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

United States Courts
Southern District of Texas
FILED
OCT 14 2003
Michael N. Milby, Clerk

IN RE ENRON CORPORATION SECURITIES, DERIVATIVE, & "ERISA" LITIGATION	MDL-1446
This Document Relates to: MARK NEWBY, ET AL., PLAINTIFFS, VS. ENRON CORPORATION, ET AL., DEFENDANTS.	CIVIL ACTION NO. H-01-3624 CONSOLIDATED CASES
SAMSON INVESTMENT COMPANY, PLAINTIFF, VS. ARTHUR ANDERSEN L.L.P., DEFENDANT.	CIVIL ACTION NO. H-03-2264
AND ARTHUR ANDERSEN L.L.P., DEFENDANT/THIRD-PARTY PLAINTIFF, VS. ANDREW FASTOW, ET AL., THIRD-PARTY DEFENDANTS	

[Caption continued on following pages.]

OUTSIDE DIRECTORS' RESPONSE TO BANK DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' MOTIONS TO REMAND CONCERNING THE EFFECT OF THE COURT'S SEPTEMBER 15, 2003 DECISION IN *AMERICAN NATIONAL, ET AL. V. ARTHUR ANDERSEN, ET AL.*

1748

RICHARD CHOUCROUN, ET AL.,
PLAINTIFFS,

VS. — CIVIL ACTION NO. H-03-3320

ARTHUR ANDERSEN L.L.P., ET AL.,
DEFENDANTS.

AND

ARTHUR ANDERSEN L.L.P.,
DEFENDANT/THIRD-PARTY
PLAINTIFF,

VS.

JP MORGAN CHASE & CO., ET AL.,
THIRD-PARTY DEFENDANTS.

AL RAJHI INVESTMENT CORPORATION BV,
PLAINTIFF,

VS. — CIVIL ACTION NO. H-03-1219

ARTHUR ANDERSEN L.L.P.,
DEFENDANT.

AND

ARTHUR ANDERSEN L.L.P.,
DEFENDANT/THIRD-PARTY
PLAINTIFF,

VS.

JP MORGAN CHASE & CO., ET AL.,
THIRD-PARTY DEFENDANTS.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
PLAINTIFF,

VS. — CIVIL ACTION NO. H-03-3481

BANC OF AMERICA SECURITIES LLC, ET AL.,
DEFENDANTS.

PAUL OKOMO, PLAINTIFF	:	
VS.	:	CIVIL ACTION NO. H-03-3508
BANC OF AMERICA SECURITIES LLC, ET AL., DEFENDANTS.	:	
RETIREMENT SYSTEMS OF ALABAMA, ET AL., PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-03-2308
MERRILL LYNCH & CO., ET AL., DEFENDANTS.	:	
CONNECTICUT RESOURCES RECOVERY AUTHORITY, PLAINTIFF,	:	
VS.	:	CIVIL ACTION NO. H-03-1580
MURTHA CULLINA, LLP, ET AL., DEFENDANTS.	:	
WAI CHINN, ET AL., PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-03-862
ROBERT A. BELFER, ET AL., DEFENDANTS.	:	
DAVID JOSE, ET AL., PLAINTIFFS,	:	
VS.	:	CIVIL ACTION NO. H-03-1087
ARTHUR ANDERSEN L.L.P., ET AL., DEFENDANTS.	:	

TO THE HONORABLE MELINDA HARMON:

Defendants Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Joe H. Foy, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, John Mendelsohn, Jerome Meyer, Charls E. Walker, John Wakeham, and Herbert S. Winokur, Jr. (collectively, the "Outside Directors"[1]) hereby respond as follows to the Bank Defendants' Supplemental Response to Plaintiffs' Motions to Remand Concerning the Effect of the Court's September 15, 2003 Decision in *American National, et al. v. Arthur Andersen, et al.* (*Newby* Instrument # 1734, hereafter the "Bank Motion"):

Waiver of Non-Jurisdictional Defects

The Bank Defendants argue that certain of the above-captioned actions are not candidates for remand because the plaintiffs in those actions have allege the procedural defect of failure to secure unanimous consent either too late or not at all, thus waiving that defect under 28 U.S.C. § 1447. *See* Bank Motion at 16-19 (noting waiver in *Samson*, *Al Rajhi*, *CalPERS* and *Okomo* actions). The Outside Directors incorporate the Bank Defendants' waiver argument in full, and respectfully bring to the Court's attention that the plaintiffs in the following (now above-captioned) actions have also waived the procedural point of unanimity:

- *Connecticut Resources Recovery Authority v. Murtha Cullina, L.L.P.*, C.A. No. H-03-1580;
- *Chinn v. Belfer*, C.A. No. H-03-862; and
- *Jose v. Arthur Andersen*, C.A. No. H-03-1087.

Indeed, plaintiffs in *Chinn* and *Jose* have never raised the procedural issue of unanimous consent to removal, the 30 day limit now having long passed. Additionally, plaintiff Connecticut Resources Recovery Authority ("CRRA") raised the unanimity objection, but not until at least 49 days after the filing of the notice of removal.[2]

---

[1] The Outside Directors are named as defendants in *Newby v. Enron Corp.* as well as some, but not all, of the above-captioned consolidated and coordinated cases.

[2] *See* Notice of Removal dated January 10, 2003 (*CRRA v. Murtha Cullina* Instrument # 1); Motion to Remand and/or Abstain and Memorandum of Law in Support dated February 28, 2003 (*CRRA v. Murtha Cullina* Instruments # 72 and 73).

The Outside Directors anticipate that CRRA will argue that the time period to raise procedural defects in removal was extended by order of the United States District Court for the District of Connecticut (before MDL transfer). This argument has no merit. Judge Goettel did grant CRRA's motion "pursuant to Local Rule 9(b) for a four-week extension of time . . . to file a motion to remand . . .." *See CRRA v. Murtha Cullina* Instrument # 21 and 21-1 (underlying motion and Court's "endorsement," respectively). However, that order did not purport to extend the statutory deadline for raising procedural defects in removal, and in any event could not have done so within the rules. *See* 28 U.S.C. § 1447(c) (imposing statutory 30 day deadline for raising procedural defects in removal); 4B WRIGHT & MILLER *Federal Practice and Procedure* § 1165, at 519 (2002 ed.) (analyzing Federal Rule of Civil Procedure 6(b) and concluding that it does not authorize courts to extend statutory deadlines); 1 MOORE'S *Federal Practice* § 6.06(1)(a) (3d ed. 2000) (same); *Harris Corp. v. Kollsman, Inc.*, 97 F. Supp. 2d 1148, 1151 (M.D. Fla. 2000) (same).[3]

Accordingly, the waiver argument precludes remand, on the basis of lack of unanimous consent, of *CRRA v. Murtha, Chinn v. Belfer, Jose v. Andersen*, as well as any other actions in which unanimity was not timely raised.

---

[3] District of Connecticut Local Rule 9(b) – which is now enumerated as 7(b) – does not purport to expand the scope of Fed. R. Civ. P. 6(b), which covers enlargement of time. Rather, it sets out various procedural requirements, and provides that certain deadlines (already in the purview of Fed. R. Civ. P.) can in certain situations be extended by the Clerk (without the necessity of an order from the District Judge). *See* District of Connecticut Local Rule 7(b) and Table of Re-numbered Rules, attached collectively as Ex. "A."

Respectfully submitted,

GIBBS & BRUNS, L.L.P.

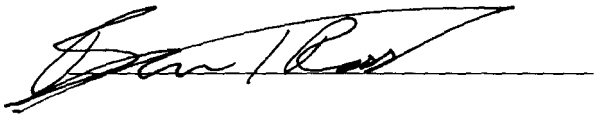
By: Robin C. Gibbs w/permission BIR

Robin C. Gibbs
Attorney-in-Charge
T.B.A. No. 07853000
Kathy D. Patrick
T.B.A. No. 15581400
Aundrea K. Frieden
T.B.A. No. 24034468
Brian T. Ross
T.B.A. No. 24037395
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713)650-8805
(713)750-0903

ATTORNEYS FOR DEFENDANTS ROBERT A. BELFER, NORMAN P. BLAKE, JR., RONNIE C. CHAN, JOHN H. DUNCAN, JOE H. FOY, WENDY L. GRAMM, ROBERT K. JAEDICKE, CHARLES A. LEMAISTRE, JOHN MENDELSOHN, JEROME MEYER, CHARLS E. WALKER, JOHN WAKEHAM, AND HERBERT WINOKUR, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by electronic posting to www.ESL3624.com on this 14th day of October, 2003.



STATE OF TEXAS §
§
County of Harris §

AFFIDAVIT OF BRIAN T. ROSS

On this day, Brian T. Ross appeared before me, the undersigned notary public. After I administered an oath to him, upon oath, he said:

1. "My name is Brian T. Ross. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am familiar with the remaining pages of Ex. "A" to the Outside Directors' Response to the Bank Defendants' Supplemental Response to Plaintiffs' Motions to Remand Concerning the Effect of the Court's September 15, 2003 Decision in American National, et al. v. Arthur Andersen, et al. They are true and correct print-outs from the "Local Rules" section of the Internet website of the United States District Court for the District of Connecticut. [http://www.ctd.uscourts.gov/]."

Brian T. Ross

Subscribed and sworn to before me this 14th day of October, 2003.

Sherry L. Graves
Notary Public for the State of Texas

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOCAL RULES OF CIVIL PROCEDURE

RENUMBERED
TABLE OF RULES

Rule		Previous Rule number
1	Scope of Rules	1
	(a) Title and Citation	1(a)
	(b) Effective Date	1(b)
	(c) Definitions	4
2	Reserved	N/A
3	Commencement of Action	N/A
	(a) Complaint	7(a)
	(b) Place of Filing; Number of Copies	25(d)
	(c) Statutory Fee	25(b)
	(d) In Forma Pauperis Motion	25(c)
4	Civil Process	5
	(a) Issue and Service	5(a)
	(b) Service Copies	5(b)
	(c) Attachments and Pre-Judgment Remedies	5(c)
5	Serving and Filing Pleadings	7
	(a) Appearance	7(b)
	(b) Proof of Service	7(e)
	(c) United States A Party	7(d)
	(d) Sealed Documents	7(f)
	(e) Filing of Discovery Material	7(g)
	(f) Service by Facsimile Copy	7(h)
	(g) Three Judge Court	7(c)
6	Computation of Time	34
7	Motion Procedures	9
	(a) Procedures	9(a)
	(b) Motions for Extensions of Time	9(b)
	(c) Motions for Reconsideration	9(e)
	(d) Reply Briefs	9(g)
	(e) Withdrawal of Appearances	15
8	Rules of Pleading	N/A
	(a) Statement of Claim	25(e)
	(b) Petitions Shall be Legible	25(a)
9	Reserved	N/A

Rule		Previous Rule number
10	Preparation of Pleadings	
	(a) Preparation of Pleadings	6
11	Sanctions	N/A
	(a) Motion for Attorney's Fees and/or Sanctions	9(f)
12 - 15	Reserved	N/A
16	Status and Settlement Conferences and ADR	11, 31 and 36
	(a) Status Conference	11(a)
	(b) Scheduling Orders	11(b)
	(c) Settlement Conferences	11(c)
	(d) Pretrial Order	11(d)
	(e) Trial Briefs	11(e)
	(f) Failure of Compliance	11(f)
	(g)(1) Sanctions Against Counsel	31(a)
	(g)(2) Failure to Pay Costs of Sanctions	31(b)
	(h) Alternative Dispute Resolution	36
17 - 25	Reserved	N/A
26	Duty of Disclosure	N/A
	(a)-(d) Definitions Applicable to Discovery Requests	39(a)-(d)
	(e) Parties Planning Conference	38
27 - 29	Reserved	N/A
30	Depositions	13
	(a) Attendance	13(a)
	(b) Depositions	13(b)
	(c) Transcripts and Copies of Taped Depositions	13(c)
31 - 36	Reserved	N/A
37	Discovery Disputes	9(d)
	(a) Discovery Disputes	
df		
38	Reserved	N/A
39	Designation of Bankruptcy Judges to Conduct Jury Trials	12(f)
40	Assignments	10
	(a) Place of Assignment of Cases	10(a)
	(b) Individual Calendar System	10(b)
	(c) Assignment to Judge upon Remand	22(a)
41	Dismissal of Actions	16
	(a) For Failure to Prosecute	16(a)
	(b) When Reported Settled to the Court	16(b)

Rule		Previous Rule number	
42	Consolidation		N/A
	(a) Consolidation of Cases		10(d)
43 - 46	Reserved		N/A
47	Selection of Jurors		N/A
	(a) Examination of Jurors	12(b)	
	(b) Peremptory Challenges		12(c)
48	Jury Panel		N/A
	(a) Number of Jurors		12(a)
49 - 52	Reserved		N/A
53	Special Masters		28
	(a) Creation of Panel of Special Masters		28(a)
	(b) Appointment of a Master		28(b)
	(c) Directives and Calendars of Special Masters		28(c)
	(d) May Sit Outside District		28(d)
	(e) Filing of Report		28(e)
	(f) Confirmation or Rejections of Master's Report	28(f)	
	(g) Compensation		28(g)
54	Taxation of Costs		17
	(a) Procedure for Taxing Costs		17(a)
	(b) Objections to the Bill of Costs	17(b)	
	(c) Items Taxable as Costs		17(c)
	(d) Review of Clerk's Ruling		17(d)
55	Reserved		N/A
56	Summary Judgment		N/A
	(a) Motion for Summary Judgment	9(c)	
57 - 66	Reserved		N/A
67	Deposit of Funds in Court Registry		35
	(a) Order for Deposit - Interest Bearing Account		35(a)
	(b) Orders Directing Investment of Funds by Clerk	35(b)	
	(c) Release of Deposited Funds		35(c)
	(d) Registry Account		35(d)
68	Offer of Judgment		40
69 - 71	Reserved		N/A
72	See Local Rules for U. S. Magistrate Judges		N/A
73	See Local Rules for U. S. Magistrate Judges		N/A

74 - 76	Reserved		N/A

Rule		Previous Rule number	
77.1	Entry of Orders and Judgments		19
	(a) By the Court	19(a)	
	(b) By the Clerk	19(b)	
	(c) Legal Holidays		24
	(d) District Court Library	27	
	(e) Order or Judgment of Appellate Court	22(b)	
78	Reserved		N/A
79	Docket Numbers	10(c)	
80	Stenographer		N/A
	(a) Reporter's fees		21(a)
81	Proceedings to Which the Rules Apply		N/A
	(a) Naturalization Sessions		23
	(b) Dismissal of Petition or Motion	25(f)	
82	Reserved		N/A
83.1	Admission of Attorneys		2
	(a) Qualifications		2(a)
	(b) Procedure of Admission		2(b)
	(c) Local Office		2(c)
	(d) Visiting Lawyers		2(d)
83.2	Discipline of Attorneys		3
	(a) Professional Ethics		3(a)
	(b) Grievance Committee	3(b)	
	(c) Proceedings Upon Complaint		3(c)
	(d) Recommendation of Grievance Committee		3(d)
	(e) Attorneys Convicted of Crimes	3(e)	
	(f) Discipline or Resignation in Other Courts		3(f)
	(g) Mental Incapacity		3(g)
	(h) Resignation		3(h)
	(i) Reinstatement		3(i)
83.3	Security for Costs		8
	(a) Security for Costs		8(a)
	(b) Modification and Waiver		8(b)
83.4	Opening Statements		12(d)
83.5	Secrecy of Jury Deliberations		12(e)
83.6	Removal of Papers and Exhibits		14

	(a) Withdrawal of Pleadings, Papers and Exhibits		14(a)
	(b) Pre-Marked Exhibits and Exhibit Lists	14(b)	
	(c) Custody of Exhibits After Trial	14(c)	
	(d) Exhibits on Appeal		14(d)
	(e) Disposition of Exhibits in the Custody of the Clerk		14(c)

Rule		Previous Rule number	
83.7	Transfer of Cases to Another District or Upon a Remand to a State Court		18
83.8	Orders for Extension of Filing Record on Appeal		20
83.9	Law Student Internship Rules		26
	(a) Appearance of Law Student Intern		26(a)
	(b) Requirements of Supervision Attorney	26(b)	
	(c) Requirement of Law Student Intern		26(c)
	(d) Privileges of Law Student Intern		26(d)
83.10	Civil Pro Bono Panel		29
	(a) List of Attorneys		29(a)
	(b) Appointment Procedure		29(b)
	(c) Responsibilities of Appointed Attorney	29(c)	
	(d) Relief from Appointment		29(d)
	(e) Discharge		29(e)
	(f) Expenses		29(f)
	(g) Compensation for Services		29(g)
	(h) Duration of Representation		29(h)
83.11	Recordings and Photographs		30
83.12	Auxiliary Orders		32
83.13	Prohibition on Counsel as Witness		33
	(a) Refusing Employment When Counsel May be Called As a Witness		33(a)
	(b) Withdrawal as Counsel When the Lawyer Becomes a Witness		33(b)
	(c) Discretion of Court To Provide Relief from this Rule When Lawyer in Same Firm is Likely to be A Witness		33(c)

RULE 7

MOTION PROCEDURES

(a) Procedures.

1. Any motion involving disputed issues of law shall be accompanied by a written memorandum of law and shall indicate in the lower margin of the motion whether oral argument is requested. Failure to submit a memorandum may be deemed sufficient cause to deny the motion. Unless otherwise ordered by the Court, all memoranda in opposition to any motion shall be filed within twenty-one (21) days of the filing of the motion, and shall indicate in the lower margin of the first page of such memorandum whether oral argument is requested. Failure to submit a memorandum in opposition to a motion may be deemed sufficient cause to grant the motion, except where the pleadings provide sufficient grounds to deny the motion. Nothing in this Rule shall require the Judge ruling on the motion to review portions of the record in response to a motion, where the moving papers do not make specific reference to such portions of the record. Notwithstanding that a request for oral argument has been made, the Judge may, in his or her discretion, deny such request. To expedite a decision or for other good cause, the Court may, on notice to all parties, rule on a motion before expiration of the 21-day period ordinarily permitted for filing opposition papers.

2. Except by permission of the Court, briefs or memoranda shall not exceed forty (40) 8 1/2" by 11" pages of double spaced standard typographical print, exclusive of pages containing a table of contents, table of statutes, rules or the like. The original of all motions or briefs shall be filed with the Clerk at the seat of Court where the Judge sits.

(b) Motions for Extensions of Time.

1. Unless otherwise directed by a particular Judge with respect to cases on his or her docket, the Clerk is empowered to grant initial motions for extensions of time, not to exceed 30 days, in civil cases with regard to the following time limitations:

(a) the date for filing an answer or motion addressed to the complaint, counterclaim or third party complaint; and

(b) the date for serving responses to discovery requests.

2. All other motions for extensions of time must be decided by a Judge and will not be granted except for good cause. The good cause standard requires a particularized showing that the time limitation in question cannot reasonably be met despite the diligence of the party seeking the extension.

3. All motions for extensions of time, whether for consideration by the Clerk or a Judge, shall include a statement of the moving counsel that (1) he or she has inquired of opposing counsel and there is agreement or objection to the motion, or that (2) despite diligent effort, he or she cannot ascertain opposing counsel's position. All such motions shall also indicate the number of motions for extension of time that have been filed by the moving party with respect to the same limitation. The motion may be granted ex parte notwithstanding a report of objection by opposing counsel. Opposing counsel may move within 5 days of an order granting a motion for extension of time to have the Court set aside the order for good cause. Agreement of counsel as to any extension of time does not of itself extend any time limitation or provide good cause for failing to comply with a deadline established by the federal rules of civil procedure, these rules or the Court.

(c) Motions for Reconsideration.

1. Motions for reconsideration shall be filed and served within ten (10) days of the filing of the decision or order from which such relief is sought, and shall be accompanied by a memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court overlooked in the initial decision or order.

2. In all other respects, motions for reconsideration shall proceed in accordance with Rule 7(a)1 of these Local Rules.

(d) Reply Briefs.

Reply briefs are not required and the absence of a reply brief will not prejudice the moving party. Any reply brief must be filed within 10 days of the filing of the responsive brief to which reply is being made, as computed under Fed. R. Civ. P. 6. A reply brief may not exceed 10 pages, must be strictly confined to a discussion of matters raised by the responsive brief and must contain references to the pages of the responsive brief to which reply is being made.

(e) Withdrawal of Appearances.

Withdrawal of appearances may be accomplished only by leave of Court on motion duly noticed, and normally shall not be granted except upon a showing that other counsel has appeared or that the party has elected to proceed pro se, and that the party whose counsel seeks to withdraw has received actual notice by personal service or by certified mail of the motion to withdraw. In cases where the party has failed to engage other counsel or file a pro se appearance, where good cause exists for permitting the withdrawal by the appearing counsel, the Court may grant the motion to withdraw the

appearance after notice to the party that failure to either engage successor counsel or file a pro se appearance will result in the granting of the motion to withdraw and may result in a dismissal or default being entered against the party.