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

United States Courts
Southern District of Texas
FILED
MAR 2 2 2002
Michael N. Milby, Clerk

NEWBY, *ET AL.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-01-3624
	§	& CONSOLIDATED CASES
ENRON CORP., *ET AL.*,	§	
	§	
Defendants.	§	

MOTION FOR RECONSIDERATION OF ORDER GRANTING EMERGENCY MOTION TO QUASH SUBPOENA ISSUED BY FLEMING & ASSOCIATES AND FOR SANCTIONS

TO THE HONORABLE COURT:

COMES NOW Fleming & Associates, L.L.P. (F&A), on behalf of Plaintiffs Mary Bain Pearson and John Mason (the *Pearson* Plaintiffs and/or F&A), and files this its Motion for Reconsideration of Order Granting Emergency Motion to Quash Subpoena Issued by Fleming & Associates and For Sanctions. In support of its opposition, the *Pearson* Plaintiffs/F&A show the Court the following:

1. Fleming & Associates was never given the opportunity to respond to LJM Cayman, L.P., Chewco Investments, L.P. and Michael J. Kopper's ("LJM" collectively) Motion to Quash Subpoena Wrongfully Issued by Fleming & Associates and for Sanctions before this Court ruled on it. LJM's motion to quash was filed on March 14, 2002 without asking for an expedited ruling on their motion. In fact, according to the Court's docket sheet, LJM's motion to quash was set on the Court's April 3, 2002 motion docket in accordance with the Court's Local

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Rule LR7.3. This Court ruled on LJM's motion to quash on March 15, 2002 ordering[1] F&A to return any documents it had received and suggesting that sanctions would be imposed upon F&A without F&A ever having the opportunity to respond to LJM's motion in accordance with the Court's Local Rules.

2. F&A did not receive any documents in response to the subpoena served on Joseph Trahan; therefore, no documents were required to be returned to the producing party.

3. Additionally, counsel for F&A and LJM entered into an agreement on March 14, 2002, after the filing of LJM's motion to quash, eliminating the need for any court intervention at the time. *See* attached Exhibits "A", "B" and "C". Specifically, the parties agreed that F&A would not require any documents be provided pursuant to the subpoena until LJM had an opportunity to have its motion to quash heard.

4. Before this Court continues to ponder the assessment of sanctions or, in fact, awards sanctions against F&A, F&A respectfully requests that it be allowed to respond to LJM's motion to quash and to present evidence on this matter as to why F&A filed its motion for leave and served the subpoena which this Court has quashed.

WHEREFORE, Fleming & Associates, L.L.P., on behalf of Plaintiffs Mary Bain Pearson and John Mason, requests that this Court reconsider its March 15, 2002 Order Granting Emergency Motion to Quash Subpoena Issued by Fleming & Associates and for Sanctions allowing F&A an opportunity to respond to LJM's motion to quash before an award of sanctions is entered against F&A and for any and all further relief to which F&A may be justly entitled.

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[1] The Court's March 15, 2002 order is entitled "Order Granting Emergency Motion to Quash Subpoena Issued by Fleming & Associates and for Sanctions" yet LJM never requested expedited relief as this Court suggests.

Respectfully submitted,

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State Bar No. 07123000
1330 Post Oak Boulevard, Suite 3030
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By: _____
G. Sean Jez

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing has been provided to all parties on this the 22nd day of March, 2002 as indicated below:

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March 14, 2002

Via Facsimile 713/951-3720
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Dear Eric:

As you know I am in New Orleans, Louisiana, attending a seminar. I will not return to the office until Monday, March 18.

Earlier today you contacted my legal assistant regarding the subpoena that was served on Joseph Trahan, requesting that we enter into an agreement whereby we would not take possession of any documents requested pursuant to the subpoena until such time that Judge Harmon ruled on our motion for leave. In the alternative, you requested that we agree not to review the documents, if delivered, until a ruling by Judge Harmon.

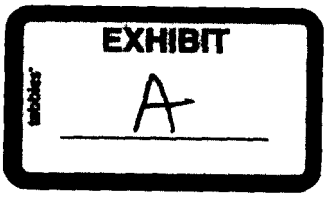
When I called you from New Orleans this afternoon I advised you that I would contact you by close of business today to let you know if we could reach an agreement. Before I had the opportunity to call you again, you unilaterally filed your motion to quash, motion for sanctions, or whatever it is, as I have not yet seen a copy.

As I discussed with you during our second conversation today, I left a message for counsel for Joseph Trahan, telling him that he was not required to produce any documents to me until I further requested those documents. I also told you I would advise you should I request these documents from him pursuant to the subpoena.

Therefore, the filing of your motion was premature and unnecessary. I would request that you advise the Court that you intend to withdraw your motion.

Very truly yours,

G. Sean Jez



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March 14, 2002

Re: Civil Action No. H-01-3624 and Consolidated Cases; ***Mark Newby, et al. v. Enron Corporation, et al.***; In The United States District Court for the Southern District of Texas, Houston Division.

Mr. Ken Zimmern
1920 N. Memorial Way, Suite 205
Houston, Texas 77007

Via Facsimile

Dear Mr. Zimmern:

After we filed the motion to quash I sent to you earlier, I spoke with Sean Jez.

Mr. Jez and I reached the following agreement: His firm will not seek production of any materials pursuant to the subpoena at issue until (at the earliest) he and I have had an opportunity to discuss next week the resolution of the issues presented by the motion to quash.

Please call me with any questions.

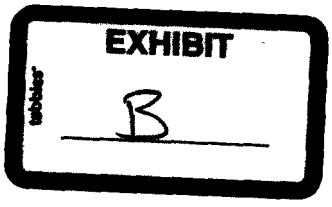
Sincerely,

Eric J.R. Nichols

EJRN:ha

cc: Sean Jez

Via Facsimile



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Re: Civil Action No. H-01-3624 and Consolidated Cases; ***Mark Newby, et al. v. Enron Corporation, et al.;*** In The United States District Court for the Southern District of Texas, Houston Division.

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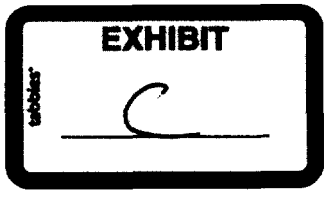
Dear Mr. Jez:

In response to your March 15 letter, we filed the motion to quash after you failed to agree that the Fleming firm would not seek any production of documents pursuant to the subpoena until after the Court rules on the motion *that the Fleming firm filed* regarding the subpoena. You have still failed to agree to this. Despite having sought the Court's approval of the subpoena, and the production sought thereunder, your firm unilaterally served and *attempted to enforce* the subpoena without the approval you sought. The motion to quash is hardly "premature and unnecessary."

It is my understanding that (incredibly, in my view) you have yet to agree that your firm will not seek to enforce the subpoena until the Court rules on the Fleming firm's own motion, although I raised these issues again with George Bishop today.

To the extent otherwise implied in your letter, it has never been an acceptable solution for the Fleming firm to receive a production pursuant to the subpoena and agree not to review that production.

As we discussed, I look forward to hearing from you or George as to whether we can resolve the issues raised in the motion to quash prior to the time that the motion is set for submission to the Court. In the meantime, I do expect you to abide by the agreement that we do have: That no one at the Fleming firm will make any further efforts to obtain a production under the subpoena without advising me in a manner that will allow me to seek immediate Court action on the motion to quash and for sanctions.



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Thank you for your attention to these matters.

Sincerely,

Eric J.R. Nichols

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