United States Courts
Southern District of Texas
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Michael N. Milby, Clerk

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

IN RE ENRON CORPORATION SECURITIES LITIGATION	CONSOL. CIVIL ACTION NO. H-01-3624
This Document Relates To:	
JACOB BLAZ, On Behalf of Himself and All Others Similarly Situated, Plaintiff, v. ROBERT A. BELFER, et al., Defendants.	CIVIL ACTION NO. H-02-1150 (Removed from District Court of Harris County, Texas)

REPLY BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR REMAND

Plaintiff Jacob Blaz ("Plaintiff"), by and through his attorneys, respectfully submits this Reply Brief in support of his Motion for Remand.

I. INTRODUCTION

Applying venerable United States Supreme Court precedent to facts indistinguishable from those present in the case at bar, Judge Acker of the Northern District of Alabama held in W.R. Huff Asset Management Co., LLC v. BT Securities Corp., 190 F. Supp.2d 1273 (N.D. Ala. 2001), that the removal and dismissal provisions of the Securities Litigation Uniform Standards Act ("SLUSA"), Pub. L. No. 105-353, 112 Stat. 3227 (1998), could not be applied retroactively

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to an action based exclusively on pre-enactment conduct.[1] Judge Acker's well-reasoned opinion in Huff is highly persuasive, and Defendants have offered the Court no basis to reject Judge Acker's reasoning or holding.[2] Accordingly, this Court should follow Huff and grant Plaintiff's Motion for Remand.

II. ARGUMENT

A. SLUSA's Elimination Of Plaintiff's Ability To Bring A Class Action Constitutes An Impermissible Retroactive Effect

Defendants' primary argument against remand is that the application of SLUSA to this action would not have an impermissible retroactive effect because "SLUSA does not prevent plaintiff from pursuing his state law claims against defendants, but only affects plaintiff's choice of pursuing his claims as a class action rather than an individual action." Defendant Andersen's Brief, at 3. This meritless argument was specifically rejected in Huff, where the court held:

> Because the preemptive effect [of SLUSA] is limited to "covered class actions" as defined in 15 U.S.C. § 77p(f)(2)(A), §77p(c) may be characterized, in a sense, as procedural. However, labeling a rule as "procedural" does not end the inquiry. In [Landgraf v. USI Film Products, 511 U.S. 244 (1994)], the Supreme Court "took pains to dispel the 'suggestion that concerns about retroactivity have no application to procedural rules.'"

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[1] To Plaintiff's knowledge, Huff is the first and only case to address this precise issue. Moreover, due to the passage of time since SLUSA's enactment and the relative rarity of securities fraud defendants successfully concealing their fraud for extended lengths of time, the instant case will likely be the last one in which this issue will arise.

[2] Indeed, Defendants have not attempted to distinguish Huff in any meaningful manner, and therefore have implicitly conceded that their position is not reconcilable with Huff.

[Quoting Martin v. Hadix, 527 U.S. 343, 359 (1999) (quoting Landgraf, 511 U.S. at 275 n.29)]. In keeping with the functional approach, this court must look at the practical procedural restrictions resulting from the application of the term "covered class action."

. . .

Thus, the question is whether SLUSA, if it denies Huff and its unnamed party-clients the use of the various incarnations of "covered class action" as they seek to recover for injuries caused by defendants' alleged violations of state law, is also denying them procedural rights that cannot be retrospectively yanked from under them without running afoul of the notions of "fair notice", "reasonable reliance", and "settled expectations."

Id., at 1279. The Huff court concluded that:

If SLUSA applies, it will deny Huff and the individuals on whose behalf it purports to act the efficient resolution of claims naturally suited to group action and will expose them to the shortcomings inherent in separate actions. Such exposure runs counter to the concepts of fair notice, reasonable reliance, and settled expectations and would attach new legal consequences to completed events that form the factual basis for Huff's complaint.

Id., at 1280 (citing Martin, 527 U.S. at 357-60). Hence, regardless of whether Plaintiff's right to pursue his claims as a class action is characterized as "procedural" or "substantive," the denial of that right constitutes an impermissible retroactive effect.[3]

B. Principles Of Federalism Require The Court To Remand This Case To State Court

As a final rationale for remanding the Huff case to state court, Judge Acker relied on:

principles of federalism and comity which recognize that federal courts are courts of limited jurisdiction, so that any statute upon which a removal from state court can be based, must be construed against federal and in favor of state jurisdiction. When Congress is ambiguous on the question of the retroactivity of a preemptive federal statute, and when removability depends upon a retroactive application of that statute, the ambiguity must be resolved

[3] Moreover, contrary to Defendants' argument (see Defendant Andersen's Brief, at 7-9), applying SLUSA to this action would fundamentally alter the legal consequences of Defendants' pre-enactment conduct, and therefore would necessarily constitute an impermissibly retroactive application of the statute. See, e.g., Landgraf, 511 U.S. at 269-70. The legislative history cited by Defendant Lay (see Defendant Lay's Brief, at 3) does not address SLUSA's applicability to an action based solely on pre-enactment conduct, and therefore is irrelevant to the Landgraf retroactivity analysis. Id., at 262-63.

> against removability and thus against retroactivity. This is the only way to recognize the primacy of the state courts as courts of first instance.

Huff, 190 F. Supp.2d at 1281. This Court, as well, has recognized that in accordance with principles of federalism, any ambiguity concerning the propriety of removal must be resolved in favor of remand. See Walters v. Grow Group, Inc., 907 F. Supp. 1030, 1032 (S.D. Tex. 1995) (Harmon, J.). Plaintiff maintains that the relevant law unequivocally compels the Court to remand this case to state court. However, even if SLUSA's inapplicability to this action were ambiguous, the proper course would be to grant Plaintiff's Motion for Remand rather than continuing to exercise federal jurisdiction that is at best questionable.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order granting his Motion for Remand and remanding this case to the District Court of Harris County.

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Respectfully submitted,

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