UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAY 0 8 2002 LF

Michael N. Milby, Clerk

In re ENRON CORPORATION SECURITIES LITIGATION	§ §	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Plaintiffs, - against - ENRON CORP., et al., Defendants,	§ § § § § § § § § § § §	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
This Document Relates To: RALPH A. WILT, JR., Plaintiff, - against - ANDREW S. FASTOW, et al., Defendants.	§ § § § § § § § § § § §	Cause No. H-02-0576

MOTION OF DEFENDANTS C.E. ANDREWS, DORSEY L. BASKIN, JR., JOSEPH F. BERARDINO, GREGORY J. JONAS, ROBERT KUTSENDA, STEVE M. SAMEK, JOHN E. STEWART, AND NANCY A. TEMPLE TO DISMISS THE *WILT* COMPLAINT AS AGAINST EACH ONE OF THEM FOR LACK OF PERSONAL JURISDICTION

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MOTION OF DEFENDANTS C.E. ANDREWS, DORSEY L. BASKIN, JR., JOSEPH F. BERARDINO, GREGORY J. JONAS, ROBERT KUTSENDA, STEVE M. SAMEK, JOHN E. STEWART, AND NANCY A. TEMPLE TO DISMISS THE *WILT* COMPLAINT AS AGAINST EACH ONE OF THEM FOR LACK OF PERSONAL JURISDICTION

The above named defendants (the "Moving Defendants") move pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure to dismiss the Wilt complaint against them on the ground of lack of personal jurisdiction. As is demonstrated in the Affidavits of the Moving Defendants, which are attached to this motion as Exhibits 1 - 8, there is no basis for the assertion of general jurisdiction over these defendants. Moreover, plaintiffs fail to allege any basis in their complaint upon which personal jurisdiction can be predicated. Therefore, the claims against them should be dismissed.[1]

BACKGROUND

Plaintiffs contend in their complaint that Arthur Andersen LLP ("Andersen"), along with named and unnamed partners and employees (which the Complaint collectively denominates the "Accountant Defendants," Compl. ¶¶ 43-72), conspired over a period of several years with Enron directors and officers, Enron attorneys, and an array of pubic officials to make material misrepresentations and to

[1]In its order of February 28, 2002, this Court consolidated the Wilt action with the Newby cases. See Wilt v. Fastow, No. 02-CV-0576 (S.D. Tex. Feb. 18, 2002). Plaintiffs have not objected to the consolidation. Simultaneously with this motion, certain defendants in the consolidated Newby cases move to strike the First Amended Complaint in Wilt (the "Complaint") on the grounds that it violates the consolidation order, and certain defendants move for entry of a preliminary scheduling order for the cases consolidated into Newby and pursued by persons other than the lead plaintiff. As the motion to strike states, this Court has made it clear that for all the consolidated cases a single plaintiff is to file a single consolidated complaint. Because under the Court's orders responses are due only to that single complaint, the Moving Defendants do not consider themselves obliged to make any response to the Wilt Complaint, and the present motion is not inconsistent with that position.

conceal material information about Enron's financial condition – thereby purportedly effecting a fraud under Texas state law. Compl. ¶¶ 306-24. Each of the above Moving Defendants is named (usually for the first and last time in the Complaint) in the paragraph identifying him or her as a party. Compl. ¶¶ 60, 63-64, 66-70. These paragraphs level vague and sweeping accusations to the effect that each individual "acted as a direct participant, aider and abetter, and/or co-conspirator in the fraudulent acts, omissions, and scheme set forth" in the rest of the Complaint. Id. With respect to Moving Defendants Temple, Baskin, Andrews, and Berardino, plaintiffs hedge even further by alleging that these Defendants participated "and/or *inter alia* knew of, condoned, authorized, directed, participated in, furthered, and/or attempted to conceal the true extent of [Andersen's] involvement" in the alleged fraudulent conduct. Compl. ¶¶ 67-70. In several instances plaintiffs also allege that certain of the Moving Defendants "ordered and/or participated *inter alia*" in destruction of documents allegedly relating to Andersen's involvement in the supposed fraud. Compl. ¶¶ 60, 63-64, 66. But virtually without exception, none of the introductory paragraphs describes any specific conduct engaged in by any of these Moving Defendants, let alone any specific conduct directed at or connected to Texas.

After enumerating the parties, plaintiffs proceed to expend more than 200 paragraphs of the complaint describing the alleged fraudulent scheme on which they base their claims. Compl. ¶¶ 103-304. With a single exception,[2] none of Moving Defendants is mentioned by name even once in this section of the Complaint. Plaintiffs present a litany of allegations directed at the "Accountant

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[2]That exception relates to Ms. Temple, whom it is contended, had communications with Andersen partners in Houston in October 2001. See Compl. ¶¶ 279-280, 285. None of these contacts, however, is related to the alleged misrepresentation or omissions on which plaintiffs base their claims.

Defendants"[3] generally. But they do not identify contacts between any of the Moving Defendants and the state of Texas that would give rise to personal jurisdiction.

ARGUMENT

I. THE CLAIMS AGAINST THE MOVING DEFENDANTS SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION

A federal court has personal jurisdiction over a nonresident defendant only if (1) the nonresident defendant would be subject to jurisdiction under the state's long-arm statute, and (2) the exercise of jurisdiction under that statute is consistent with due process. See Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); Fed. R. Civ. P. 4(k). The Texas long-arm statute has been construed by courts to provide jurisdiction to the full extent permitted by the federal constitution; accordingly, the personal jurisdiction analysis in Texas courts turns on whether the assertion of personal jurisdiction comports with federal due process. See Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C., 815 S.W.2d 223, 226 (Tex. 1991); Tex. Civ. Prac. & Rem. Code § 17.042 (1997).

"The Due Process Clause guarantees that a party cannot be bound to the judgments of a forum with which he has established no meaningful contacts, ties, or relations." Nat'l Indus. Sand Assoc. v. Gibson, 897 S.W.2d 769, 772 (Tex. 1995) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. at 471-72; International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (internal quotation marks omitted)). A court may not subject a non-resident defendant to its jurisdiction unless that defendant has

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[3]This reference includes three entities that plaintiffs denominate "Andersen," "Andersen Worldwide," and Arthur Andersen, LLP," along with all the Andersen partners and employees designated in the Complaint. See Compl. ¶¶ 43-72.

"purposefully established minimum contacts with the forum state such that [he or she] could reasonably anticipate being sued in the courts of the state." Gibson, 897 S.W. 2d at 772 (citing Guardian Royal Exch., 815 S.W.2d at 226-27 (party must have fair warning that its activity will subject it to the jurisdiction of the forum)). The "minimum contacts must have a basis in some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." Asahi v. Superior Court of California, 480 U.S. 102, 109 (1987) (quoting Burger King, 471 U.S. at 475). In addition to satisfying this minimum contacts requirement, the exercise of jurisdiction also must not offend traditional notions of fair play and substantial justice. See International Shoe, 326 U.S. at 316.[4]

When a state exercises personal jurisdiction in a suit that does not arise out of or related to the defendant's contacts with the forum, the exercise is termed general jurisdiction. See Star Technology, Inc. v. Tultex Corp., 844 F. Supp. 295, 299 (N.D. Tex. 1993) (citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 n. 9 (1984)). General jurisdiction exists only when the nonresident defendant maintains "continuous and systematic" contacts with the forum state. See Helicopteros, 466 U.S. at 414-16.

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[4]Factors determining whether the exercise of jurisdiction passes this fairness test "include (1) the burden on the defendant, (2) the interest of the forum state in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies." Nikolai v. Strate, 922 S.W.2d 229, 235 (Tex. App. 1996) (citing World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 (1980); Burger King, 471 U.S. at 477; Asahi, 480 U.S. at 113.)

When a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, it exercises "specific jurisdiction" over the defendant. See Helicopteros, 466 U.S. at 414 n. 8. For the forum to assert this type of jurisdiction, the defendant must have "purposefully directed" his activities at the residents of the forum, and the litigation must resul from alleged injuries that "arise out of or relate to" the defendant's activities directed at the forum. Burger King, 471 U.S. at 474; see also Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d 505, 509 n. 1 (S.D. Tex. 2000).

The burden is on plaintiffs to establish jurisdiction. See Clark v. America's Favorite Chicken Co., 908 F. Supp. 390, 394 (E.D. La. 1995) (citing Stuart v. Spademan, 772 F.2d 1185, 1192 (5th Cir. 1985). "When a challenge is made to the court's personal jurisdiction, the plaintiff has the burden of making a prima facie case by alleging facts in the complaint and accompanying affidavits sufficient to establish personal jurisdiction over the non-resident defendants." Hawkins v. The Upjohn Co., 890 F. Supp. 601, 604 (E.D. Tex. 1994); (WNS, Inc. v. Farrow, 884 F.2d 200, 203 (5th Cir. 1989).

Plaintiffs must show minimum contacts separately with respect to every defendant over whom they wish to establish jurisdiction. See Rush v. Savchuk, 444 U.S. 320, 332 (1980) ("The requirements of International Shoe must be met as to each defendant . . . .;" assertion of jurisdiction over one defendants based solely on the activities of another is "plainly unconstitutional"); Calder v. Jones, 465 U.S. 783, 790 (1984). As the Ninth Circuit has observed, "[l]iability and jurisdiction are independent. Liability depends upon the relationship between the plaintiff and the defendants and between individual defendants; jurisdiction depends upon each defendant's relationship with the forum." Sher v. Johnson, 911 F.2d 1357, 1365-66 (9th Cir. 1990).

A. The Court Does Not Have General Jurisdiction Over Any of the Moving Defendants

Where a cause of action does not relate to the defendant's alleged contacts with the forum, the court may exercise jurisdiction over the defendant only if it finds sufficient basis for general jurisdiction. See Star Technology, 844 F. Supp. at 297 (citing Helicopteros, 466 U.S. at 414 n. 9). Such jurisdiction is proper only over a defendant who has "continuous and systematic contacts" with the forum state. See Guardian Royal Exch., 815 S.W.2d at 228 (citing Helicopteros, 466 U.S. at 414-16).

With respect to the Moving Defendants, the complaint states absolutely no allegations of the sort of continuous and systematic contacts that are required to support the exercise of general personal jurisdiction. As the attached affidavits reveal, all the Moving Defendants live and work in states other than Texas and do not reside in or have business interests in the state.[5] There is accordingly no basis for general personal jurisdiction over them.

The fact that general jurisdiction may be available as to other defendants is irrelevant because one defendant's contacts may not be attributed to another to establish jurisdiction. It is settled law that jurisdiction may not be exercised over one partner merely because another (or their partnership) is properly subject to jurisdiction. See Nikolai v. Strate, 922 S.W.2d at 241 ("Texas law is clear that a business's contacts may not be imputed to its personnel to establish personal jurisdiction"); Siskind v. Villa Found. for Educ., Inc., 642 S.W.2d 434, 437-38 (Tex. 1982) ("it is the contacts of the defendant

[5] While one of the Moving Defendants owns property in Texas, the mere ownership of property in the forum state is not enough to confer general jurisdiction. See Holt Oil & Gas Corp. v. Harvey, 810 F.2d 773, 779 (5th Cir. 1986).

himself that are determinative"); Sher, 911 F.2d at 1366 ("a partner's actions may be imputed to the partnership for the purpose of establishing minimum contacts, but ordinarily may not be imputed to other partners").[6]

In addition, in accordance with the rule that jurisdictional contacts must always be analyzed separately as to every defendant, "conclusory allegations of conspiracy" between resident and non-resident defendants, such as those in the present complaint, do not provide a basis for jurisdiction over the non-residents. Thomas v. Kadish, 748 F. 2d 276, 282 (5th Cir. 1984); Vosko v. Chase Manhattan Bank, N.A., 909 S.W. 2d 95, 100 (Tex. App. 1995) (no jurisdiction over non-resident based on alleged conspiracy with resident where court "unable to find an allegation or evidence of a specific act by [non-resident] in Texas in furtherance of [the] conspiracy"); Hawkins, 890 F. Supp. at 608 ("[N]o court has conferred jurisdiction over an alleged conspirator merely because jurisdiction exists as to a fellow alleged conspirator."); Star Tech., Inc. v. Tultex Corp., 844 F. Supp. at 299 ("Although Plaintiff accuses [the non-resident defendant] of conspiracy, that allegation alone will not support the Court's exercise of jurisdiction absent minimum contacts.").

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[6]As the court in Stuart v. Spademan observed, "The general rule is that jurisdiction over an individual cannot be predicated upon jurisdiction over a corporation." 772 F.2d at 1198. In fact, courts have taken the principal one step further, and, under the fiduciary shield doctrine, apply the rule that "an individual's transaction of business within the state solely as a corporate officer does not create personal jurisdiction over that individual though the state has in personam jurisdiction over the corporation." Id. at 1197. In several instances courts have accordingly declined to consider contacts in a representative capacity when deciding on jurisdiction over an individual. "Some courts have held that if offends notions of fair play and substantial justice to force employees, who conduct business by phone or mail in numerous states on behalf of their employers, to defend lawsuits in those states in their individual capacities." Kisiel v. RAS Securities Corp., No. 3:01-CV-294-X, 2001 WL 912425, at *5-*7 (N.D. Tex. Aug. 9, 2001) (citing Saktides v. Cooper, 742 F. Supp. 382, 387 (W.D. Tex. 1990); see also Dynamo, L.P. v. Warehouse of Vending & Games, 168 F. Supp. 2d 616, 620-21 (N.D. Tex. 2001).

As the court in Hawkins noted, 890 F. Supp. at 609, a rule allowing the imputation of jurisdiction between alleged co-conspirators would be contrary to the Supreme Court's expressed purpose of maintaining the predictability "that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." Burger King, 471 U.S. at 473 (quoting World-Wide Volkswagen, 444 U.S. at 297). In Gibson, the Texas Supreme Court observed, "To comport with due process, the exercise of long-arm jurisdiction over a defendant must rest not on a conceptual device but on a finding that the non-resident, through his relationship with another, has purposefully availed himself of the privilege of conducting activities within the forum State." 897 S.W. 2d at 773. "Due process will not permit the plaintiff to use insignificant acts in the forum to assert jurisdiction over all conspirators," id. and "[m]ere association is not enough to establish general jurisdiction." Id. at 774.

Because there are no allegations that any of the Moving Defendants had continuous and systematic contacts with the State of Texas, and because their affidavits demonstrate that no such contacts could be alleged, there is no basis for an assertion of general jurisdiction over the Moving Defendants.

B. The Court Does Not Have Specific Jurisdiction over Any of the Moving Defendants

For a valid exercise of specific jurisdiction, the cause of action must "arise out of or relate to the non-resident defendant's contact with the forum state," Guardian Royal Exch., 815 S.W.2d at 227 (citing Helicopteros, 466 U.S. at 414 n. 8). The defendant's activities "must have been 'purposefully directed' to the forum and the litigation must result from alleged injuries that 'arise out of or relate to'

those activities." Guardian Royal Exch., 815 S.W.2d at 228 (quoting Burger King, 471 U.S. at 472). Specific jurisdiction may not be based on "random, fortuitous, or attenuated" contacts or on the "unilateral activity of another party or a third person;" it is proper only where "the contacts proximately result from actions by the defendant himself that create a substantial connection with the forum." Burger King, 471 U.S. at 475-76. The contacts must be such that the defendant "should reasonably anticipate being haled into court" in the foreign jurisdiction. Id.

Plaintiffs have not alleged a sufficient basis for the exercise of specific jurisdiction over any of the Moving Defendants. The complaint completely fails to specifically attribute any Texas contacts whatsoever to defendants Andrews, Baskin, Beradino, Jonas, Kutsenda, or Samek. These defendants are mentioned by name only once each in the complaint, in introductory paragraphs that broadly accuse them of participation in the entire "scheme" that plaintiffs purport to describe. The complaint sets forth no specific acts by these defendants in furtherance of the alleged fraud, and nowhere is it made clear whether or how these defendants' supposed participation involved any contact on their part with the state of Texas. Plaintiffs lump these defendants (indeed all the Moving Defendants) into the class of "Accountant Defendants" along with Andersen and every other individual defendant who ever worked for Andersen. They then direct at the entire class almost every allegation made against any member of it. In doing so they attempt to accomplish with vague pleading something they can not achieve as a matter of legal principle: the exercise of jurisdiction over one defendant based on the contacts of another.[7]

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[7]It should also be noted that even if the Complaint did attribute to specific Moving Defendants actions in their official capacities as representatives of Andersen, under the fiduciary shield doctrine,
(continued...)

As already discussed with respect to general jurisdiction, the alleged contacts of Andersen or other Andersen partners may not be counted as a basis of jurisdiction over the Moving Defendants; nor may such contacts be attributed to them through plaintiffs' extravagant allegations of conspiracy. Because the complaint fails to offer any specific examples of Texas contacts for these defendants (and certainly none related to the cause of action), there is no basis for specific jurisdiction over them.

While the Complaint does allege a single, attenuated contact for John Stewart and a handful of Texas contacts for defendant Nancy Temple, the contacts it identifies are too limited and too remote from plaintiffs' cause of action to provide a basis for the assertion of jurisdiction.

Mr. Stewart is accused of participating by telephone in Chicago in a meeting among Andersen personnel, some of whom were located in Houston, on February 5, 2001, in which Andersen's relationship with Enron was the subject of an internal debate. Compl. ¶¶ 66, 232. The constitutional requirements of minimum contacts cannot be satisfied with such an insubstantial allegation. See Marathon Oil Co. v. Ruhrgas, 182 F.3d 291, 295 (5th Cir. 1999) (In a fraud action, defendant's presence at three meetings in Houston and participation in correspondence and phone calls was not sufficient to establish minimum contacts because there was no evidence that the "false statements at the meetings or that the alleged tortious conduct was aimed at activities in Texas."); Holt Oil & Gas Corp. v. Harvey, 801 F.2d at 778 (refusing to exercise specific jurisdiction where defendant sent a contract to, and had "extensive telephonic and written communications" with, the forum); Dynamo, L.P. v.

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[7](...continued)
those actions could still not be counted as contacts with Texas justifying the exercise of jurisdiction over them in their individual capacities. See, e.g., Kisiel v. RAS Securities Corp., No. 3:01-CV-294-X, 2001 WL 912425 at *5-*7 (N.D. Tex. Aug. 9, 2001).

Warehouse of Vending & Games, 168 F. Supp. 2d 616, 620-21 (N.D. Tex. 2001) (in contract and fraud action, exchange of phone calls and purchase of goods insufficient to support exercise of jurisdiction); Smirch v. Allied Shipyard, Inc., 164 F. Supp. 2d 903, 907 (S.D. Tex. 2001) (no specific jurisdiction where defendant contracted with Texas residents, sent repair bills to Texas, placed phone calls to plaintiffs in Texas, and faxed invoice reports to plaintiffs in Texas).

Plaintiffs have failed to show that Mr. Stewart's participation on the February 5, 2001 phone call was purposefully directed toward Texas. The relationship between Mr. Stewart's presence on the call and plaintiffs' alleged cause of action is too attenuated for such an isolated contact to represent a constitutionally sufficient basis for jurisdiction. This is not an instance in which a defendant's limited contacts with a state themselves give rise to a cause of action. Plaintiffs' theory of liability for the "Accountant Defendants" focuses on their issuance of audit reports on Enron financial statements and (more vaguely) on their supposed collaboration in the preparation of statements relating to Enron's financial circumstances. See, e.g., Compl. ¶¶ 117-22. The mere suggestion that Mr. Stewart was included in a discussion on Andersen's relations with Enron does nothing to indicate that he contributed to the allegedly false statements on which plaintiffs' claims are based.[8] Plaintiffs attempt to assert jurisdiction over Mr. Stewart based on the February 5, 2001 call is at bottom nothing more than a variant of the conspiracy theory of jurisdiction. Even given the construction most generous to plaintiffs,

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[8]Even if Mr. Stewart's communication with Houston represented a contribution to Andersen's work for Enron, it was too limited and isolated to support jurisdiction over him. Isolated contacts incidental to the performance of professional services for an in-state client do not provide jurisdiction over an out-of-state defendant – even where the cause of action arises from the professional relationship. See Star Technology, 844 F. Supp. at 298-99 (discussing attorney cases); Myers v. Emery, 697 S.W. 2d 26, 30-32 (Tex. App. 1985); Nikolai, 922 S.W. 2d at 240-41.

the allegation of Mr. Stewart's participation in the February 5th meeting amounts to a charge that he spoke with Houston auditors who worked on Enron financials.[9]

Plaintiffs' allegations also fail to establish specific jurisdiction over Nancy Temple. The allegations against Ms. Temple describe only a handful of contacts with Texas, and the relationship between these contacts and plaintiffs' cause of action is equally attenuated. Plaintiffs do not allege that Ms. Temple had any involvement in any of the allegedly fraudulent representations giving rise to their claims. All of the allegations directed against her relate to actions taken long after the issuance of any alleged false statement by Andersen; specifically, plaintiffs allege that Ms. Temple (1) sent an October 12, 2001 e-mail to an Andersen partner in Houston referring to Andersen's document retention policy; (2) subsequently inquired about Houston office compliance with the policy; and (3) requested in an e-mail to an Andersen partner in Houston ("on or about October 16, 2001") that he remove her name from "one or more" documents. Compl. ¶¶ 67, 279-82, 285. Sporadic correspondence, as alleged here, whether by telephone, e-mail, or otherwise, does not constitute purposeful availment. See Stuart v. Spademan, 772 F.2d at 1189; Smirch, 164 F. Supp. 2d at 907. As already discussed with respect to the single allegation concerning Mr. Stewart, such slight and infrequent contacts are insufficient to

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[9]Moreover, the fact that Stewart engaged in phone conversations with Andersen's Texas office approximately once per week regarding Enron is not enough to covey specific jurisdiction over Stewart. See Holt Oil, 801 F.2d at 778 (exchange of "extensive" telephone and mail conversations with Texas, in itself, is "insufficient to constitute purposeful availment of the benefits and protections of Texas law"); Patterson v. Dietze, 764 F.2d 1145, 1147 (5th Cir. 1973) (numerous calls to Texas not enough to support the exercise of specific jurisdiction).

support jurisdiction, especially where the cause of action does not arise from them. See, e.g., Marathon Oil, 182 F.3d at 295.[10]

Plaintiffs cannot dispute that Ms. Temple sent the e-mails at issue, and participated in the telephone calls at issue, from Chicago, Illinois. Nor can plaintiffs claim that their alleged causes of action result from Ms. Temple's isolated contacts with Texas. Plaintiffs claim to have been injured by "material misrepresentations . . . . relating to Enron's financial condition and the value of Enron's securities." Compl. ¶ 306. But Ms. Temple is not alleged to have participated in any of those purported misrepresentations. Instead, she is alleged to have participated in a series of internal Andersen communications concerning other subjects.

Those communications, however, cannot form the basis of plaintiffs' fraud claims.[11] All of plaintiffs' transactions in Enron stock occurred *before any* of Ms. Temple's actions. The latest of plaintiffs' purchases occurred May 14, 2001. Compl. ¶¶ 170, 178, 214, 276. None of the conduct

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[10]In addition, "[w]here personal services are involved, such as those of a professional person like a doctor or a lawyer, the *place where the services were rendered* is very important. In this regard, the rule is that the use of the mails or telephone does not amount to purposeful activity, invoking the benefits and protections of the state on the receiving end of such communications." Campbell v. Gasper, 102 F.R.D. 159, 162 (D. Nev. 1984) (citations omitted). Cf. Roetenberg v. King & Everhard, P.C., No. Civ. A. 00-1452, 2000 WL 1705787, at *4 (E.D. Pa. Nov. 6, 2000) (court lacked personal jurisdiction over defendant that provided legal advice from Virginia for plaintiff in Pennsylvania; "Plaintiff argues that the fact that she was physically present in Pennsylvania when she received Defendant's negligent advice via phone calls, e-mails, faxes and mailed correspondence satisfies the minimum contacts necessary for specific jurisdiction," but "the telephone calls, faxes and mail services used to deliver the negligent legal advice are not sufficient to support personal jurisdiction over an out-of-state resident").

[11]Among other things, Ms. Temple's communications were proper instructions to comply with corporate policy, were not misrepresentations, were not intended for plaintiffs to rely upon, and were not communicated to plaintiffs.

alleged with respect to Ms. Temple took place before October 2001. Compl. ¶¶ 279, 285. Because plaintiffs could not have relied upon any of Ms. Temple's alleged conduct, Ms. Temple cannot have caused any of plaintiffs' alleged injuries . See, e.g., Marburger v. Seminole Pipeline Co., 957 S.W.2d 82, 86 n. 5 (Tex. App. 1997, pet. denied) (affirming decision granting defendant summary judgment on fraud claim; "In order to prove reliance, the party claiming fraud must show that he *knew of* and was induced by the defendant's representations.") (emphasis added).

Ms. Temple's few contacts with Texas cannot provide a basis for the assertion of jurisdiction over her. Accordingly she, like all the other Moving Defendants, is not subject to personal jurisdiction in this Court.[12]

CONCLUSION

For the foregoing reasons, the court should grant the motion of the Moving Defendants to dismiss the Wilt complaint as against each one of them for lack of personal jurisdiction.

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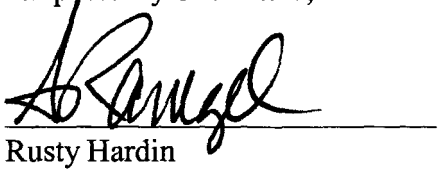
[12]The assertion of jurisdiction over the Moving Defendants would also be unfair and unreasonable. The "minimum contacts" analysis seeks to ensure that the exercise of jurisdiction over the defendant would be reasonable. See International Shoe Co. v. Washington, 326 U.S. at 317. It is axiomatic, however, that "[i]f the defendants have not purposefully availed themselves of the privilege of acting in the forum state, then it clearly cannot be said that the acts of the defendant were sufficiently substantial to make the exercise of jurisdiction in the forum state reasonable." Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203, 1209 (E.D. Pa. 1983). The Moving Defendants never purposefully availed themselves of the privilege of acting in Texas, and it would be unfair and unreasonable to require them to defend this lawsuit almost 1,000 miles from Chicago, where they live and work, and where they allegedly did the (few) things that are supposedly the basis for the claims against them.

Dated: Houston, Texas
May 8, 2002

Respectfully Submitted,



Rusty Hardin
State Bar No. 08972800
S.D. Tex. I.D. No. 19424

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Attorney-in-Charge for
Defendants C.E. Andrews, Dorsey L. Baskin, Jr., Joseph F. Berardino, Gregory J. Jonas, Robert Kutsenda, Steve M. Samek, and John E. Stewart

OF COUNSEL
Andrew Ramzel
State Bar No. 00784184
S.D. Tex. I.D. No. 18269
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(212) 450-3633 (fax)

Mark C. Hansen by
with permission.

Mark C. Hansen
(*admitted pro hoc vice*)

KELLOGG, HUBER, HANSEN, TODD &
EVANS, P.L.L.C.
1615 M Street, N.W. Suite 400
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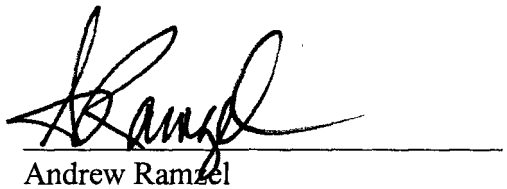
(202) 326-7900
(202) 326-7999 (fax)

Attorney-in-Charge for
Defendant Nancy Temple

OF COUNSEL
David E. Ross
(*admitted pro hoc vice*)
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2002, the forgoing pleading was served pursuant to the Court's April 5, 2002 Order.



Andrew Ramzel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF C. E. ANDREWS IN SUPPORT OF THE
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

DISTRICT OF COLUMBIA) ss.:

C. E. Andrews, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.

2. I am a resident of Virginia. I reside at 2020 Spring Branch Dr., Vienna, Virginia, and I have lived in Virginia throughout my life. I have never resided in Texas.

3. I have never owned or rented property located in Texas.

4. I am a partner at the firm of Arthur Andersen LLP. I work in Andersen's offices in Washington, D.C. and Vienna, Virginia and have worked at these locations at all times relevant to the above-captioned action. I have never maintained any office or place of business in Texas.

5. In the past six years I have visited Texas on no more than three occasions. In March of 1998 I visited San Antonio, Texas for pleasure. I did not visit Texas again until January of 2002. Since then I have made business trips to Texas on one or two occasions, for periods of no more than two days total. I have never visited Texas to conduct business related to Enron. In none of my visits to Texas did I engage in any alleged conduct on which the above-captioned action is based.

C.E. Andrews

C.E. Andrews

Sworn before me this
6 day of May, 2002.

Notary Public

Frances M. Love
Notary Public, District of Columbia
My Commission Expires Oct. 14, 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF DORSEY L. BASKIN, JR. IN SUPPORT OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Dorsey L. Baskin, Jr., being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.

2. I am a resident of Illinois. I reside at 12 Hubbell Court, Barrington Hills IL 60010, where I have lived since March 2001. I have lived in the Chicago Metropolitan area since September 1999. From 1989 until September 1999, I resided in Fairfax County, Virginia.

3. I own property in Texas, which I purchased for my mother's residence in or about 1990, but I have not lived on that property. I have not resided in Texas at any time relevant to the above-captioned action.

4. I am a partner at the firm of Arthur Andersen LLP. I work in Andersen's office in Chicago, Illinois and have worked there since 1999. From 1989 until 1999 I worked in Andersen's office in Washington, D.C.

5. I have not visited the state of Texas for business purposes in approximately ten years.

6. In my role as a member of the Assurance Professional Standards Group, I have had telephone contacts with Andersen's Texas offices. In September or October of 2001, I participated, from Chicago, in two or possibly three telephone calls with persons in Houston regarding Enron. None of my other telephone contacts with Texas have been related to Enron or any Enron-related entity.

Dorsey L. Baskin, Jr.

Sworn before me this
3rd day of May, 2002.

Notary Public

"OFFICIAL SEAL"
MILISSA R. HARTWELL
COMMISSION EXPIRES 02/07/06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF JOSEPH F. BERARDINO IN SUPPORT OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Joseph F. Berardino, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.

2. I am a resident of Connecticut. I reside at Four Avon Ln., Greenwich, Connecticut, and I have lived in Connecticut at all times relevant to the above captioned action. I have never resided in Texas.

3. I do not own or rent and never have owned or rented property located in the state of Texas.

4. I am a partner at the firm of Arthur Andersen LLP. I work in Andersen's office in New York, N.Y. and have worked there for the past thirty years. I have never maintained an office or place of business in Texas.

5. For the past six months I have served as a director on the board of a not-for-profit organization based in Austin, Texas. I have not visited Texas in connection with my membership on that board.

6. I have visited Texas on two to five occasions per year for the past five years. On one occasion in 2001 I met with representatives of Enron Corp. in Texas. In none of those visits did I engage in any alleged conduct on which the above captioned action is based.

Joseph F Berardino

Joseph F. Berardino

Sworn before me this
7th day of May, 2002.

Rosemary Gomez

Notary Public

ROSEMARY GOMEZ
Notary Public, State of New York
No. 30-4686361
Qualified in Nassau County
Commission Expires ~~September 30, 2005~~
November

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF GREGORY J. JONAS IN SUPPORT OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Gregory J. Jonas, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.

2. I am a resident of Illinois. I reside at 161 East Chicago Avenue, #4B, Chicago, IL 60611, and I have lived in Chicago, Illinois at all times relevant to the above-captioned action.

3. I do not own or rent property located in the state of Texas, nor have I ever owned or rented property in Texas.

4. I am a partner at the firm of Arthur Andersen LLP. I work in Andersen's office in Chicago, Illinois and have worked there at all times relevant to the above-captioned action.

5. To the best of my recollection, in my role as Managing Director of Financial Statement Assurance, I have visited Texas on approximately ten occasions during the time period relevant to the above-captioned action. One of these trips, in 1998, was Enron-related. I spent approximately one half of a day in Texas on that trip. In addition, I commuted to Texas during a five week period in 2000, but these visits were not related to Enron or any Enron-related entity.

6. During time relevant to the above-captioned action, I participated in telephone conversations with Andersen offices in Texas and received e-mail communications from these offices that required my attention on an average of once per month. In addition, from approximately 1998 until 2001, my supervisor, with whom I had regular contact, was based in Houston, Texas. However, because of the transitory nature of our respective a vast majority of my contacts with

my supervisor occurred at times when he was not physically located in Texas. None of our conversations related to Enron or any Enron-related entity.

Gregory J. Jonas

Sworn before me this
30th day of May, 2002.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

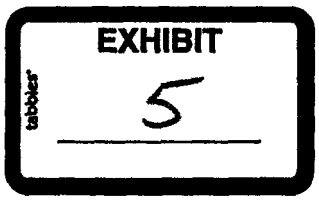
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants.	Cause No. H-02-0576

AFFIDAVIT OF ROBERT G. KUTSENDA IN SUPPORT OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Robert G. Kutsenda, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.



2. I am a resident of Illinois. I currently reside at 195 N. Harbor Drive, Apt. 2302, Chicago, Illinois, 60601. I have lived in Chicago, Illinois at all times relevant to the above-captioned action.

3. I do not own or rent property located in the state of Texas, nor have I owned or rented property in Texas at any time.

4. I retired as a partner of Arthur Andersen LLP in June 2001. While I was an active partner I was based in Andersen's office in Chicago, Illinois and I worked there at all times relevant to the above-captioned action. I have never maintained any office or place of business in Texas.

5. To the best of my recollection, in the past five years, I visited Texas on two or three separate occasions in connection with my work responsibilities as a Practice Director. One of these trips, in 1998, was Enron-related. I spent approximately one half of a day in Texas on that trip. The other visit or two were not related in any way to Enron or any Enron-related entity.

6. In February 2001, I participated in a single conference call during which Enron was discussed. By this date I had begun my transition into retirement and my responsibilities as Managing Partner Global Risk Management had been assigned to other partners of the firm. I participated in the call from Chicago, although I understood that other participants were in Texas. I was not involved with any follow-up to this call, even

assuming there was any, nor did I ever do any subsequent work with respect to Enron or any Enron-related entity.

Robert G. Kutsenda

Robert G. Kutsenda

Sworn before me this
4 day of May, 2002.

Christine Rosario

Notary Public

OFFICIAL SEAL
CHRISTINE ROSARIO
NOTARY PUBLIC, STATE OF ILLINOIS
COMMISSION EXPIRES 12-17-200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

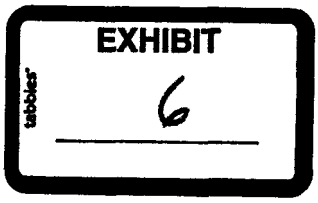
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF STEVE M. SAMEK IN SUPPORT OF THE
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Steve M. Samek, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.



2. I am a resident of Illinois. I reside at 502 Robinwood Lane, Wheaton, IL 60187, and I have lived in the greater Chicago, Illinois area at all times.

3. I do not own or rent property located in the state of Texas, nor have I ever owned or rented property in Texas.

4. I am a partner at the firm of Arthur Andersen LLP. I work in Andersen's office in Chicago, Illinois and have worked there at all times during my tenure at Andersen. I have never maintained an office or a place of business in Texas.

5. To the best of my recollection, in my role as Managing Partner for the United States, I visited the state of Texas on three or four occasions for business purposes during the time period relevant to the above-captioned action; however, none of these visits were related to Enron or any Enron-related entity.

6. In February, 2001, I participated in a single conference call during which Enron was discussed. By this date, I had no management responsibilities with respect to Enron as my responsibilities as Managing Partner had been assigned to another partner in the firm. I participated in the call from Chicago, although I understand that other participants were in Texas. I was not involved with any follow-up to this call, even assuming there was any, nor did I ever do any

subsequent work with respect to Enron or any Enron-related entity.

Steve M. Samek

Sworn before me this
3rd day of May, 2002.

Heather Chizzo
Notary Public

"OFFICIAL SEAL"
HEATHER CHIZZO
Notary Public, State of Illinois
My Commission Expires 11/28/2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

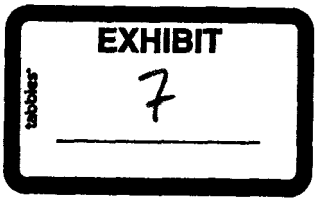
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF JOHN E. STEWART IN SUPPORT OF THE
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

John E. Stewart, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.



John E. Stewart

John E. Stewart

Sworn before me this
14th day of May, 2002.

Milissa R. Hartwell

Notary Public

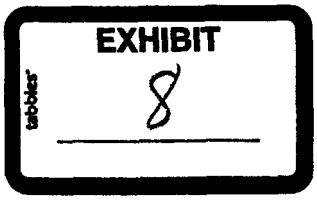
"OFFICIAL SEAL"
MILISSA R. HARTWELL
COMMISSION EXPIRES 02/07/06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	Civil Action No. H-01-3624 (Consolidated) CLASS ACTION
THIS DOCUMENT RELATES TO: RALPH A. WILT, JR., Plaintiff, v. ANDREW S. FASTOW; KENNETH L. LAY; JEFFREY K. SKILLING, ET AL., Defendants,	Cause No. H-02-0576

AFFIDAVIT OF NANCY A. TEMPLE IN SUPPORT OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Nancy A. Temple, being duly sworn, deposes and says:

1. I submit this affidavit in support of the motion to dismiss this action for lack of personal jurisdiction. All of the statements in this affidavit are based on personal knowledge.