United States Courts
Southern District of Texas
FILED

JAN 1 5 2002

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
	§	
Plaintiffs,	§	CLASS ACTION
	§	
vs.	§	
	§	
ENRON CORP., et al.,	§	
	§	
Defendants.	§	

SUPPLEMENTAL BRIEF IN SUPPORT OF AMALGAMATED BANK'S
EX PARTE APPLICATION FOR PARTICULARIZED EXPEDITED DISCOVERY
FROM DEFENDANT ARTHUR ANDERSEN

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On January 11, 2002, plaintiff Amalgamated Bank filed before the Honorable Lee H. Rosenthal its *Ex Parte* Application for Particularized Expedited Discovery from Defendant Arthur Andersen LLP to Preserve Evidence. That motion was made based on the admission of Arthur Andersen that, in recent months, Arthur Andersen employees had destroyed a "significant but undetermined" number of documents and electronic evidence related to the Enron engagement. On January 14, 2002, Florida State Board of Administration and New York City Pension Funds, recently aggregated plaintiffs, filed a very similar motion. For the reasons set forth in plaintiff Amalgamated's *ex parte* application and herein, Amalgamated requests the Court consider its motion on an expedited basis.

Since Amalgamated filed its *ex parte* application for expedited discovery from Arthur Andersen, Arthur Andersen has made further damaging admissions regarding the willful destruction of Enron engagement documents. In a January 15, 2002 press release, Arthur Andersen stated it will ***fire*** the lead partner on its Enron engagement, place three other partners responsible for the engagement on administrative leave, and relieve four Houston-based partners of their management responsibilities. *See* Ex. A. Arthur Andersen further admitted, among other things:

> ***[T]he firm discovered activities including the deletion of thousands of e-mails and the rushed disposal of large numbers of paper documents. These activities were on such a scale and of such a nature as to remove any doubt that Andersen's policies and reasonable good judgment were violated.***
>
> ***Although the firm is still working to collect all the facts, it has learned that at the direction of the lead partner an expedited effort to destroy documents in Houston was undertaken.*** The effort was initiated following an urgent meeting the lead partner called on Oct. 23 to organize the expedited effort to dispose of Enron-related documents. This meeting occurred shortly after the lead partner learned that Enron had received a request for information from the SEC about its financial accounting and reporting. This effort was undertaken without any consultation with others in the firm and at a time when the engagement team should have had serious questions about their actions....
>
> Most of the activity to delete e-mails and discard desk files and other documents took place in the days following that meeting.

Id. (emphasis added).

Immediate action is necessary to preserve evidence critical in this litigation. For the reasons set forth in Amalgamated's *ex parte* application and the reasons set forth herein, Amalgamated requests the Court order Arthur Andersen:

(i) make available witnesses with personal knowledge to answer the limited oral examination topics delineated in Amalgamated's *ex parte* application;

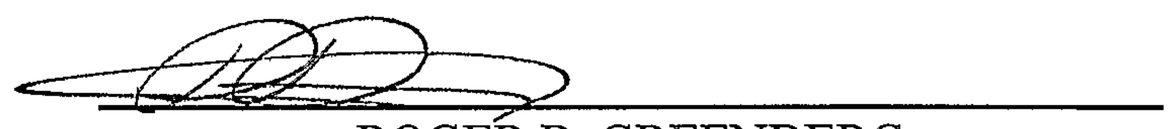
(ii) produce two limited categories of documents; and

(iii) preserve all relevant electronic evidence by depositing in the Court's registry mirror-image copies of computer hard drives or other electronic data.

DATED: January 15, 2002

Respectfully submitted,

SCHWARTZ, JUNELL, CAMPBELL
& OATHOUT, LLP
ROGER B. GREENBERG



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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 600 West Broadway, Suite 1800, San Diego, California 92101.

2. That on January 15, 2002, declarant served the SUPPLEMENTAL BRIEF IN SUPPORT OF AMALGAMATED BANK'S *EX PARTE* APPLICATION FOR PARTICULARIZED EXPEDITED DISCOVERY FROM DEFENDANT ARTHUR ANDERSEN by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of January, 2002, at San Diego, California.

VICKI J. ROGERS

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Andersen announces preliminary Enron-related disciplinary and administrative actions

- Firm will dismiss lead audit partner; three other partners on engagement placed on leave
- Actions relate to document destruction; firm's investigation still under way
- New management planned for Houston office

CHICAGO, January 15, 2002 — Andersen today said it will dismiss the lead partner on its Enron engagement and is placing three other partners responsible for the engagement on administrative leave. The actions were taken based on preliminary facts relating to Andersen's inquiry into the disposal of documents related to the engagement.

Separately, Andersen announced that it is putting new management in charge of its Houston office. Four partners based in the Houston office have been relieved of their management responsibilities.

"We promised to be forthright and to take action where appropriate," said Joseph F. Berardino, Andersen's managing partner and chief executive officer. "This was a painful decision, but it was absolutely the right thing to do. We are prepared to take all appropriate steps necessary to maintain confidence in the integrity of our firm."

Andersen will dismiss anyone found to have improperly destroyed audit work papers. papers constitute the principal record of the work done and the conclusions reached on significant matters. At this time, the firm does not believe that any work papers were destroyed.

The firm also will take action against anyone found to have purposefully deleted Enron-related e-mails or destroyed Enron-related documents after having been informed that on Nov. 8, 2001 these documents were subpoenaed by the U.S. Securities and Exchange Commission. The firm is still looking into this issue. If anyone is found to have acted in this way, they will be dismissed.

However, the firm has determined that it is appropriate to take action now with respect to other conduct.

"Based on our actions today, it should be perfectly clear that Andersen will not tolerate unethical behavior, gross errors in judgment or willful violation of our policies," said Berardino.

In its review of the document disposal issue, the firm discovered activities including the deletion of thousands of e-mails and the rushed disposal of large numbers of paper documents. These activities were on such a scale and of such a nature as to remove any doubt that Andersen's policies and reasonable good judgment were violated.

Although the firm is still working to collect all the facts, it has learned that at the direction of the lead partner an expedited effort to destroy documents in Houston was undertaken. The