

ARTHUR ANDERSEN AND ME

LIKE MOST OF YOU, I CAN claim no special insights into the Enron scandal. I do, however, have inside information about the Arthur Andersen accounting firm suggesting that Mark Twain's formulation be amended. There are, it seems, lies, damned lies, and accountants.

In Enron's case, this accessory to "the genius of capitalism" shredded incriminating documents. In my case, the only thing Andersen shredded was its own credibility.

In 2000, I was a consultant to attorneys who settled a class-action copyright infringement suit, *Ryan v. CARL* – the first of its kind in the history of American jurisprudence. The terms included the payment by the owners of a company called UnCover of a total of \$7.25 million to settle claims that this article delivery service had systematically copied and sold authors' works without permission or compensation. (For the full story, click <http://muchnick.net/crassaction.pdf>.)

Having spent six years grabbing confused writers by the lapels, alerting them that they were being knocked off by newfangled electronic database operators and explaining what I was doing about putting a fair share of money into their pockets – first as assistant director of the National Writers Union and then as a consultant – I applied to the class attorneys for the position of administering class notice and claims processing. My fallback suggestion was that the lawyers hire me, for a relative pittance, to do the grunt work at the same time that an experienced accountant was hired to look over my shoulder.

Instead, in their wisdom, they tapped the esteemed Big Five firm Arthur Andersen to run the whole show. Utilizing the same cookie-cutter methods that are used in other class actions for things like securities fraud and defective consumer products, the settlement class team proceeded to place a couple of those tiny-type ads in *The New York Times* and to set up a fancy website. But at least two problems became apparent.

The first problem was that the database at www.uncoversettlement.com, which was designed to tell authors whether they were eligible to submit claims, missed a significant number of the more than half-million articles allegedly infringed by UnCover during the period covered by the lawsuit. This was caused by a vagary of the online indexing system whose details need not concern you here.

Though no longer working for the class attorneys, I was distressed by the idea that a lot of my fellow writers might never be aware that they were eligible for settlement checks amounting to as much \$30,000 each. I pointed out this flaw to the lawyers and negotiated the authority to find as

many of these lost authors as I could and to arrange for them to submit claims independent of the website engine. (I refused any compensation for this work.)

The second problem was, to put it bluntly, Arthur Andersen's incompetence. On at least one occasion, Andersen incorrectly told the lawyers that an author/claimant I'd sent to them was ineligible for a claim. In this instance, I was able to set the record straight by the claims deadline. It's impossible to say how many other slipups there might have been that I never knew about.

Class notice fell short of expectations. In fairness, Andersen wasn't the only reason. The other was the National Writers Union's president, who was too busy hoarding credit for his own case before the Supreme Court, *Tasini v. Times* (which wasn't a class action), to bother cooperating with another group "outside the box" that had already set an important precedent and extracted millions of dollars from a company trampling on writers' rights. Jonathan Tasini's vanity and Arthur Andersen's cluelessness combined to hold to fewer than 100 the number of writers collecting big-bucks settlement checks. Some dozens of members of another subgroup of the settlement class also got checks, most of them amounting to around \$750.

Under the settlement terms, the plaintiffs' attorneys got \$2.9 million of the \$7.25 million settlement fund. The lawyers' costs included the fees they'd paid me on an hourly basis through the pre-settlement phases of the litigation; in two and a half years, these totaled about \$150,000. The leftover money was donated to charity.

And in return for its sterling performance during the few months of the end game of *Ryan v. CARL*, Arthur Andersen pocketed a cool \$500,000.

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