

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

JAN 07 2002 LF

Michael A. Milby, Clerk

MARK NEWBY,	:	Civil Action No. H-01-3624
	:	(Consolidated Securities Actions)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ENRON CORP. et al.,	:	
	:	
Defendants.	:	

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**ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC.'S NOTICE OF JOINDER IN AMALGAMATED BANK'S SUPPLEMENTAL BRIEF IN RESPONSE TO UNIFIED SUBMISSIONS OF DEFENDANTS REGARDING THE COURT'S AUTHORITY TO ENTER AN ORDER FREEZING DEFENDANTS' INSIDER TRADING PROCEEDS AND REQUIRING ACCOUNTING.**

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TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW Plaintiff, The ArchDiocese of Milwaukee Supporting Fund, Inc., Individually and on behalf of all others similarly situated, through its attorneys, and files this Notice of Joinder in Amalgamated Bank's Supplemental Brief in Response to Unified Submissions of Defendants Regarding the Court's Authority to Enter an Order Freezing Defendant's Insider Trading Proceeds and Requiring Accounting and would respectfully show the Court that the following:

On November 21, 2001, the Archdiocese of Milwaukee Supporting Fund, Inc. ("AMS Fund") filed a Complaint on behalf of purchasers of publically traded debt securities in this matter which was consolidated for pretrial purposes by Order entered by this Court on December 12, 2001.<sup>1</sup> On

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<sup>1</sup>On December 6, 2001, the AMS Fund filed it's First Amended Class Action Complaint for violations of the federal securities laws on behalf of purchasers of the publically traded debt securities of Enron Corporation. This Complaint named as defendants twenty-nine (29) individual directors of Enron Corp. and Arthur Anderson, LLC.

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December 5, 2001, the AMS Fund filed a Notice of Joinder in Amalgamated Bank's *Ex Parte* Application for (1) a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Be Entered Freezing and Imposing a Constructive Trust Over Insider Trading Proceeds, (2) Accounting of Insider Trading Proceeds, and (3) Limited Expedited Discovery ("Application").

On December 7, 2001, Neil Rothstein, Esquire of Scott + Scott, LLC, outside counsel for the AMS Fund, appeared in this Court to support Amalgamated Bank's Application and protect the interests of purchasers of publically traded debt securities, including charities such as the AMS Fund, that have suffered losses as a result of defendants' misconduct.<sup>2</sup> Amalgamated Bank recently filed its Supplemental Brief in Response to Unified Submission of Defendants Regarding the Court's Authority to Enter an Order Freezing Defendants' Insider Trading Proceeds and Requiring Accounting ("Supplemental Brief"). Amalgamated Bank's Supplemental Brief essentially and correctly argues that this Court has the authority to grant equitable relief under the federal securities laws. Specifically, Amalgamated Bank properly seeks disgorgement in connection with its claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j, 78t, which expressly authorizes district courts to grant equitable relief under Sections 27 and 28(a) of the Exchange Act, 15 U.S.C. §§ 78aa, 78bb.<sup>3</sup>

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<sup>2</sup>In an effort to protect the interests of purchasers of publicly traded debt securities, counsel for the AMS Fund also has attended Congressional hearings regarding defendants' complained of actions and, on December 21, 2001, the AMS Fund moved for its appointment as a lead plaintiff and for approval of its selection of counsel.

<sup>3</sup>Such relief also is available to purchasers of publically traded debt securities, such as the AMS Fund, who possess claims under Section 11 of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77k, since Section 22 of the Securities Act, 15 U.S.C § 77v, also grants the Court similar equitable powers.

The AMS Fund completely concurs with Amalgamated Bank's Supplemental Brief since the Supplemental Brief is both well reasoned and legally correct. Amalgamated Bank, *inter alia*, properly argues that "when interim equitable relief is authorized and the public interest is involved, 'courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest....'" See *United States v. First Nat'l City Bank*, 379 U.S. 378, 383 (1965). The AMS Fund agrees that this Court should invoke equity to preserve the rights of the plaintiffs and for the sake of public interest. The AMS Fund respectfully suggests that, in evaluating the public interest to be served in granting the requested equitable relief, in addition to considering the significant interests of the former employees, shareholders and debt holders of Enron, identified by Amalgamated Bank, the Court also should consider other public interests that will be served by granting the relief sought by Amalgamated Bank. Specifically, the interests of the beneficiaries of (a) the AMS Fund, and (b) other charities injured by defendants' misconduct in violation of the federal securities laws should be considered in evaluating the significant public interest which supports granting equitable relief.

As explained in its First Amended Complaint and its Memorandum of Law in Support of its Motion for Appointment as Lead Plaintiff ("AMS Memorandum"), the AMS Fund is a charitable organization that has a unique fiduciary responsibility to maintain its own financial integrity for the benefit of others. It is an institution without any objective for personal gain. Rather, the AMS Fund is a charitable organization which utilizes its assets and earnings to fund the good works of other charities.<sup>4</sup> AMS Memorandum at 3. Between 1992 and 1999, the AMS Fund distributed

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<sup>4</sup> The AMS Fund is guided by the following seven fundamental principles in pursuing these good works:

1. Promote human dignity through education and formation.
2. Expand community leadership.

\$17,999,814.61 for programs supporting educational initiatives and total grants of \$40,544,664.14.<sup>5</sup>

*Id.* at 4. Accordingly, when institutions such as the AMS Fund suffer losses, charities throughout the United States are inevitably affected since less funds are available for distribution. As a result, in addition to the individuals identified by Amalgamated Bank who were directly injured by defendants' unlawful conduct, it is beyond cavil that beneficiaries of non-profit institutions, including the working poor in the case of the AMS Fund, also have been injured. The public interest will be served by remedying such misconduct and preserving assets for collection in this case because such charitable works, in addition to directly assisting their beneficiaries, also benefit the public at large by providing private support to individuals who otherwise (a) would be required to rely upon public funding or assistance, or (b) would not receive assistance. *See, e.g., Western Presbyterian Church v. District of Columbia*, 849 F.Supp. 77, 79 (D.D.C. 1994)(holding that "public interest will be advanced by a preliminary injunction" because "the plaintiffs have conducted an exemplary program for more than ten years" by "responding to a crying need ... for assistance to the poor and needy"); *Febus v. Gallant*, 866 F.Supp. 45, 47 (D.Mass. 1994)(holding that public interest was served by avoiding removal of "needy recipients from the public assistance rolls").

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3. Strengthen family, volunteer and community participation.
  4. Empower people to take responsibility for their lives and environment.
  5. Cooperate with other organizations within the community dedicated to similar goals.
  6. Demonstrate that efforts are being made by the applying organization to obtain donated goods, volunteer talent, and matching funds.
  7. Encourage collaboration and integration of diverse communities, racial and ethnic groups, and inter-faith efforts. AMS Memorandum at 4.

<sup>5</sup>The AMS Fund also provides substantial matching funds for other charities that (a) care for individuals afflicted with AIDS, (b) educate single mothers to assist them in getting off welfare, (c) study the effectiveness of welfare programs, (d) provide vocational training to young adults, (e) train religious leaders, (f) teach parenting skills and (g) provide immigrants with assistance in learning English. *Id.*

Accordingly, in light of the AMS Fund and other similarly situated charities' good works and their corresponding interest in this litigation *on behalf of the members of the public whom they serve*, the AMS Fund respectfully suggests that the public interest will be best served by immediately granting all of the relief requested by Amalgamated Bank in its Application and Supplemental Brief.

For these reasons, the AMS Fund respectfully joins in Amalgamated Bank's Application and Supplemental Brief.

Dated: January 7, 2002

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of this instrument has been forwarded to all counsel of record, via certified mail, return receipt requested, and/or via facsimile, and/or via U.S. Mail on this 7<sup>th</sup> day of January, 2002, properly addressed as follows:

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