United States Courts
Southern District of Texas
FILED

JUN 2 0 2002

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE ENRON CORPORATION SECURITIES LITIGATION	)))	No. H-01-3624 Hon. Melinda Harmon
PAMELA M. TITTLE, et al., Plaintiffs, v. ENRON CORP., et al., Defendants.	)))))))))	No. H-01-3913 (consolidated with H-01-3624)

DEFENDANT ANDERSEN-UNITED KINGDOM'S
MEMORANDUM IN SUPPORT OF ITS MOTION
TO DISMISS THE FIRST CONSOLIDATED AND AMENDED COMPLAINT

Defendant Andersen-United Kingdom, by its attorneys, respectfully submits this memorandum in support of its motion to dismiss the First Consolidated and Amended Complaint ("the Complaint").

INTRODUCTION

Plaintiffs' Complaint was served on Defendant Andersen-United Kingdom, a partnership that is located outside the United States, on May 31, 2002. At all relevant times, Andersen-United Kingdom was a "member firm" of Andersen Worldwide Societe Cooperative ("AWSC"), a Swiss Societe Cooperative formed under the Swiss Code of Obligations and domiciled in Geneva, Switzerland. AWSC coordinates the activities of various distinct legal entities around the world, including Arthur Andersen LLP ("Andersen LLP"), that have contracted to participate in the Andersen network. Other than a single vague allegation

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regarding purported document destruction, Andersen-United Kingdom is not alleged to have committed any wrongdoing whatsoever. Although Andersen LLP was the auditor for Enron, and it is Andersen LLP's work that the complaint attacks, plaintiffs nevertheless have named Andersen-United Kingdom as a defendant here.

It is not clear why plaintiffs even bothered to do so. Neither Andersen-United Kingdom nor any class of defendants that is defined to include Andersen-United Kingdom is named as a being liable under any particular Count of the Complaint. Absent such an allegation, Andersen-United Kingdom cannot be held liable for anything, especially in light of the total absence of any specific factual allegations about it.

This Court, however, need not reach the merits of plaintiffs' claims against Andersen-United Kingdom, because this Court lacks personal jurisdiction over it.

ARGUMENT

The Due Process Clause prevents plaintiffs from dragging parties into far-away courts. An individual entity has a "liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (citation omitted). The Supreme Court has admonished lower courts to exercise "great care and reserve ... when extending our notions of personal jurisdiction into the international field." *Asahi Metal Indus. Co., Ltd. v. Superior Court*, 480 U.S. 102, 115 (1987) (quotation omitted).

These general principles are applied through a two-part test. First, a court may not exercise jurisdiction over the entity unless that entity has had sufficient "minimum contacts" with the forum state such that it "reasonably should anticipate being haled into court there." *Marathon Oil Co. v. A.G. Ruhrgas*, 182 F.3d 291, 295 (5th Cir. 1999). Second, the exercise of

personal jurisdiction "cannot offend 'traditional notions of fair play and substantial justice." *Id.*, quoting *International Shoe Co. v. State of Washington Office of Unemployment Compensation & Placement*, 326 U.S. 310, 316 (1945).

The first part of the test, "minimum contacts," can be satisfied in two different ways. A court may exercise "specific jurisdiction" when the defendant has "purposefully directed [its] activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King*, 471 U.S. at 472 (internal quotation marks and citations omitted); *Marathon Oil Co.*, 182 F.3d at 295. If a court lacks "specific jurisdiction," it may nonetheless exercise "general jurisdiction" if a defendant's contacts with the forum are "continuous, systematic and substantial." *Marathon Oil Co.,* 182 F.3d at 295; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-416 (1984). In the absence of either specific or general jurisdiction, the case must be dismissed for lack of personal jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) ("Personal jurisdiction ... is an essential element of the jurisdiction of a district court, without which the court is powerless to proceed to an adjudication.") (citations omitted).

This Court lacks specific jurisdiction over Andersen-United Kingdom because it is not alleged to have engaged in any acts within Texas, or which were directed toward Texas, out of which plaintiffs claims arise. *Calder v. Jones*, 465 U.S. 783, 789-790 (1984) (requiring tortious acts "expressly aimed" at the forum jurisdiction to establish specific jurisdiction); *Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208, 212 (5th Cir. 1999) (same); *Collins v. Gospocentric Records*, No. 3:00-CV-1813, 2001 WL 194985, at *2 (N.D. Tex. Feb. 22, 2001) ("In cases involving torts, specific jurisdiction may be supported by a single tortious act in the forum

state."). Indeed, the allegations as to the acts of Andersen-United Kingdom are extraordinarily sparse.

Andersen-United Kingdom simply is not alleged to have engaged in any conduct outside of the United Kingdom, much less in Texas. Instead, plaintiffs' allegations suggest the contrary:

> Defendant Arthur Andersen United Kingdom ("Andersen UK") is a member firm of Andersen Worldwide with offices in at least 14 cities *through the United Kingdom*, including London, Manchester, Leeds, Edinburgh and Glasgow. The individual members of Andersen UK are also practice partners of Andersen Worldwide and certain of them have had important roles in directing Andersen's international operations. In or about October 2001, members of Andersen UK participated in destroying Enron audit records as part of an overall effort to clean up its files in response to learning, *inter alia*, that the SEC was investigating transactions that Andersen [LLP] had helped engineer and which it had approved.

(Cmplt. ¶ 101 (emphasis added).) Nothing more is stated in the Complaint. As the attached affidavit makes clear, Andersen-United Kingdom was engaged by Andersen LLP to report on certain Enron foreign operations in connection with the LLP's audits of Enron's consolidated financial statements. (*See* Affidavit of John Ormerod ("UK Aff.") (attached as Exhibit A).) This is not the kind of conduct that gives rise to specific jurisdiction.

This Court also lacks general jurisdiction over Andersen-United Kingdom because it did not have sufficiently systematic, consistent and substantial contacts with Texas. Andersen-United Kingdom is not a creature of the law of any of the United States, much less Texas. (UK Aff. ¶¶ 2, 3.) It neither owns, possesses, nor has any interest in real property or any other assets in either the United States or Texas. (UK Aff. ¶ 4.) It is not registered to do business in either the United States or Texas, nor does it perform services in either Texas or the United States. (UK Aff. ¶¶ 8, 9.) It does not provide services to clients based in Texas or the

United States. (UK Aff. ¶ 7.) It does not pay any taxes in Texas or the United States. (UK Aff. ¶ 5.) It does not maintain an agent to receive service of process in either Texas or the United States. (UK Aff. ¶ 6.) The absence of such sustained and substantial contacts with either Texas or the United States weighs heavily against a finding of general jurisdiction. *See Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 181-82 (5th Cir. 1992) (finding no general jurisdiction even though defendant was registered to do business in the forum and had a registered agent to receive service of process there); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987) (holding no general jurisdiction despite the facts that defendant's distributors sold defendant's goods in the forum and defendant advertised for the sale of its products in the forum); *see also Consolidated Development Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1294 (11th Cir. 2000), *cert. denied*, 122 S. Ct. 68 (2001); *Young & EDX Holdings, Inc. v. Jones*, 816 F. Supp. 1070, 1074-77 (D.S.C. 1992); *Hotel Partners v. KPMG Peat Marwick*, 847 S.W.2d 630 (Tex. App. – Dallas 1993, writ denied).

It is true that representatives of Andersen-United Kingdom regularly come to the United States for the purpose of coordinating policy for AWSC, attending AWSC meetings, receiving training, or in connection with audits of United States-based subsidiaries of their foreign clients. (UK Aff. ¶ 11.) This contact is insufficient to confer personal jurisdiction in Texas. *Black v. U.S.A. Travel Auth., Inc.*, No. 99 CIV 11278, 2001 WL 761070 (S.D.N.Y. July 6, 2001) (holding that nonresident defendant's business travel to forum state in capacity as corporate officer of resident corporation was insufficient to establish general jurisdiction); *CCS Int'l, Ltd. v. ECI Telesystems, Ltd.*, No. 97 CIV 4646, 1998 WL 512951 (S.D.N.Y. Aug. 18, 1998) (same). Likewise, the fact that personnel from Andersen-United Kingdom have also traveled to the United States to evaluate work performed by Andersen LLP that related to

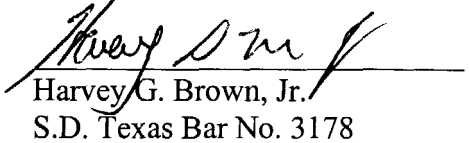
subsidiaries of Andersen-United Kingdom's clients (UK Aff. ¶ 11) is insufficient to establish general jurisdiction over it. *Helicopteros*, 466 U.S. at 418 (holding that court lacks personal jurisdiction over corporation even though corporation regularly "sent personnel into Texas for training in connection with the purchase of helicopters and equipment in that State"); *Management Insights Inc. v. CIC Enters., Inc.*, No. 3:00-CV-2597, 2001 WL 1829539, at *6 (N.D. Tex. Nov. 19, 2001) (periodic visit by corporation's agent to customers based in forum is insufficient to establish general jurisdiction).

Andersen-United Kingdom simply is not directly implicated in any of the alleged improprieties in this case. Nor is it substantially connected with Texas as a general matter. This Court lacks personal jurisdiction over these Andersen-United Kingdom, and it should be dismissed from this case.

CONCLUSION

For the foregoing reasons, Defendant Andersen-United Kingdom respectfully requests that this Court grant its motion to dismiss and enter an order dismissing the First Consolidated and Amended Complaint with prejudice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing DEFENDANT ANDERSEN-UNITED KINGDOM'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE FIRST CONSOLIDATED AND AMENDED COMPLAINT and PROPOSED ORDER to all counsel of record on the attached Service List pursuant to the Court Order dated April 10, 2002 on this the 20th day of June, 2002.

Harvey G. Brown, Jr.

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AFFIDAVIT OF JOHN ORMEROD

The undersigned, being first duly sworn, deposes and states as follows:

1. My name is John Ormerod, and I am Country Managing Partner of Andersen-United Kingdom ("Andersen-UK"). In connection with preparing this affidavit, I have conducted a thorough inquiry into Andersen-UK's contacts with both the State of Texas and the United States.

2. Andersen-UK comprises a number of partnerships formed in the United Kingdom, pursuant to United Kingdom law.

3. Andersen-UK's principal place of business and headquarters are located in London.

4. Andersen-UK does not own, possess or have any interest in any real property or any other assets in Texas or the United States.

5. Andersen-UK does not pay any taxes in either Texas or the United States.

Exhibit A

6. Andersen-UK has no offices in either Texas or the United States. Andersen-UK has no registered agent authorized to receive service of process in Texas or anywhere in the United States.

7. Andersen-UK has no employees who are based in either Texas or the United States who are engaged in providing services to its clients.

8. Andersen-UK is not registered to do business in either Texas or the United States.

9. Andersen-UK neither provides nor delivers its services in either Texas or the United States.

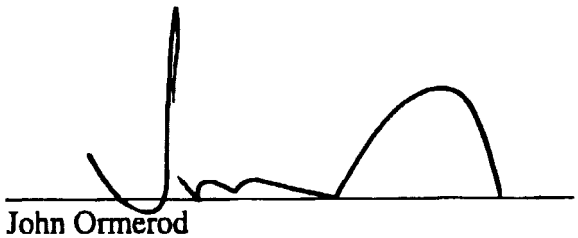
10. Andersen-UK is a separate and distinct entity from Andersen LLP. Andersen-UK has a contractual relationship with Andersen Worldwide Societe Cooperative ("AWSC").

11. Certain Andersen-UK partners travel to the United States for the purpose of coordinating policy for AWSC. In addition, some partners occasionally travel to the United States in connection with audits of United States-based subsidiaries of Andersen-UK clients. Andersen-UK partners travel to the United States to evaluate the work performed by Andersen LLP on those United States-based subsidiaries.

12. Andersen-UK was not engaged by Enron Corp. and has not performed any professional services for Enron Corp. Andersen-UK was, however, engaged by certain UK subsidiaries of Enron Corp. to perform certain audit services required by UK law. In addition,

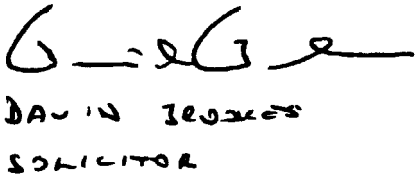
Andersen LLP engaged Andersen-UK to report on Enron's European operations in connection with Andersen LLP's audits of the consolidated financial statements of Enron Corp. All of these services were performed in the UK.

Further affiant says not.



John Ormerod

Sworn and subscribed to
before me this 19th day of
June, 2002.



DAVID JEWKES
SOLICITOR

The Service List

Attached

to this document

may be viewed at

the

Clerk's Office