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MAY 14 2003

Michael N. Milby, Clerk

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

In re ENRON CORP. SECURITIES  
DERIVATIVE, & "ERISA" LITIGATION

MDL-1446

MARK NEWBY, et al., Individually and On  
Behalf of All Others Similarly Situated,  
Plaintiffs,

C.A. No. H-01-3624  
AND CONSOLIDATED CASES

v.

ENRON CORP., et al.,  
Defendants.

**DECLARATION OF CATHERINE E. PALMER AND EXHIBITS 1 – 5 IN SUPPORT OF  
ARTHUR ANDERSEN LLP'S AND ARTHUR ANDERSEN INDIVIDUALS' MOTION  
FOR PROTECTION FROM BANKRUPTCY RULE 2004 SUBPOENAS**

**VOL. 1 of 4**

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

MARK NEWBY, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO. H-01-3624
	)	
v.	)	AND CONSOLIDATED CASES
	)	
ENRON CORPORATION, ET AL.,	)	
	)	
Defendants.	)	
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**DECLARATION OF CATHERINE E. PALMER**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

I, Catherine E. Palmer, do declare the following:

1. I am a partner of Latham & Watkins, located at 885 Third Avenue, New York NY 10022, counsel for Arthur Andersen LLP (“Andersen”), and John Stewart, Benjamin Neuhausen, Carl Bass, Debra Cash, and Patricia Grutzmacher (the “Andersen Individuals”). I submit this declaration in support of Arthur Andersen LLP’s and the Andersen Individuals’ Motion for Protection from Bankruptcy Rule 2004 Subpoenas.
2. In March 2003, Alston & Bird, counsel for the Examiner, served Rule 2004 subpoenas calling for the production of documents and depositions upon Andersen and four former Andersen personnel involved in certain tax transactions (the “Andersen Tax Personnel”), who are different from the Andersen Individuals involved in the present motion. We

contacted William Plybon of Alston & Bird and indicated that we wished to work with the Examiner to provide the Examiner with the information he needed but wished to negotiate an arrangement limiting the scope of the document production and depositions. Alston & Bird eventually agreed to accept interviews of the Andersen Tax Personnel and to limit the discussion to tax transactions that are not the subject of the Fastow Litigation or the *Newby* Litigation. On that basis, Andersen and the Andersen Tax Personnel agreed to provide the Examiner with the discovery he requested.

3. On April 23, 2003, Mr. Plybon informed me by voicemail that the Examiner wished to depose or examine the Andersen Individuals, and wanted to know whether I could accept service of subpoenas to them on their behalf.
4. On April 24, 2003, I called Mr. Plybon to speak about the proposed examinations. I said that we wanted to understand what information the Examiner needed from the Andersen Individuals, so that we could hopefully reach a mutually agreeable way to provide the Examiner with this information. I noted that we had reached an agreement on narrowing the scope of the four examinations of the Andersen Tax Personnel, and said that we hoped to be able to work similarly with the Examiner regarding his current request. Upon my asking whether the examinations would or could be limited in any way, he said that the Andersen Individuals were "in the thick of everything Arthur Andersen did" with Enron, and that examinations would cover "all of their dealings at Enron" and would be "wide ranging". When asked why it was necessary to take these examinations after the Examiner had already issued two Reports which reached conclusions regarding Andersen's accounting work on essentially all of the material transactions, he did not provide an explanation other than stating that the purpose was to "learn what these people know." Mr. Plybon refused to

identify the transactions, issues, or timeframes that would be covered, or to limit the scope of the examinations in any way. When asked about the timing of the depositions, Mr. Plybon said that the Examiner was on a tight schedule and most likely could not be flexible about timing. When I proposed that the Examiner could participate in the anticipated depositions of the Andersen Individuals in the *Newby* Litigation, to avoid the burden on the individuals of preparing for and participating in multiple duplicative depositions, he refused this proposal.

5. On May 5, I had another conversation with Mr. Plybon. In that conversation, he said that the examinations would cover all of the transactions covered by Appendix Q to the Examiner's March report, except for the tax transactions. In addition, he said that the examinations would also cover other transactions, including Blockbuster, Nigerian Barge, LE Huston, and the "Minority Interest" transactions such as Nahani and Nighthawk. Mr. Plybon said that the Examiner would not agree to push back the dates of the examinations.
6. The transactions that the Examiner seeks to cover in the examinations are at the heart of the claims in the Fastow Litigation, and also constitute the great majority of the transactions that are at issue in the *Newby* Litigation. The examinations would be almost entirely duplicative of the anticipated depositions in the Fastow Litigation and the *Newby* Litigation. These transactions have also already been addressed and concluded upon in the Examiner's previous Reports.
7. Andersen has already provided substantial discovery to the Examiner. We provided the Examiner, his counsel, and his accountants with access to the Andersen workpapers throughout 2002, including months of access to the physical workpapers, and permission to copy any workpapers the Examiner deemed relevant. We provided an interview with the

head of the Houston office at the Examiner's request in November 2002. We produced documents relevant to the tax transactions in April and May 2003, as discussed above. We are currently providing sworn interviews of the four Andersen Tax Personnel as discussed above. In response to the subpoenas at issue here we have offered to provide the desk files of the Andersen Individuals. In addition, we have offered to provide access to the entire collection of Andersen documents to be produced in the *Newby* Litigation, totaling approximately twelve million pages. Finally, we have offered to allow the Examiner to participate in the *Newby* depositions of Andersen witnesses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of May, 2003.

  
Catherine E. Palmer

The Exhibit(s) May

Be Viewed in the

Office of the Clerk