

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

United States Courts  
Southern District of Texas  
FILED

FILED

APR 15 2002

Michael N. Milby, Clerk

Mark NEWBY,  
Plaintiff,

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§

§

v.

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Consolidated Lead No. H-01-3624

§

ENRON CORP., et al.,  
Defendants.

§

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AMERICAN NATIONAL  
INSURANCE COMPANY, et al.,  
Plaintiffs,

§

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§

§

v.

§

Civil Action No. G-02-0084

§

ARTHUR ANDERSEN, L.L.P., et al.,  
Defendants.

§

§

**ARTHUR ANDERSEN LLP'S EMERGENCY MOTION  
(JOINED IN PART BY THE LEAD PLAINTIFF)  
TO CONTINUE HEARING CURRENTLY SET FOR APRIL 17, 2002**

Arthur Andersen LLP ("Andersen") and the Regents of the University of California, Lead Plaintiff in the *Newby* case (the "Regents") jointly file this motion to request that the time for Andersen to respond to the Regents' *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction to Enjoin Defendant Andersen's Breakup ("Lead Plaintiff's Application") be extended until April 22, 2002, and that the hearing currently set by this Court for April 17, at 2:00 p.m. be continued until April 22, 2002, or such other date thereafter as may be convenient to the Court. This joint motion is made jointly on behalf of these two parties in light of the ongoing discussions and developments in the mediation between and among them and Lead Plaintiff in the *Tittle* case.

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Andersen also files this motion to continue the hearing currently scheduled for the same date and time on American National Insurance Company, et al.'s Emergency Motion for Temporary Injunction and Request for Hearing ("American National Motion"), and in support thereof would show:

A. Background

On or about March 28, 2002, American National Insurance Co, *et al.* ("American National") moved for the entry of a temporary restraining order enjoining Andersen from "(1) transferring any assets to foreign subsidiaries or affiliates; (2) releasing any foreign subsidiaries or affiliates from any obligations to [Andersen]; and (3) releasing from non-compete agreements any partners, employees or other agents subject to non-compete agreements with Andersen, without the express permission of the Court." See American National Motion (Docket No. 422).

Andersen responded to the American National Motion on April 5, 2002. On that same date, the Regents filed Lead Plaintiff's Application seeking a temporary restraining order, which subsumed and broadened the relief sought by American National. the Regents seek an order to "preserve the *status quo* of defendants [Arthur] Andersen LLP, Andersen Worldwide Cooperative, Switzerland . . . and Andersen's member firms and affiliates ([defined] collectively, [as] 'Andersen') and enjoining Andersen's efforts to dissolve or spin-off divisions or businesses; and (2) an Order to Show Cause why a preliminary injunction should not issue." See Lead Plaintiff's Application.

On April 8, 2002, the parties appeared before the Court for argument. At the suggestion of the Regents and the *Tittle* Lead Plaintiff and with the concurrence of all parties, that hearing was adjourned until April 17 given the progress and developments in the mediation between Andersen, the Regents and the *Tittle* Lead Plaintiffs.

### B. Joint Motion of Andersen and Lead Plaintiff

As indicated in today's motion, it is the considered view of the Regents and Andersen that those same considerations warrant a further continuation of the hearing. Andersen and the Regents jointly request that the time for Andersen to respond to the Lead Plaintiff's Application be extended until April 22, 2002, and that the hearing currently set by this Court for April 17, at 2:00 p.m. be continued until April 22, 2002, or such other date thereafter as may be convenient to the Court.

### C. Andersen's Motion to Continue American National's Motion

The Court should also continue any hearing resulting from American National's motion. In light of Regents' and Andersen's joint motion, allowing the hearing to go forward solely with respect to the relief sought by American National, would create the very same interference in the process that the parties to the mediation believe is best avoided through a continuance. In addition, requiring Andersen to proceed with a hearing on American National's motion, while the Regents' motion for similar relief is continued, would constitute a waste of judicial resources as well as a waste of Andersen's resources. Andersen should not be required to assume the costs and burdens of responding to what are virtually two identical motions on two different schedules.

Indeed, it is for this very reason, among others, that the Court consolidated these cases and appointed a lead plaintiff and lead counsel. In appointing the Regents as Lead Plaintiff and Milberg Weiss as lead counsel, the Court empowered them to "henceforth direct and coordinate and prosecute this action on behalf of all Plaintiffs' counsel, including discovery, pretrial conferences and settlement negotiations with counsel for Defendants." Memorandum Opinion and Order dated February 15, 2002. In addition, the Court's order of February 15, 2002 vests standing to bring this motion only in the Regents, as lead plaintiff,

if in anyone<sup>1</sup>. Certainly the Court could not have contemplated and Andersen did not contemplate that notwithstanding the Court's consolidation order and order appointing Lead Plaintiff and Lead Counsel, Andersen could be required to respond to a multiplicity of duplicative motions filed by any and all of the other plaintiffs' counsel who have appeared in the dozens and dozens of cases that have been consolidated before this Court. The entire purpose of coordination and of streamlining these proceedings through the appointment of a lead plaintiff and counsel would be obviated by a rule that simply allowed each individual plaintiff to continue to act in what it perceived as its own interest and to ignore the order appointing lead plaintiff and counsel.

Moreover, American National cannot claim any prejudice from a continuance because the very relief that it seeks is being sought by Lead Plaintiff on behalf of all plaintiffs.

#### D. Emergency Relief Sought

Pursuant to S.D. Tex. Local R. 7.8, Andersen respectfully asks the Court to decide this motion on an emergency basis. Under S.D. Tex. Local R.7.3, this motion would ordinarily be submitted on twenty days from today. In light of the fact that submission on that date would moot this motion, and that counsel will be required to travel to Houston for the April 17 hearing, Andersen respectfully requests that the Court rule on this motion prior to April 17, 2002.

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<sup>1</sup>Andersen does not suggest that there is any validity to the Regents' motion and believes that it suffers from many of the same infirmities as the American National motion. Andersen will respond to the Regents' motion at the appropriate time.

E. Prayer

For the above stated reasons, Andersen respectfully requests that the Court shorten its normal time period for submission; rule on this motion prior to April 17, 2002; extend the time for Andersen to respond to the Lead Plaintiff's Application until April 22, 2002; and continue the hearing currently set by this Court for April 17, at 2:00 p.m. until April 22, 2002, or such other date thereafter as may be convenient to the Court.

Dated: Houston, Texas  
April 15, 2002

Respectfully Submitted,

By: Rusty Hardin  
Rusty Hardin  
State Bar No. 08972800  
S.D. Tex. I.D. No. 19424  
*Samuel*  
*with permission*

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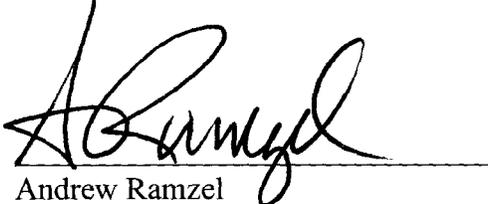
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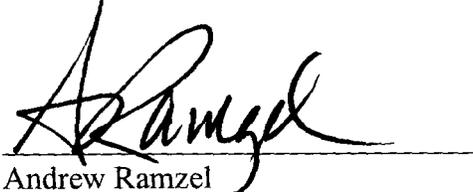
CERTIFICATE OF CONFERENCE

I hereby certify that on this 15<sup>th</sup> day of April, 2002, I spoke with David Le Blanc, counsel for American National, by telephone. Mr. Le Blanc told me that American National is opposed to continuing the hearing currently set for April 17.

  
Andrew Ramzel

CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of April, 2002, the foregoing pleading was served on all counsel listed in Exhibit A of the Court's April 10, 2002 Order by e-mail (PDF format).

  
Andrew Ramzel