

SEP 23 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 & § MDL 1446
"ERISA" LITIGATION, §

MARK NEWBY, ET. AL. §

Plaintiffs §

VS. §

CIVIL ACTION NO. H-01-3624 ✓
AND CONSOLIDATED CASES

ENRON CORPORATION, ET.AL. §

Defendants §

DAVID A. HUETTNER, Individually and as §
Custodian of the David A. Huettner Individual §
Retirement Account; SUSAN B. HUETTNER; §
and DONALD E. HUETTNER, Individually §
and as Custodian of the Donald E. Huettner §
Individual Retirement Account §
Plaintiffs §

VS. §

CIVIL ACTION NO. H-02-2984

EOTT ENERGY PARTNERS, L.P.; §
EOTT ENERGY CORP.; KENNETH LAY; §
DANA R. GIBBS; STANLEY C. HORTON; §
MARY ELLEN COOMBE; §
DAVID R. HULTSMAN; LORI L. MADDOX; §
PEGGY B. MENCHACA; §
MOLLY M. SAMPLE; SUSAN C. RALPH; §
DANIEL P. WHITTY; and §
ARTHUR ANDERSEN, L.L.P. §

**SUPPLEMENT TO MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND
RENEWED MOTION TO TRANSFER VENUE**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

EOTT Energy Partners, L.P., ("EOTT"), Dana R. Gibbs, Mary Ellen Coombe, David R.
Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph, Daniel P.

1038

Whitty (collectively referred to as the “Individual Defendants”) (The Individual Defendants and EOTT collectively are referred to as the “Defendants”) file this Supplement to their Motion to Dismiss for Failure to State a Claim and renew EOTT’s Motion to Dismiss for Improper Venue and Alternative Motion to Transfer Venue and respectfully states as follows:

1. On September 20, 2002, Defendants filed their initial Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue.
2. The exhibits to the motion inadvertently were not attached to the motion.
3. Therefore, Defendants file this supplement and attach EOTT’s Motion to Dismiss for Improper Venue and Alternative Motion to Transfer Venue file in the Northern District of Ohio as Exhibit “A” and the Conditional Transfer Order transferring this case to the Southern District of Texas as Exhibit “B.”

Therefore, EOTT Energy Partners, L.P. and all the Individual Defendants ask the court to consider the attached exhibits along with their Motion to Dismiss for Failure to State a Claim and Renewed Motion to Transfer Venue and enter judgment that Plaintiffs take nothing, dismiss Plaintiffs’ suit with prejudice, assess costs against Plaintiffs, and award EOTT Energy Partners, L.P., Dana R. Gibbs, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph, Daniel P. Whitty all other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing pleading has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure, on this 23rd day of September, 2002

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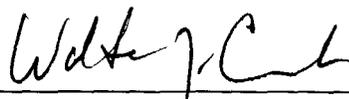
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
02 JUN 24 PM 8:58
NORTH-SOUTH DISTRICT COURT
COURT

DAVID A. HUETTNER, Individually and as §
Custodian of the David A. Huettner Individual §
Retirement Account; SUSAN B. HUETTNER; §
and DONALD E. HUETTNER, Individually §
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Plaintiffs §

Civil Action No. 1:02 CV 917

VS. §

Judge Donald C. Nugent

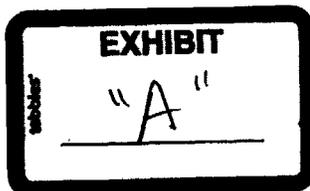
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Defendants §

**DEFENDANTS, EOTT ENERGY PARTNERS, L.P.'S
AND EOTT ENERGY CORP.'S MOTION TO DISMISS FOR
IMPROPER VENUE AND ALTERNATIVE MOTION TO TRANSFER VENUE**

Defendants, EOTT Energy Partners, L.P. and EOTT Energy Corp., move for an order to dismiss Plaintiffs' suit for improper venue or, alternatively, to transfer Plaintiffs' suit to the United States District Court for the Southern District of Texas, Houston Division.

Venue

1. Plaintiffs have filed this suit in an improper district under the applicable venue statutes. Consequently, the Court should dismiss Plaintiffs' suit for improper venue, as authorized by Federal Rule of Civil Procedure 12(b)(3), or alternatively, transfer Plaintiffs' suit to the United States District Court for the Southern District of Texas, Houston Division, as authorized by 28 U.S.C. § 1406(a).



2. Further in the alternative should the Court determine that venue is proper in this district, the Court should transfer Plaintiffs' suit to the United States District Court for the Southern District of Texas, Houston Division for the convenience of parties and witnesses and in the interest of justice, as authorized by 28 U.S.C. § 1404(a).

3. This motion is based on the pleadings and papers on file in this action and the attached memorandum of points and authorities, which memorandum is incorporated herein for all purposes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing pleading has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure, on this 21st day of June, 2002.

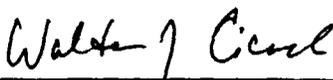
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Lori L. Maddox, Peggy B.
Menchaca, Molly M. Sample, Susan
C. Ralph and Daniel P. Whitty*



Walter J. Cicack

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EASTERN DIVISION

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Civil Action No. 1:02 CV-917

Judge Donald C. Nugent

FILED
02 JUN 24 AM 8:58
U.S. DISTRICT COURT
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EASTERN DIVISION

**DEFENDANTS, EOTT ENERGY PARTNERS, L.P.'S AND EOTT ENERGY CORP.'S
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR IMPROPER VENUE
AND ALTERNATIVE MOTION TO TRANSFER VENUE**

Defendants, EOTT Energy Partners, L.P. ("EOTT L.P.") and EOTT Energy Corp. ("EOTT Corp.") file this motion to dismiss Plaintiffs' suit for improper venue, as authorized by Federal Rule of Civil Procedure 12(b)(3), alternative motion to transfer Plaintiffs' suit for improper venue, as authorized by 28 U.S.C. § 1406(a), and alternative motion to transfer Plaintiffs' suit for the convenience of Defendants and its witnesses and in the interest of justice, as authorized by 28 U.S.C. § 1404(a).

I. INTRODUCTION

1. Plaintiffs are David A. Huettner, individually and as custodian of the David A. Huettner individual retirement account, Susan B. Huettner, and Donald E. Huettner, individually and as custodian of the Donald E. Huettner individual retirement account.

2. Defendants are EOTT Energy Partners, L.P., EOTT Energy Corp., Kenneth L. Lay, Dana R. Gibbs, Stanley C. Horton, Mary Ellen Coombe, David R. Hultsman, Lori L. Maddox, Peggy B. Menchaca, Molly M. Sample, Susan C. Ralph, Daniel P. Whitty, and Arthur Andersen, L.L.P.

3. On May 15, 2002, Plaintiffs sued Defendants for securities fraud under the Securities Exchange Act of 1934, professional malpractice, and for other relief in the district court for the Northern District of Ohio, Eastern Division. Plaintiffs maintain that venue is proper in the Northern District of Ohio, Eastern Division pursuant to section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391.

4. Venue is improper under both venue statutes, however, and the Court should dismiss the suit or, in the alternative, transfer the suit to the United States District Court for the Southern District of Texas, Houston Division. Further, in the alternative should this Court determine that venue is proper in the Northern District of Ohio, Eastern Division, venue is inconvenient for the Defendants in this district and more convenient in the United States District Court for the Southern District of Texas, Houston Division. The Court, therefore, should transfer the suit to the United States District Court for the Southern District of Texas, Houston Division for the convenience of the Defendants and the witnesses and in the interest of justice.

II. ARGUMENT AND AUTHORITIES

5. If an action is filed in an improper judicial district, the court may dismiss the action upon timely objection or, in the interest of justice, may transfer the case to a district where the action could have been brought. 28 U.S.C. § 1406(a).

6. The district court for the Northern District of Ohio, Eastern Division is an improper venue under both Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391.

A. Venue Improper Under 15 U.S.C. § 78aa

7. Section 78aa is a special venue provision incorporated into the Securities Exchange Act of 1934 and restricts the bringing of an action to districts wherein (1) any act or transaction constituting the violation occurred, (2) the defendant was found, or (3) the defendant was an inhabitant or transacted business. Section 1391 is the general venue statute and is supplemental to special venue provisions, such as section 78aa.

8. None of the alleged acts or transactions made the basis of Plaintiffs' suit occurred in the Northern District of Ohio. Further, only one of the thirteen defendants, Arthur Andersen, L.L.P. ("Arthur Andersen"), is found in or inhabits or transacts business in the Northern District of Ohio.

9. If an action is brought against multiple parties, venue must be proper as to *each* of them. *See* 28 U.S.C. § 1391(b)(1). Specifically, Section 1391(b)(1) provides that a civil action may be brought only in a judicial district where any defendant resides, if all defendants reside in the same state. Courts have interpreted this to mean that in a case in which all defendants reside in the same state, venue lies only in *that* state, and, specifically, only in a district within *that* state

in which one of the defendants resides. *See, e.g., Cobra Partners L.P. v. Liegl*, 990 F.Supp. 332, 335 (S.D.N.Y. 1998).

10. Here, Arthur Andersen “resides” in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(c). The remaining twelve Defendants, however, do not reside in Ohio. Consequently, venue is not established in the Northern District of Ohio pursuant to Section 1391(b)(1). *See Cobra Partners L.P.*, 990 F.Supp. at 335.

11. Further, the co-conspirator venue theory is inapplicable under the facts of this case to establish venue over the other twelve defendants by virtue of venue established for Arthur Andersen. The co-conspirator venue theory provides that where an action is brought against multiple defendants alleging a common scheme of acts or transactions in violation of securities statutes, so long as venue is established for any of the defendants in the forum district, venue is proper as to all defendants. *See, e.g., Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985). The co-conspirator venue theory only applies, however, where venue has been established over one conspirator by reason of an act or transaction performed in the district by that conspirator in furtherance of the conspiracy. *Miller v. Asensio*, 101 F.Supp.2d 395, 408 (D. S.C. 2000); *FS Photo, Inc. v. PictureVision, Inc.*, 48 F.Supp.2d 442, 446 (D. Del. 1999); *Rose v. Arkansas Valley Envtl. & Utility Authority*, 562 F.Supp. 1180, 1211 (W.D. Mo. 1983) (noting that, when applying the co-conspirator venue theory, “courts have made clear that an act in the forum district, in furtherance of the fraudulent scheme, is vital; it is not sufficient, for purposes of venue in connection with all defendants, that venue may otherwise exist as to one or more defendants simply because they reside in the forum district, or are found there, or do business there”).

12. In this case, venue in the Northern District of Ohio is only proper as to Arthur Andersen because Arthur Andersen maintains an office in Cleveland, Ohio, not because it performed an act or transaction in furtherance of the alleged conspiracy in its Cleveland, Ohio office. As a result, the co-conspiracy venue doctrine is inapplicable to establish proper venue for the remaining twelve defendants. *See Miller*, 101 F.Supp.2d at 408; *Rose*, 562 F.Supp. at 1211.

B. Venue Improper Under 28 U.S.C. § 1391

13. As noted above, Section 1391 is the general venue statute and is supplemental to special venue provisions, such as Section 78aa. Section 1391 provides that, except as otherwise provided by law, a civil action may be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(b).

14. Although Arthur Andersen “resides” in the Northern District of Ohio by virtue of its office in Cleveland, Ohio, none of the remaining Defendants do. Subsection (1), therefore, does not support venue as to Defendants.

15. In addition, because none of the events or omissions giving rise to Plaintiffs’ claims occurred in the Northern District of Ohio, subsection (2) is inapplicable.

16. In order to be applicable, Section 1391(b)(3) requires that there be “no district in which the action may otherwise be brought.” A recent Delaware court noted that case law is nonexistent as to the meaning of this clause. *See FS Photo, Inc. v. PictureVision, Inc.*, 48 F.Supp.2d 442, 448 (D. Del. 1999). As a matter of first impression, the *FS Photo* court held that Section 1391(b)(3) may only be utilized if there is no other district which would have both

personal jurisdiction and venue as to all defendants. *Id.* The *FS Photo* court reasoned that this approach was consistent with judicial interpretation of analogous language in other venue provisions. *Id.*

17. For example, the Supreme Court in *Hoffman v. Blaski* interpreted an almost identical phrase in 28 U.S.C. § 1404(a), “that a district court may transfer an action to any other district or division where it might have been brought,” to mean that the transferee court must be the proper venue, as well as have both subject matter and personal jurisdiction over the action. 363 U.S. 335, 343–44 (1960). Similarly, the phrase “any district or division in which [the action] could have been brought” in 28 U.S.C. § 1406(a) has been construed to mean that the transferee forum must have proper venue and personal jurisdiction over the defendant. *See, e.g., Minnette v. Time Warner*, 997 F.2d 1023, 1026 (2d Cir. 1993); *Liaw Su Teng v. Skaarup*, 743 F.2d 1140, 1148 (5th Cir. 1984), *overruled on other grounds, In re Air Crash Disaster Near New Orleans, Louisiana*, 821 F.2d 1147 (5th Cir. 1987) (“Ordinarily transfer of a suit against multiple defendants is proper only when all of them would have been amenable to process in, and if venue as to all of them would be proper in, the transferee court.”).

18. Here, Arthur Andersen is found in Ohio. Venue is proper as to the remaining defendants, therefore, if there is no other district in which Plaintiffs’ action may otherwise have been brought (*i.e.*, if there is no other district which has both personal jurisdiction and venue over Arthur Andersen and the other twelve defendants).

19. Plaintiffs could have brought this suit in the United States District Court for the Southern District of Texas, Houston Division. Specifically, all thirteen defendants either reside in or are found in Houston, Texas. Moreover, a substantial part of the events or omissions giving rise to Plaintiffs’ claim occurred in Houston, Texas. Because the United States District Court for

the Southern District of Texas, Houston Division has both personal jurisdiction and venue as to all thirteen defendants, Ohio is not the proper venue. *See FS Photo*, 48 F.Supp.2d at 448.

III. ALTERNATIVE MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1406(a)

20. The court may transfer this case to the United States District Court for the Southern District of Texas, Houston Division if (1) defendants are subject to the jurisdiction of the proposed forum, (2) venue is proper in the proposed forum, and (3) the transfer is in the interest of justice. *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962).

21. Defendants are subject to the jurisdiction of the proposed forum. Specifically, the defendant entities, EOTT L.P., EOTT Corp., and Arthur Andersen, maintain offices and transact business within the Southern District of Texas, Houston Division. Further, all ten individual defendants reside and/or work in the Southern District of Texas, Houston Division.

22. Venue is proper in the United States District Court for the Southern District of Texas, Houston Division under 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Specifically, a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred in the Southern District of Texas, Houston Division, within the meaning of the venue statute. All thirteen defendants either reside in or are found in the southern district of Texas. Moreover, the majority of the documentation and individuals with knowledge of relevant facts relating to the transactions made the basis of Plaintiffs' suit are located in the Southern District of Texas, Houston Division.

23. For the foregoing reasons, the transfer is in the interest of justice. *Goldlawr*, 369 U.S. at 467. Out of the thirteen defendants named in Plaintiffs' suit, only Arthur Andersen is found in Ohio. Notably, however, none of the transactions made the basis of Plaintiffs' suit occurred in Arthur Andersen's Cleveland, Ohio office. Conversely, a substantial part of the

events or omissions giving rise to Plaintiffs' claim occurred in the Southern District of Texas, Houston Division, where all thirteen defendants are found.

IV. ALTERNATIVE MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

24. Venue is inconvenient for Defendants and its witnesses in this district and more convenient in the Southern District of Texas. The Court, therefore, should transfer the suit to the United States District Court for the Southern District of Texas, Houston Division.

25. The Court may transfer a suit to any other district or division where it might have been brought for the convenience of the defendant or its witnesses and in the interest of justice. 28 U.S.C. § 1404(a). Under section 1404(a), a district court has broad discretion to grant or deny a motion to transfer a case. *United States v. Cinemark USA, Inc.*, 66 F.Supp.2d 881, 886–87 (N.D. Ohio 1999) (citing *Phelps v. McClellan*, 30 F.3d 658, 663 (6th Cir. 1994)).

26. The threshold task is to discern whether the suit “might have been brought” in the proposed transferee forum. A transferee court may receive a case if (1) it has subject matter jurisdiction; (2) venue is proper; and (3) the defendant is amenable to process its issues. *DeMoss v. First Artists Prod. Co., Ltd.*, 571 F.Supp. 409, 412–13 (N.D. Ohio 1983), *appeal dismissed*, 734 F.2d 14 (6th Cir. 1984). A proposed transfer must then enhance “the convenience of the parties and witnesses” and advance “the interests of justice.” *Id.* at 413.

27. As illustrated above, this suit clearly could have been brought in the United States District Court for the Southern District of Texas, Houston Division. That court has subject matter jurisdiction pursuant to Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa). Further, venue is proper as to all Defendants because a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred in the Southern District of Texas, Houston Division, within the meaning of the venue statute, and all thirteen defendants either reside in or

are found in Houston. Finally, all Defendants are amenable to process in the Southern District of Texas, Houston Division.

28. Once it is determined that the case “could have been brought” in the transferee court, a district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of “interests of justice.” *Moses v. Business Card Express, Inc.*, 929 F.2d 1131, 1137 (6th Cir. 1991). These private and public interests include the plaintiff’s choice of forum, location of documents, convenience of witnesses, possibility of prejudice in either forum, and the practical problems associated with trying the case expeditiously and inexpensively. *Cinemark USA, Inc.*, 66 F.Supp.2d at 887.

A. *Plaintiffs’ Choice of Forum*

29. A Plaintiff’s choice of forum should be given “great” or “substantial” weight when considering whether to transfer a case under section 1404(a). *Id.* When a plaintiff has little or no connection to the chosen forum, however, the plaintiff’s reason for choosing the forum—and remaining in the forum—is diminished and thus should be given less weight. *Id.* at 889; *Central States, Southeast & Southwest Areas Health & Welfare Fund v. Guarantee Trust Life Ins. Co.*, 8 F.Supp.2d 1008, 1010–11 (N.D. Ohio 1998) (noting that several courts have indicated that if a plaintiff chooses a forum that is not the plaintiff’s residence, this choice is given less consideration).

30. In this case, none of the three Plaintiffs reside or work in Ohio. Further, none of the alleged events or omissions giving rise to Plaintiffs’ claims occurred in Ohio. There is no justification for denying a transfer solely because Plaintiffs have chosen to sue in this district.

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See Cinemark USA, Inc., 66 F.Supp.2d at 889; *Guarantee Trust Life Ins. Co.*, 8 F.Supp.2d at 1010–11. Their only tie to Ohio appears to be that they hired a lawyer in Ohio who is a family relative.

B. Convenience of the Parties and Witnesses

31. Convenience of the parties and witnesses is an important factor to weigh in the balance. *Cinemark USA, Inc.*, 66 F.Supp.2d at 889; *Bacik v. Peek*, 888 F.Supp. 1405, 1414 (N.D. Ohio 1993) (noting that it has been said that the most important factor, and the factor most frequently mentioned, in passing on a motion to transfer under section 1404(a) is the convenience of witnesses). The majority of witnesses for EOTT L.P., EOTT Corp., and the other defendants will come from Texas. All Defendants have offices or live and/or work in Houston. All of the individual defendants live and work in or around the Houston area. All relevant transactions made the basis of Plaintiffs' suit took place in Houston. Many of the relevant witnesses work or live within 100 miles of the District Court in Houston and are amenable to subpoena for a hearing or trial in that district.

32. Further, no Ohioans will be utilized during these proceedings. None of the Houston nonparty witnesses would be subject to compulsory process issued by this Court. The availability and convenience of the witnesses, therefore, would best be served by a transfer of this action to the Southern District of Texas, Houston Division. *See id.* at 889.

C. Location of Events

33. As indicated above, a majority of the events and omissions made the basis of Plaintiffs' suit occurred in Houston, Texas. Specifically, all of the underlying financial transactions occurred in Houston, Texas. Further, no Plaintiffs received or distributed any information allegedly made the basis of this suit in Ohio. The only connection the state of Ohio

has to this suit is the fact that one of the thirteen defendants, Arthur Andersen, maintains an office in Cleveland, Ohio. Because none of the events and omissions made the basis of Plaintiffs' suit occurred in Ohio, this Court should transfer this action to the Southern District of Texas, Houston Division.

D. Location of Documentary Evidence

34. Most documents relating to the alleged events or omissions giving rise to Plaintiffs' claim are located in Houston. Unlike those cases where records were equally divided between two districts and transfer was denied, there is no evidence that any relevant records are located in Ohio. Consequently, the one-sided distribution of the documents provides additional grounds for transferring this case. *See DeMoss*, 571 F.Supp. at 414.

V. CONCLUSION

35. Because Plaintiffs filed suit in an improper district, the Court should dismiss Plaintiffs' suit pursuant to Federal Rule of Civil Procedure 12(b)(3), or, in the alternative, transfer it pursuant to 28 U.S.C. § 1406(a) to the United States District Court for the Southern District of Texas, Houston Division, which has personal jurisdiction over all thirteen defendants and the district of proper venue. Further in the alternative, should this Court determine that venue in this district is proper, Plaintiffs filed suit in an inconvenient district and the Court should transfer Plaintiffs' suit to the United States District Court for the Southern District of Texas, Houston Division pursuant to 28 U.S.C. § 1404(a).

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JUN 28 2002

DOCKET NO. 1446

FILED
CLERK'S OFFICE
BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ENRON CORP. SECURITIES, DERIVATIVE & "ERISA" LITIGATION

David A. Huettner, et al. v. EOTT Energy Partners, L.P., et al.,
N.D. Ohio, C.A. No. 1:02-917

CONDITIONAL TRANSFER ORDER (CTO-4)

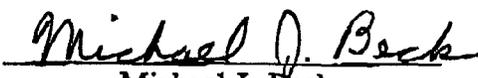
On April 16, 2002, the Panel transferred 14 civil actions to the United States District Court for the Southern District of Texas for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, six additional actions have been transferred to the Southern District of Texas. With the consent of that court, all such actions have been assigned to the Honorable Melinda Harmon.

It appears that the action on this conditional transfer order involves questions of fact which are common to the actions previously transferred to the Southern District of Texas and assigned to Judge Harmon.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the Southern District of Texas for the reasons stated in the order of April 16, 2002, 196 F. Supp.2d 1375, (J.P.M.L. 2002), and, with the consent of that court, assigned to the Honorable Melinda Harmon.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of Texas. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


Michael J. Beck
Clerk of the Panel

