UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
MAR 2 8 2002 JS
MICHAEL N. MILBY, CLERK OF COURT

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

MARK NEWBY, *ET AL.*,	§	
	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO: H-01-3624
v.	§	CONSOLIDATED LEAD CASE
	§	
ENRON CORPORATION, *ET AL.*,	§	
	§	
Defendants.	§	

REPLY TO RESPONSE OF
L.J.M. (CAYMAN), L.P., CHEWCO INVESTMENTS, L.P., AND MICHAEL J. KOPPER
IN OPPOSITION TO
THE PEARSON PLAINTIFFS'
MOTION TO ALLOW INSPECTION OF DOCUMENTS
AND SUBPOENA OF SAME FOR SAFEKEEPING

TO THE HONORABLE MELINDA HARMON:

COMES NOW Fleming & Associates, L.L.P. to file its reply to the response of L.J.M. (Cayman), L.P., Chewco Investments, L.P., and Michael J. Kopper in opposition to the *Pearson* Plaintiffs' motion to allow inspection of documents and subpoena of same for safekeeping; and in support thereof would show the Court the following:

1. In February 2002, an attorney came to the offices of Plaintiffs' counsel and met with Russ Abney, an attorney employed by Fleming & Associates, L.L.P., concerning the strong possibility documents presently in the custody of Joseph Trahan of Distributive Network Services Corp. were important to the case, showing the off-the-books transactions done by Michael J. Kopper and others in which assets belonging to Enron Corporation were placed off the books with various L.J.M. partnerships and Chewco Investments controlled by Mr. Kopper.

2. Because it was related to Mr. Bishop and Fleming & Associates that the documents were being requested to be returned to L.J.M. and Chewco and time was of the

essence, a subpoena was prepared for the preservation of these documents by George M. Bishop, an employee of Fleming & Associates, for signature of G. Sean Jez, lead counsel in the *Pearson* case and other cases in which plaintiffs are seeking recovery from Arthur Andersen, L.L.P. and various other defendants. A motion was also prepared in order to preserve the documents and have the originals placed in a court depository where they could be available for the Court and for all counsel. Due to the urgency of the situation as expressed to Mr. Bishop by both the lawyer who voluntarily appeared at Fleming & Associates and Joseph Trahan, the subpoena was served on Mr. Trahan at the Houstonian Health Club the day after the motion was filed with the Court, which was accompanied with a copy of the subpoena.

3. Subsequent to service of the subpoena, Ken Zimmern, an attorney for Mr. Trahan, contacted Fleming & Associates and talked to George Bishop concerning the costs for copying the records. Mr. Trahan requested $3,800 in copy costs in order to have the documents copied pursuant to the subpoena. George Bishop delivered a check from Fleming & Associates in the amount of $3,800 on the date requested by Mr. Zimmern, March 8, 2002. A copy of the receipt for such check is attached hereto as Exhibit "A."

4. To date, no one at Fleming & Associates has received any documents or copies of any documents nor has Fleming & Associates received any computer tapes, disks, or reviewed any materials whatsoever currently in the possession of Joseph Trahan of Distributive Network Services Corp.

5. Fleming & Associates filed a motion to preserve the documents in an effort to have the Court take custody of the documents in question considering the urgency of such documents as expressed by both the attorney who appeared at the offices of Fleming & Associates in February 2002 and by Mr. Trahan, himself. Fleming & Associates is of the belief

that the documents are important to the investigation of this case and have not yet been discovered by any of the other parties and should be deposited in the Court's depository for documents, with Fleming & Associates being allowed to use a copy of such documents in its preparation and trial of its cases against the various defendants herein.

6. The primary authority cited by movants in support of this Court enjoining discovery of state law claims such as the claims of the Washington County residents in that county, e.g., *Cowen Sec. Comp. v. U.S. Dist. Ct.*, 189 F.3d 909, 912-13 (9th Cir. 1999), deals with state law pendant claims, not those in an independent state court action, not part of a class action. The documents in the custody of Mr. Trahan were in fact in danger of being lost, deleted, or destroyed when the Plaintiffs in Washington County issued their subpoena in that court and in this Court.

WHEREFORE, Fleming & Associates, L.L.P. prays that the Court set a hearing on this matter and allow testimony so that it may show why and when the subpoena was issued and the urgency of protecting the documents in question.

Respectfully submitted,

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I hereby certify a true and correct copy of the above and foregoing has been provided to all parties as indicated on the attached Service List on this the 28th day of March 2002:

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