

MAR 25 2002

BC

Michael N. Milby, Clerk

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

MARK NEWBY, ET AL.,

Plaintiff,

vs.

ENRON CORPORATION, ET AL.,

Defendants.

§
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§
§
§
§
§

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

**MOTION FOR ENTRY OF ORDER GRANTING SANCTIONS
PURSUANT TO COURT'S MARCH 15, 2002 ORDER**

THE HONORABLE JUDGE OF THIS COURT:

LJM Cayman, L.P., Chewco Investments, L.P., and Michael J. Kopper (collectively, "Movants") file this motion for entry of an order granting sanctions pursuant to the Court's March 15, 2002 order, and in support thereof would show as follows:

1. On March 15, 2002, the Court granted Movants' motion to quash a subpoena wrongfully issued by Fleming & Associates ("Fleming"). As part of its Order, the Court directed counsel for Movants to file affidavits supporting a request for sanctions relating to the conduct leading to the entry of the Order.

2. Attached to this motion is an affidavit of Eric J.R. Nichols in support of the Movants' request for sanctions, as well as a proposed order containing suggested findings with respect to the requested sanctions award.

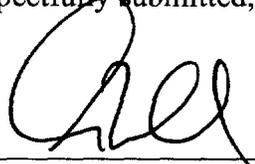
3. Movants have limited their request for sanctions to attorneys' fees and expenses incurred by Movants in investigation and research for and the drafting, filing, and service of the motion granted by the Court. These fees and expenses would not have been incurred but for the

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wrongful conduct of Fleming in serving and seeking production under a subpoena that was the subject of a pending motion for approval filed by Fleming itself.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully request that the Court enter an order awarding sanctions against Fleming & Associates and in favor of Movants in the amount of \$2,827.89, as detailed in the attached affidavit.

Respectfully submitted,

By: 

Eric J.R. Nichols
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Attorney-in-Charge for Defendants
LJM Cayman, L.P., Chewco
Investments, L.P., and
Michael J. Kopper

OF COUNSEL:

BECK, REDDEN & SECREST
A Registered Limited Liability Partnership

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Attorneys for Defendants
LJM Cayman, L.P., Chewco
Investments, L.P., and
Michael J. Kopper

CERTIFICATE OF CONFERENCE

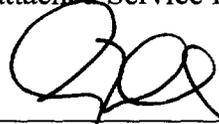
I certify that despite efforts I have been unable to resolve the matters presented by this motion.



Eric J.R. Nichols

CERTIFICATE OF SERVICE

This pleading was served in compliance with the Rules 5b of the Federal Rules of Civil Procedure on March 25, 2002, to all counsel on the attached Service List.



Eric J.R. Nichols

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

MARK NEWBY, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3624
	§	AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants.	§	

AFFIDAVIT OF ERIC J.R. NICHOLS IN SUPPORT OF AWARD OF
ATTORNEY'S FEES, COSTS AND EXPENSES

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, appeared Eric J.R. Nichols, who, being duly sworn and deposed, stated under oath the following:

1. "My name is Eric J.R. Nichols. I am over eighteen years of age and I have personal knowledge of the facts stated herein. The statements contained in this affidavit are true and correct.
2. I am a partner in the law firm of Beck, Redden & Secrest, L.L.P. My firm represents Michael J. Kopper, LJM Cayman, L.P., and Chewco Investments, L.P. (Movants) in the above-referenced matter.
3. On March 15, 2002, the Court issued an order that granted Movants' motion to quash a subpoena issued by Fleming & Associates. The Order quashed the subpoena that Fleming

& Associates (Fleming) had served upon Joseph Trahan, despite the fact that in a then-pending motion Fleming sought this Court's approval of that subpoena. The Court's Order further noted that it was likely that sanctions were appropriate and directed counsel for Mr. Trahan and counsel for Movants to file affidavits within ten days of the entry of the order which reflected costs and fees incurred. This affidavit is filed pursuant to the Court's March 15 Order.

4. My background is set out in the resume attached at Tab 1 to this affidavit. I have been licensed to practice law since 1989, and have practiced law in the state courts of Texas and have been admitted to practice in the United States District Court for the Southern District of Texas, among other courts.

5. In my years of practice, I have worked on, among other things, a number of commercial cases, including matters involving securities litigation. Through this experience I am familiar with the normal and customary charges for attorneys' fees in such cases and the rates charged in such matters, both by attorneys practicing in the Houston area and in other parts of the country. I am also familiar with the expenses and costs associated with litigation and the necessity of such expenses and costs.

6. Since November 2001 I am and have been lead counsel for Movants. In addition, Jeanne Sommerfeld (an attorney) and Leslie W. Hassen (a legal assistant) of my firm assisted me in the preparation and prosecution of the motion to quash that was filed in response to the wrongfully issued subpoena. The educational credentials and experience of Ms. Sommerfeld and Ms. Hassen are outlined in Tab 2.

7. Movants have incurred legal fees from my firm in the amount of \$2,215.00 in connection with the efforts of counsel to investigate the circumstances of the subpoena issued by Fleming to Mr. Trahan and in the preparation of the motion to quash. In addition, \$612.89 in

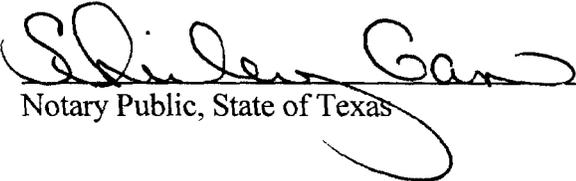
expenses were incurred. These fees and expenses were incurred in connection with the quashed subpoena, and are both reasonable and necessary and consistent with the hourly rates and amounts charged for similar matters in the Southern District of Texas. These fees and expenses were incurred in researching the legal authorities applicable to the motion to quash; reviewing documents relevant to the motion to quash, including but not limited to the Fleming motion and its attachments; drafting the motion to quash and for sanctions and preparing it for filing; and discussions and correspondence on the subpoena issue with Fleming and counsel for Mr. Trahan. The expenses are copy and mailing costs associated with computerized legal research and the filing and service of the motion. A chart reflecting the incurred fees and expenses is attached hereto at Tab 3.

8. These fees and expenses would not have been incurred by Movants but for the wrongful conduct of Fleming that resulted in the Order quashing the subpoena.”


Eric J.R. Nichols

SUBSCRIBED AND SWORN TO before me on March 25, 2002.




Notary Public, State of Texas

The Exhibits May
Be Viewed In The
Office of the Clerk