

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MICHAEL N. MILBY, CLERK OF COURT

MARK NEWBY, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

§ Civil Action No. H-01-3624  
§ (Consolidated)

§ CLASS ACTION

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**RESPONSE AND SUPPORTING MEMORANDUM OF LAW OF THE  
ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC.  
TO ALL OTHER MOVANTS' MOTIONS FOR APPOINTMENT  
AS LEAD PLAINTIFF IN THIS CONSOLIDATED ACTION.**

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TO: THE HONORABLE UNITED STATES DISTRICT COURT JUDGE

Plaintiff, the Archdiocese of Milwaukee Supporting Fund, Inc. ("AMS Fund" or "Movant" or "Proposed Lead Plaintiff"), by and through its undersigned counsel, submits this Response and Supporting Memorandum of Law to the Motions of All Other Movants for Lead Plaintiff and in Support of the Motion of the Archdiocese of Milwaukee Supporting Fund, Inc. for Appointment as Lead Plaintiff and for Approval of Lead Plaintiff's Selection of Counsel.<sup>1</sup> This Response is submitted pursuant to Section 27(A)(3)(B) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77z-1(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA").<sup>2</sup>

### I. INTRODUCTION.

As reflected by the national focus within the media and the United States government on the collapse of Enron Corporation ("Enron"), its resulting bankruptcy and the causes underlying Enron's collapse and bankruptcy, this litigation is extraordinarily important to investors and others who have been severely harmed by defendants' alleged misconduct. Perhaps not surprisingly, a number of individuals, institutions and other entities have moved to be appointed as a lead plaintiff in this consolidated action to protect the interests of the proposed class or, at times, proposed sub-classes. In light of the magnitude and importance of this litigation, as

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<sup>1</sup>The AMS Fund seeks its appointment as a lead plaintiff and for approval of its counsel, Scott + Scott, LLC, to serve as lead counsel. The AMS Fund also now seeks approval of Kilgore & Kilgore, PLLC (replacing Hoeffner & Bilek, LLP) to serve as liaison counsel. Although the AMS Fund previously proposed that Hoeffner & Bilek, LLP serve as liaison counsel in its underlying motion to be appointed as a lead plaintiff in this litigation, since Hoeffner & Bilek, LLP also has been proposed to serve as liaison counsel by other plaintiffs seeking appointment as a lead plaintiff, out of an abundance of caution and to avoid any conflict (or the appearance of any conflict) on the part of Hoeffner & Bilek, LLP, the AMS Fund and Hoeffner & Bilek, LLP have agreed that Hoeffner & Bilek, LLP will withdraw its appearance as the AMS Fund's local counsel in this proceeding and be replaced by Kilgore & Kilgore, PLLC. A true and correct copy of the firm resume of Kilgore & Kilgore, PLLC is attached as Exhibit "C."

<sup>2</sup>As *Lax v. First Merchants Acceptance Corp.*, 1997 WL 461036 \*2 (N.D. Ill. Aug. 11, 1997), correctly notes, "the lead plaintiff provisions of the 1933 [Securities Act] and 1934 [Securities Exchange Act] ... are identical," and, therefore, authority applicable to lead plaintiff appointment under the Securities Exchange Act of 1934 applies with equal force to claims arising under the 1933 Securities Act.

explained fully below, the AMS Fund respectfully suggests that the Court should act to ensure that only the most adequate plaintiffs are chosen to serve as lead plaintiffs and that all of the lead plaintiffs are (1) fully qualified to protect the interests of the entire proposed class, (2) do not have any conflicts of interest (or the appearance of any conflict of interest), and (3) are not subject (or potentially subject to) any unique defenses that could disqualify such plaintiffs from serving in an effective representative role. Such action is especially appropriate in this case because, in light of the unprecedented attention that this proceeding has received from the media, as well as elected and appointed federal and state officials, any lead plaintiff appointed by the Court is likely to be the subject of intense scrutiny. By choosing representative lead plaintiffs that can easily withstand such scrutiny, the AMS Fund respectfully suggests that the Court will fully and appropriately protect the interests of the putative class.

Here, for the reasons explained in its Motion for Appointment as Lead Plaintiff and below, the AMS Fund respectfully submits that, after engaging a full and proper inquiry as to the qualifications of the other proposed lead plaintiffs, this Court should conclude that the AMS Fund is one of the most appropriate lead plaintiffs. Accordingly, the AMS Fund should be appointed as one of the lead plaintiffs to act upon behalf of the interests of all Enron securities purchasers, including purchasers of Enron debt securities like the AMS Fund, who suffered losses as a result of defendants' alleged misconduct. Such appointment is exceptionally appropriate in this case because the AMS Fund is an institution above reproach that cannot be tainted by any suggestion of any conflict of interest or other impropriety, is not subject to unique defenses and, as a fiduciary and non-profit organization, has substantial experience in acting in effectively representing and serving the interests of others.

## II. ARGUMENT.

### A. Standard of Review.

As this Court previously and cogently explained, "[t]his Court may *sua sponte* evaluate the adequacy of any proposed person or group of persons as Lead Plaintiff(s)." *In re Waste Management*, 128 F. Supp. 2d 401, 410 (S.D.Tex. 2000). In so holding, this Court recognized and cited the holding of *In re Oxford Health Plans, Inc. Securities Litigation*, 182 F.R.D. 42 (S.D.N.Y. 1998)(addressing the appointment of lead plaintiffs) repeatedly with approval. *In re Waste Management*, 128 F. Supp. 2d at 410-13, 417, 419-20. In *Oxford*, the Court addressed the appointment of lead plaintiffs in complex securities class actions and explained:

The PSLRA directs the Court to "appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(i) (emphasis added). The Act creates a "rebuttable presumption ... that the most adequate plaintiff ... is the person or group of persons that (aa) has either filed the complaint or made a motion in response to a notice ... (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

The presumption may be rebutted "only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff – (aa) will not fairly and adequately represent the interests of the class; or (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class. 15 U.S.C. §78u-4(a)(3)(B)(iii)(II). Before obtaining discovery in this regard, the objecting plaintiff must demonstrate a reasonable basis for a finding "that the presumptively most adequate plaintiff is incapable of representing the class." 15 U.S.C. §78u-4(a)(3)(B)(iv).

\* \* \*

The House Conference Report on the PSLRA stated that the lead plaintiff provisions were "intended to encourage the most capable representatives of the plaintiff class to participate in class action litigation and to exercise supervision and control of the lawyers for the class." H.R. Rep. No. 104-369 at 32 (1995) reprinted in 1996 U.S.C.C.A.N. 730 (emphasis added).

*Id.* at 44-45. After examining the purpose of the PSLRA, the *Oxford* Court also persuasively held that it was appropriate to appoint more than one lead plaintiff to protect the interests of the class and that such lead plaintiffs should be well suited to act as fiduciaries on behalf of the class:

The use of multiple lead plaintiffs will best serve the interests of the proposed class in this case because such a structure will allow for pooling, not only of the knowledge and experience, but also of the resources of the plaintiffs' counsel in order to support what could prove to be a costly and time-consuming litigation.

\* \* \*

While the legislative history of the PSLRA suggests a desire that institutional investors be preferred as class representatives, not all institutional investors are similarly situated. A class representative, once designated by the Court, is a fiduciary for the absent class members. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949) (class representative is volunteer who assumes position of fiduciary nature); *Kline v. Wolf*, 88 F.R.D. 696, 700 (S.D.N.Y. 1981), *aff'd* 702 F.2d 400 (2d Cir. 1983) (class representative serves as fiduciary to advance and protect interests of those whom he purports to represent).

\* \* \*

In addition the plain language of the PSLRA expressly contemplates the appointment of more than one lead plaintiff, *see* 15 U.S.C. §78u-4(a)(3)(B)(i) (court "should appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be the most capable of adequately representing the interests of the class members ..."); §78u-4(a)(3)(B)(iii)(I) ("the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that ..."); §78u-4(a)(3)(B)(iv) ("discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff").

\* \* \*

As noted above, the PSLRA expressly contemplates the appointment of more than one plaintiff, and this Court finds no basis in the statute for the distinction drawn by the SEC between competing and non-competing groups of plaintiffs. It should also be noted that the lead plaintiff movants are not in fact competing with each other. Each is seeking the same result – the greatest recovery for the class consistent with the merits of the claims raised, the defenses asserted and the burdens and risks of litigation. The rebuttable presumption created by the PSLRA which favors

the plaintiff with the largest financial interest was not intended to obviate the principle of providing the class with the most adequate representation and in general the Act must be viewed against established principles regarding Rule 23 class actions. **Allowing for diverse representation, including in this case a state pension fund, significant individual investors and a large institutional investor, ensures that the interests of all class members will be adequately represented in the prosecution of the action and in the negotiation and approval of a fair settlement, and that the settlement process will not be distorted by the differing aims of differently situated claimants.**

\* \* \*

Because the PSLRA does not recommend or delimit a specific number of lead plaintiffs, the lead plaintiff decision must be made on a case-by-case basis, taking account of the unique circumstances of each case. In light of the magnitude of this case, the Court concludes that the use of three lead plaintiffs is the most reasonable means. Such a structure allows for broad representation and the sharing of resources and experience to ensure that the litigation will proceed expeditiously against Oxford and the experienced counsel it has retained to represent it, and will assure the Court that any settlement when proposed will be provident. (Emphasis added.)

*Id.* at 41-49; *see also Laborers Local 1298 Pension Fund v. Campbell Soup Company*, 2000 U.S. Dist. LEXIS 5481 (D.N.J. 2000) (citing *Oxford* and appointing certain individual and institutional investors to serve as lead plaintiffs); *In re Microstrategy, Inc. Securities Litigation*, 110 F.Supp.2d 427 (E.D. Va. 2000) (appointing individual and institutional investor to serve as lead plaintiffs). Here, as *Oxford* and its progeny teaches, the AMS Fund respectfully suggests that the appointment of a well qualified and diverse group of lead plaintiffs is the approach best suited to protection of the proposed class' interests. Furthermore, given the AMS Fund's unique status in this case, it respectfully suggests that it is one of the most qualified and appropriate lead plaintiffs.<sup>3</sup>

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<sup>3</sup>To the extent the Court determines that, like in *In re Waste Management, Inc., supra*, only one lead plaintiff should be appointed, the AMS Fund respectfully requests that the Court appoint that institution (as opposed to any group of institutions or other investors) which it determines to (1) be adequate, and (2) have the largest financial interest in this proceeding. In such event, the AMS Fund stands ready to serve on an executive committee of other proposed lead plaintiffs or in any similar representative role that the Court deems appropriate to represent and protect the interests of charitable, non-profit institutions, purchasers of debt securities and all other purchasers of Enron securities.

**B. Unlike Other Purchasers Of Debt Securities Or Preferred Stock, At This Time, The AMS Fund Does Not Seek Creation Of Subclasses Or Any Other "Carve Out," And, As A Result, The AMS Fund Is Uniquely Well Suited To Serve As A Lead Plaintiff Within This Consolidated Securities Class Action Upon Behalf Of The Purchasers Of All Enron Securities, Including The Purchasers Of Debt Securities.**

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The AMS Fund does not seek to "carve out" a separate action for itself on behalf of all debt holders via creation of a subclass or to modify this Court's consolidation order. As this Court properly concluded in *In re Waste Management, Inc.*, absent the existence (as opposed to the possibility) of a conflict of interest between purchasers of different securities, the appointment of a lead plaintiff to represent a subclass is not appropriate at the time that lead plaintiffs are selected by the Court. *Id.* at 432. Here, as explained in the AMS Fund's Memorandum of Law in Support of its Motion for Appointment as Lead Plaintiff, although it is possible that a conflict of interest may arise between purchasers of debt securities and other securities, AMS Fund's Lead Plaintiff Memorandum at 3, 10, no present conflict exists. Other movants, although raising the specter of a potential conflict between the interests of different securities' holders in an effort to "carve out" independent cases for themselves within this litigation or, in the alternative, to represent a separate class or subclass of purchasers, also cannot identify any *presently* existing conflict between the interests of purchasers of common stock, preferred stock and debt securities (i.e., bonds and other debt instruments). *See* Memoranda of Law filed on behalf of Movants, JMG/TQA (aggregated hedge funds that purchased debt securities), Pulsifier & Associates or, in the alternative, Murray Van de Velde (professional money manager that purchased debt securities), Proposed Preferred Purchaser Lead Plaintiffs (aggregated group of individuals purchasing preferred stock), Staro Asset Management, LLC (hedge fund purchasing debt securities). Nevertheless, these movants prematurely seek to "carve out" separate cases or subclasses for themselves in an effort to obtain appointment as lead plaintiff.<sup>4</sup> The AMS Fund respectfully suggests that, at this stage of the proceedings, such a

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<sup>4</sup>As the Court properly concluded in *In re Waste Management, Inc.*, to the extent any conflict exists in the future between purchasers of debt securities and purchasers of other securities, the Court can consider creation of a subclass at that time.

fractious approach does not serve the interests of the entire proposed class of purchasers of Enron securities, including the interests of debt security purchasers. Rather, at this stage of the proceedings, as this Court effectively recognized in *In re Waste Management, Inc.*, the orderly prosecution of this complex litigation is best served by lead plaintiffs, such as the AMS Fund, able and willing to work on behalf of the interests of the entire class with other lead plaintiffs who can readily represent the interests of purchasers of non-debt securities. For this reason alone, at this stage in the proceedings, the AMS Fund is uniquely well suited to serve the interests of the entire class of securities' purchasers, including, but not limited to, the purchasers of Enron debt securities.

**C. The Court Should Appoint A Lead Plaintiff, Such As The AMS Fund, That Will Act To Protect The Substantial Interests Of Debt Security Holders Within This Consolidated Action.**

As *In re Waste Management, Inc.* teaches, it is unnecessary to now "carve out" subclasses or individual actions for purchasers of different Enron securities. In light of the potential conflicts that *may* arise between different classes of purchasers, however, the AMS Fund respectfully suggests that, consistent with the approach adopted in *Oxford, supra*, of appointing a diverse group of lead plaintiffs, it makes good and compelling sense to appoint a lead plaintiff, such as the AMS Fund, which is a "pure" bondholder as a representative party. *See McDonald v. Chicago Milwaukee Corp.*, 565 F.2d 416, 421-423 (7<sup>th</sup> Cir. 1977)(acknowledging that, in certain circumstances, conflicts can arise between shareholder and bondholders in securities fraud actions and that it may "be preferable in some actions to fix upon 'pure' shareholders or 'pure' bondholders as representative parties"). Here, among the several institutions seeking appointment as lead plaintiff in this consolidated action, there are no proposed lead plaintiffs (other than the AMS Fund) that are "pure" holders of debt securities and which seek appointment as one of the lead plaintiffs in this consolidated action. Rather, in stark contrast to the AMS Fund, based upon the representations contained in their own pleadings, the other institutions

seeking appointment as lead plaintiffs<sup>5</sup> all suffered losses in Enron equity investments that greatly outweigh the losses suffered in debt securities:

1. Amalgamated Bank et al – suffered over ninety-four (94%) of losses in equity investments;
2. Florida State Board of Administration – suffered over ninety-seven percent (97%) of losses in equity investments;
3. The “New York City Pension Funds” – suffered over seventy-six percent (76%) of its losses in equity investments; and
4. State Retirement System Group<sup>6</sup> – suffered at least seventy-three percent (73%) of losses in equity investments and perhaps more than eighty-five (85%) of losses in equity investments.<sup>7</sup>

Thus, consistent with the approach adopted in *Oxford*, the Court should appoint the AMS Fund as an institution well suited to serve as a member of a diverse group to serve and protect the interests of the entire proposed class. Specifically, as the only “pure” debt security purchaser prepared to work cooperatively with other plaintiffs suffering losses in other Enron securities, the AMS Fund seeks to be appointed a lead plaintiff in concert with other institutions, such as the

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<sup>5</sup>The AMS Fund does not substantively address the motions of the “Davidson Group” (a group of individuals who purchased common stock), “Private Asset Management” (an unidentified entity that purchased common stock), or “Local 710 Pension Fund” (a Taft-Hartley pension fund that purchased common stock), because none of these individuals or entities purchased debt securities and, based upon the moving papers of other proposed lead plaintiffs, there appear to be other purchasers of common stock moving for appointment of lead plaintiff in this case that will be facially adjudged more adequate and appropriate lead plaintiffs.

<sup>6</sup>This “group” consists of The Teachers Retirement System of Georgia, the Employees’ Retirement System of Georgia, the Teachers Retirement System of Ohio, the Employees’ Retirement System of Ohio, the Washington State Investment Board seek appointment as Lead Plaintiff, and the Retirement Systems of Alabama.

<sup>7</sup>To the extent that JMG/TQA, Pulsifer & Associates or, in the alternative, Murray Van de Velde, Staro Asset Management and/or the Proposed Preferred Purchaser Lead Plaintiffs withdraw their request for a carve out of separate cases or subclasses and seek appointment as a lead plaintiff within this consolidated action, each movant should be required to confirm that, like the AMS Fund, it solely purchased one variety of securities (i.e., common, preferred or debt securities) during the class period and did not purchase more than one Enron security during the class period.

Amalgamated Bank,<sup>8</sup> that seek such appointment on behalf of all class plaintiffs, including representatives purchasing common stock, preferred stock or debt securities.

**D. As The Only Non-Profit Institution Seeking Appointment As A Lead Plaintiff, The AMS Fund Should Be Appointed As A Lead Plaintiff To Create A Diverse And Well Balanced Group Of Institutions That Can Work Together To Protect The Interests Of The Proposed Class.**

As detailed more fully in its Lead Plaintiff Memorandum, the AMS Fund is a charitable, non-profit organization, *see* AMS Fund's Articles of Incorporation and By-laws, true and correct copies of which are attached together as Exhibit "A," that has donated more than \$40,000,000 to other charitable programs and institutions over the past decade and 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.
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.

*See* AMS Lead Plaintiff Memorandum at 3-4. Unlike other proposed lead plaintiffs, which, as explained below, may be subject to unique defenses based upon their investment strategies

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<sup>8</sup>The AMS Fund identifies the Amalgamated Bank merely as an example of another proposed lead plaintiff that may be appropriate solely because, to date, the Amalgamated Bank has taken an active role in seeking to protect the interests of the proposed class by seeking to freeze certain insider trading proceeds of individual defendants and the AMS Fund has supported and joined in the Amalgamated Bank's efforts. As explained below, the AMS Fund respectfully suggests that, before determining that any proposed lead plaintiff is appropriate to serve in this important litigation (whether the AMS Fund, Amalgamated Bank or otherwise), the Court should engage in a substantive inquiry to confirm that each proposed lead plaintiff is both adequate and suitable to serve the interests of the proposed class.

and/or objectives, the AMS Fund is a conservative investor that pursues a primary investment objective of ensuring the safety of its principal:

The primary investment objective of the account is safety of principal. AMSFI [AMS Fund] desires limited portfolio volatility and a high and secure level of current income. Selection of this objective implies a willingness to assume a level of risk less than that of common stocks in general. Liquidity and marketability should be prime considerations in the selection of individual securities.

See AMS Fund Investment Objectives, Guidelines And Restrictions, a true and correct copy of which is attached as Exhibit "B." This investment approach is entirely consistent with the fiduciary role that the AMS Fund occupies with respect to its beneficiaries. The AMS Fund's charitable purpose and conservative investment philosophy also frankly renders it a perfect plaintiff to represent the interests of the class both before and during any trial on the merits of this action. Simply put, the AMS Fund's *raison d'être* is admirable and, given its investment philosophy, the losses it suffered by purchasing Enron debt securities are quite representative of the harm suffered by many innocent institutions and individuals throughout the world. Furthermore, in light of its institutional commitment to and goal of serving the needs and interests of others, it obviously is well qualified to act for and on behalf of the interests of all proposed class members, including, but not limited to, other non-profit institutions and purchasers of debt securities.<sup>9</sup>

**E. The Court Should Sua Sponte Engage In An Inquiry To Determine The Most Adequate Lead Plaintiffs.**

As this Court recognized in *In re Waste Management, supra* at 410, this Court may *sua sponte* inquire as to whether a given institution or individual is adequate to serve as a lead plaintiff. In determining the proper delimits of such inquiry, this Court also has recognized that

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<sup>9</sup>In light of its interest in serving and protecting the interests of the proposed class, the AMS Fund also will negotiate a separate fee agreement with its counsel (subject to court approval) that is carefully tailored in order to ensure that, in the event the AMS Fund is appointed as a lead plaintiff, any recovery obtained in this action results in a maximum recovery by the putative class members. The AMS Fund stands ready to present a proposed fee agreement to the Court for its consideration and review.

"[t]he statutory presumption of appointment as lead plaintiff, as noted, may only be rebutted ... through evidence that the lead plaintiff 'will not fairly and adequately protect the interests of the class' or is 'subject to unique defenses that render such plaintiff incapable of adequately representing the class.'" See *In re Waste Management*, at 410-11, citing 15 U.S.C. §78u-4(a)(3)(B)(iii)(II). Here, at least seven government/public pension funds have moved to be appointed as lead plaintiff.<sup>10</sup> Based upon published news reports, substantial reasons exist to believe that one or more of these funds may not be appropriate lead plaintiffs under the standards enunciated above. By way of example only, in the case of the Florida State Board of Administration ("FSBA"), certain facts *may* disqualify the FSBA from serving as a lead plaintiff in this action:

1. Although, as part of its attempt to avoid the creation of "professional plaintiffs," the PSLRA provides that no person may be named as a lead plaintiff in five securities class actions during any three year period, it appears that the FSBA may have exceeded this limit. Specifically, less than three years ago, the FSBA was denied lead plaintiff status in a case for exceeding the statutory restraint. See, e.g., *Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146 (N.D. Cal. 1999);
2. Upon information and belief, the FSBA acquired a large percentage of Enron common shares *after* Enron disclosed accounting irregularities. As such purchases could be construed as in breach of a fiduciary duty<sup>11</sup> or as part of a speculative investment strategy, the FSBA obviously could be subject to unique defenses;

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<sup>10</sup>These government/public pension funds are: a) The New York City Pension Funds; b) The Teachers Retirement System of Georgia; c) The Employees' Retirement System of Ohio; d) The Washington State Investment Board; e) The Retirement System of Alabama; f) The Florida State Board of Administration; and g) the Regents of the University of California.

<sup>11</sup>Fla. Stat. Ann. § 215.47(9) states in pertinent part:

Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. §1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

3. The FSBA has terminated the services of its financial advisor/money manager (Alliance Capital Management Corp.) that invested the FSBA's funds in Enron securities and has announced that it is investigating whether that financial advisor engaged in misconduct when so investing the FSBA's funds, thereby creating the possibility (if not a likelihood) of a unique defense being raised against the FSBA;<sup>12</sup> and
4. One of the executives of the FSBA's financial advisor/money manager (Alliance Capital Management Corp.), was a member of Enron's Board of Directors, thereby further raising the specter of potential unique defenses.

As the FSBA may not be unique, before appointing any lead plaintiffs, the AMS Fund respectfully suggests that the Court should make inquiring of *all* proposed lead plaintiffs to determine whether, *inter alia*:

1. any movant purchased any Enron security after the announcement of accounting irregularities by Enron;
2. any movant violated any fiduciary or other duty when purchasing Enron securities;
3. any movant pursued an investment strategy when purchasing Enron securities that exposes it to any unique defenses; and
4. any movant has been appointed as a lead plaintiff five or more times in a securities class action in the last three years.

By so inquiring, the Court will ensure that the most adequate lead plaintiffs are appointed to represent and protect all of the members of the proposed class in this important litigation.<sup>13</sup>

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<sup>12</sup>Similarly, two of the other movants, Staro Asset Management LLC and JMG/TQA, are hedge funds that, upon information and belief, pursue high risk investment philosophies and employ aggressive investment techniques, including short-selling and purchasing through leveraged/margined positions. Although the AMS Fund does not presume to suggest that a hedge fund could not serve as an appropriate lead plaintiff in this action, it observes that (1) the AMS Fund would not be subject to any special/unique defenses based upon specialized knowledge and trading practices (especially in a case such as this where hedging with offshore funds was apparently part of Enron's own strategic business plan and one cause of its demise), and (2) at a minimum, before appointing any such entity as a lead plaintiff, the Court should engage in an inquiry to determine if any such knowledge/practices expose it to unique defenses that render it an inappropriate lead plaintiff.

<sup>13</sup>In recognition of the importance that each proposed lead plaintiff fully and openly respond to questions and concerns regarding its adequacy as a proposed lead plaintiff, the AMS Fund already is in the process of voluntarily responding to questions raised by another movant to confirm the AMS Fund's ability to fully and adequately represent the interests of the proposed class. The AMS Fund would welcome the opportunity to work with all proposed lead plaintiffs to design a questionnaire for the Court's consideration and use in evaluating the adequacy of each proposed lead plaintiff and volunteers to coordinate such an effort on behalf of all proposed lead plaintiffs.

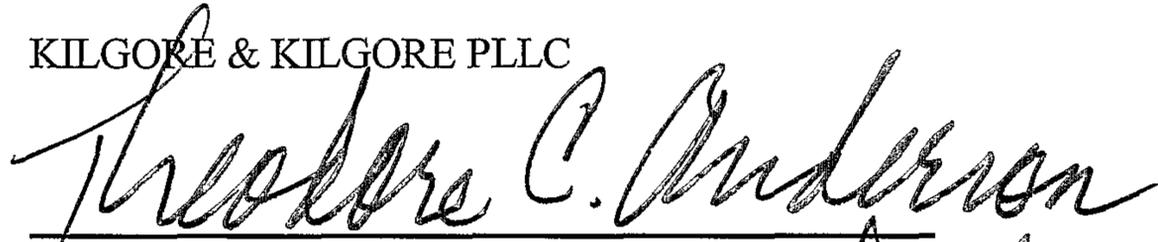
### III. CONCLUSION.

For the reasons explained above, the AMS Fund respectfully requests that the Court engage in an appropriate inquiry to ensure that only appropriate and adequate lead plaintiffs, including the AMS Fund, are appointed to represent the interests of the putative class in this action. To the extent that the Court deems it appropriate and helpful, the AMS Fund hereby offers to coordinate an effort by all proposed lead plaintiffs to create a proposed questionnaire for the Court's use in evaluating the proposed lead plaintiffs and determining the most adequate lead plaintiffs to be appointed by the Court.

DATED: January 22, 2002

Respectfully submitted,

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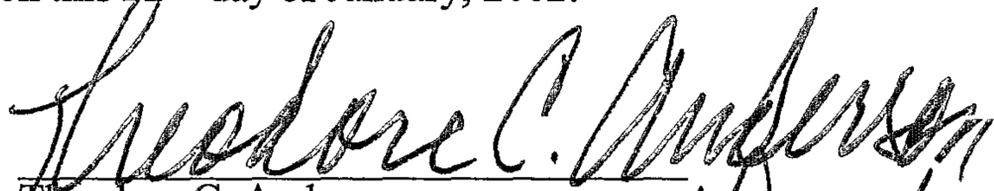


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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document has been forwarded to all parties listed on the mail matrix attached hereto via regular mail on this 22<sup>nd</sup> day of January, 2002:

  
Theodore C. Anderson  


## SERVICE LIST

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RECEIVED  
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STATE OF WISCONSIN

ARTICLES OF INCORPORATION

OF

92 DEC 15 P 4: 22

ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC.

The undersigned, acting as incorporator under the Wisconsin Non-Stock Corporation law, Chapter 181 of the Wisconsin Statutes, adopts the following Articles of Incorporation.

ARTICLE I

NAME

The name of the Corporation is ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC.

ARTICLE II

EXISTENCE

The period of existence shall be perpetual.

ARTICLE III

PURPOSE

1. The Corporation is organized and shall be operated exclusively for charitable, educational, and religious purposes in accordance with the provisions of sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future Internal Revenue Law of the United States (hereinafter referred to as the "Code"), and in particular the Corporation is organized and shall at all times be operated exclusively for the benefit of, and to carry out the purposes of, the Supported Organizations, defined as follows: The primary Supported Organization shall be the Archdiocese of Milwaukee of the Roman Catholic Church, its programs and activities. The other Supported Organizations shall be Catholic organizations associated with the Archdiocese of Milwaukee listed in the group exemption ruling issued from time to time to the U.S. Catholic Conference, as well as the following specific organizations, whether or not so listed, provided the organizations are qualified to receive gifts deductible under Section 170(c)(2) of the Code for federal income, estate and gift tax purposes:

- Camaldolese Sisters, Rome, Italy
- Immaculate Heart Hermitage, Big Sur, California
- Saint Benedict's Monastery, Snowmass, Colorado
- Christian Appalachian Project, Kentucky
- Comunita di San Egidio, Italy
- Esperanca, Inc,
- Friends of Our Little Brothers, Arizona

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Institute for Latin American Concern  
 Jesuit Midwestern Province for Missions  
 Petits Freres de L'Incarnation, Haiti  
 Society of Jesus, Province of the Near East  
 Society of the Divine Word  
 Society of the Divine Savior/Salvatorian Mission Warehouse  
 Center for the Study of the Passion of Christ & the Holy  
 Shroud, Inc.  
 Foundations and Donors Interested in Catholic Activities, Inc.  
 Mount Senario College  
 Sacred Heart School of Theology  
 Saint Dominic Center/Vietnamese Dominican Sisters  
 Woodstock Theological Center  
 The Gregorian University Foundation  
 AIDS Resource Center of Wisconsin, Inc.  
 Alliance for the Mentally Ill of Greater Milwaukee, Inc.  
 Congress for a Working America  
 CorpCare Distributions, Inc.  
 Housing with Help, Inc.  
 Messmer High School  
 Next Door Foundation  
 LaFarge Lifelong Learning Institute  
 Our Space, Inc.  
 Saint Catherine's Residence  
 Camillus House, Miami, Florida  
 Missionaries of Africa

This Corporation shall be "operated in connection with" the Archdiocese, as the primary Supported Organization, as the term "used in connection with" is defined under section 509(a)(3) of the Code.

2. Without limiting the generality of the foregoing or the powers permitted by law, the Corporation shall have the powers to:

a. Receive, hold, manage, invest, and administer gifts and grants of money or any other form of property to be dedicated to its purposes.

b. Make distributions from its income and principal in such amounts and at such times and for such specific programs and purposes as the Corporation may deem best for the support and benefit of the Supported Organizations, provided that such distributions shall be made exclusively for the benefit of, or to carry out the charitable, educational, and religious programs and purposes of, the Supported Organizations.

c. Employ officers, staff, agents, advisors, consultants, and counsel to assist in managing its assets, planning and operating its activities, and performing other functions in support of its operations.

d. Indemnify and hold harmless directors, officers, staff, agents, advisors, consultants, and counsel of organizations or persons making grants or donations to the Corporation of money or any other form of property to be dedicated to its purposes.

e. Do any and all acts that are lawful for a not-for-profit corporation under the laws of Wisconsin and an organization qualified under sections 501(c)(3) and 509(a)(3) of the Code and that are deemed by the Corporation to be necessary, proper, useful, incidental and advantageous to the above-stated purposes.

#### ARTICLE IV

##### PRINCIPAL OFFICE

The principal office is located in Milwaukee County, Wisconsin and the address of such principal office is:

7205 Grand Parkway  
Wauwatosa, Wisconsin 53213

#### ARTICLE V

##### REGISTERED AGENT

The name of the initial registered agent is Erica P. John.

#### ARTICLE VI

##### ADDRESS OF REGISTERED AGENT

The address of the initial registered agent is:

7205 Grand Parkway  
Wauwatosa, Wisconsin 53213

#### ARTICLE VII

##### DIRECTORS

The affairs of the Corporation shall be managed by the Board of Directors. The number of directors shall be fixed in the bylaws of the Corporation, but shall not be less than three. The names and addresses of the initial Board of Directors are as follows:

Erica P. John

7205 Grand Parkway  
Wauwatosa, WI 53213

REEL 2934 IMAG 168

Paula N. John

1742 N. Prospect Ave., #314  
Milwaukee, WI 53202

Archbishop Rembert Weakland

Archdiocese of Milwaukee  
~~P.O. Box 07912~~ 3501 S. LAKE DRIVES  
Milwaukee, WI 53207

The manner of electing directors in succession to the initial directors shall be as provided in the bylaws of the Corporation.

ARTICLE VIII

MEMBERS

The Corporation shall have no members.

ARTICLE IX

INUREMENT OF INCOME

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any private individual, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III herein.

ARTICLE X

LEGISLATIVE OR POLITICAL ACTIVITIES

No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

ARTICLE XI

OPERATIONAL LIMITATIONS

Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under section 501(c)(3) of the Code that is described in section 509(a)(3) of the Code; (b) by a corporation, contributions, to which are deductible under Section 170(c)(2) of the Code; or (c) by a corporation organized under Chapter 181, Wisconsin Statutes.

ARTICLE XII

DISSOLUTION

In the event of the dissolution, liquidation or termination of this Corporation, whether voluntary, involuntary or by operation of law, the Board of Directors shall, after paying or making provision for the payment of the legal obligations of the Corporation, distribute as the Board shall so determine, at least one-third (1/3) of the assets of the Corporation to the Archdiocese [provided the Archdiocese is then in existence and qualified to receive gifts deductible for federal income, estate and gift tax purposes as charitable contributions, and if the Archdiocese is not then in existence, or is not so qualified, to the successor to the Archdiocese within the Roman Catholic Church, as determined by the Board of Directors of the Corporation], and any remaining assets of the Corporation, if any, to such of the other Supported Organizations as the Board of Directors shall determine.

ARTICLE XIII

AMENDMENT

These Articles may be amended by the unanimous vote of the Board of Directors.

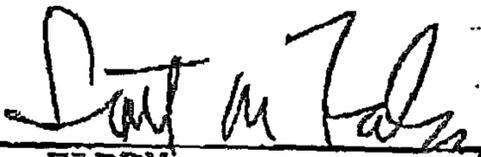
ARTICLE XIV

INCORPORATOR

The name and address of the incorporator are:

Scott M. Fabry, Esq.  
111 East Wisconsin Avenue  
Suite 1400  
Milwaukee, Wisconsin 53202

Executed in triplicate on December 15, 1992.

  
\_\_\_\_\_  
SCOTT M. FABRY  
Incorporator.



(Form 104) - 1988  
AMENDMENT  
(corporation)

RECEIVED  
SECRETARY OF STATE  
STATE OF WISCONSIN  
State of Wisconsin  
SECRETARY OF STATE

Please read instructions on  
the reverse before attempt  
to complete this form.

Resolved, That  
92 DEC 23 P 3: 12

Article III and Article X of the Articles of Incorporation be,  
and they hereby are, amended and restated as follows:

(Please see attached)

STATE OF WISCONSIN  
FILED

DEC 28 1992

DOUGLAS LA FOLLETT  
SECRETARY OF STATE

The undersigned  
officers of ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC., a Wisconsin corporation  
(enter the present corporate name, before any change this amendment may cause)  
with principal office in Milwaukee County, Wisconsin, CERTIFY:

~~(A) That the foregoing amendment of the articles of incorporation of said corporation was adopted on~~  
~~\_\_\_\_\_ 19 \_\_\_\_\_ by written consent signed by all of the members having voting rights.~~

OR

(B) That said corporation has no members having voting rights, and that the foregoing amendment of the  
articles of incorporation of said corporation was adopted at a meeting of the board of directors  
on December 16, 19 92 by a majority affirmative vote (or greater, as may be re-  
quired by the articles of incorporation) of the directors in office.

OR

~~(C) That the foregoing amendment of the articles of incorporation of said corporation was adopted by~~  
~~the members on \_\_\_\_\_, 19 \_\_\_\_\_ by the following vote:~~

Number of members having voting rights	Number present in person or by proxy	Number voting	
		FOR	AGAINST
_____	_____	_____	_____

USE ONLY ONE - STRIKE OUT THE  
ITEMS YOU DO NOT USE.

Executed in duplicate and seal (if any) affixed this 22 day of December, 19 92.

BY: Paula W. John  
as (Secretary) ~~xxxxxxx~~  
indicate which

AFFIX SEAL  
or state that  
there is none

BY: Erica P. John  
as (President) ~~xxxxxxx~~  
indicate which

This document  
was drafted by

Scott M. Fabry  
please print or type the name of the individual

**ARTICLE III**  
**PURPOSE**

1. The Corporation is organized and shall be operated exclusively for charitable, educational, and religious purposes in accordance with the provisions of sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future Internal Revenue Law of the United States (hereinafter referred to as the "Code"), and in particular the Corporation is organized and shall at all times be operated exclusively for the benefit of, and to carry out the purposes of, the Supported Organizations, defined as follows: The primary Supported Organization shall be the Archdiocese of Milwaukee of the Roman Catholic Church (the "Archdiocese"), its programs and activities. The other Supported Organizations shall be Catholic organizations, which pursuant to the authorization of the Archdiocese are permitted to be listed within the Archdiocese in the Official Catholic Directory effectuating exemption from federal income tax pursuant to an annual group exemption ruling issued from time to time to the U.S. Catholic Conference, as well as the following specific organizations, whether or not so listed, provided the organizations are described in Section 501(c)(3) of the Code and are not private foundations as defined in Section 509(a) of the Code:

Camaldolese Sisters, Rome, Italy  
 Immaculate Heart Hermitage, Big Sur, California  
 Saint Benedict's Monastery, Snowmass, Colorado  
 Christian Appalachian Project, Kentucky  
 Comunita di San Egidio, Italy  
 Esperanca, Inc.  
 Friends of Our Little Brothers, Arizona  
 Institute for Latin American Concern  
 Jesuit Midwestern Province for Missions  
 Petits Freres de L'Incarnation, Haiti  
 Society of Jesus, Province of the Near East  
 Society of the Divine Word  
 Society of the Divine Savior/Salvatorian Mission  
 Warehouse  
 Center for the Study of the Passion of Christ & the  
 Holy Shroud, Inc.  
 Foundations and Donors Interested in Catholic  
 Activities, Inc.  
 Mount-Senario College  
 Sacred Heart School of Theology  
 Saint Dominic Center/Vietnamese Dominican Sisters  
 Woodstock Theological Center  
 The Gregorian University Foundation  
 AIDS Resource Center of Wisconsin, Inc.  
 Alliance for the Mentally Ill of Greater Milwaukee,  
 Inc.  
 Congress for a Working America  
 CorpCare Distributions, Inc.  
 Housing with Help, Inc.  
 Messmer High School  
 Next Door Foundation  
 LaFarge Lifelong Learning Institute

Our Space, Inc.  
Saint Catherine's Residence  
Camillus House, Miami, Florida  
Missionaries of Africa  
Santa Fe Communications, Inc.

This Corporation shall be "operated in connection with" the Archdiocese, as the primary Supported Organization, as the term "used in connection with" is defined under section 509(a)(3) of the Code.

a. Without limiting the generality of the foregoing or the powers permitted by law, the Corporation shall have the powers to:

b. Receive, hold, manage, invest, and administer gifts and grants of money or any other form of property to be dedicated to its purposes.

c. Make distributions from its income and principal in such amounts and at such times and for such specific programs and purposes as the Corporation may deem best for the support and benefit of the Supported Organizations, provided that such distributions shall be made exclusively for the benefit of, or to carry out the charitable, educational, and religious programs and purposes of, the Supported Organizations.

d. Employ officers, staff, agents, advisors, consultants, and counsel to assist in managing its assets, planning and operating its activities, and performing other functions in support of its operations.

e. Indemnify and hold harmless directors, officers, staff, agents, advisors, consultants, and counsel of organizations or persons making grants or donations to the Corporation of money or any other form of property to be dedicated to its purposes.

f. Do any and all acts that are lawful for a not-for-profit corporation under the laws of Wisconsin and an organization qualified under sections 501(c)(3) and 509(a)(3) of the Code and that are deemed by the Corporation to be necessary, proper, useful, incidental and advantageous to the above-stated purposes.

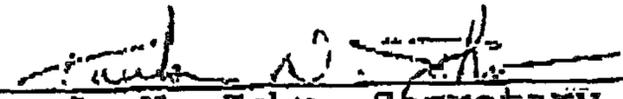
#### ARTICLE X

##### LEGISLATIVE OR POLITICAL ACTIVITIES

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

**BY-LAWS**  
**OF**  
**ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND, INC.**  
**A WISCONSIN NON-STOCK, NON-PROFIT CORPORATION**

APPROVED:

  
\_\_\_\_\_  
Paula N. John, Secretary

This 22nd day of December, 1992.

**A WISCONSIN NON-STOCK, NON-PROFIT CORPORATION****ARTICLE I****PURPOSE AND DEDICATION OF ASSETS****1.01 Purpose.**

1. The Corporation is organized and shall be operated exclusively for charitable, educational, and religious purposes in accordance with the provisions of sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future Internal Revenue Law of the United States (hereinafter referred to as the "Code"), and in particular the Corporation is organized and shall at all times be operated exclusively for the benefit of, and to carry out the purposes of, the Supported Organizations, defined as follows: The primary Supported Organization shall be the Archdiocese of Milwaukee of the Roman Catholic Church (the "Archdiocese"), its programs and activities. The other Supported Organizations shall be Catholic organizations, which pursuant to the authorization of the Archdiocese are permitted to be listed within the Archdiocese in the Official Catholic Directory effectuating exemption from federal income tax pursuant to an annual group exemption ruling issued from time to time to the U.S. Catholic Conference, as well as the following specific organizations, whether or not so listed, provided the organizations are described in Section 501(c)(3) of the Code and are not private foundations as defined in Section 509(a) of the Code:

Camaldolese Sisters, Rome, Italy  
 Immaculate Heart Hermitage, Big Sur, California  
 Saint Benedict's Monastery, Snowmass, Colorado  
 Christian Appalachian Project, Kentucky  
 Comunita di San Egidio, Italy  
 Esperanca, Inc.  
 Friends of Our Little Brothers, Arizona  
 Institute for Latin American Concern  
 Jesuit Midwestern Province for Missions  
 Petits Freres de L'Incarnation, Haiti  
 Society of Jesus, Province of the Near East  
 Society of the Divine Word  
 Society of the Divine Savior/Salvatorian Mission Warehouse  
 Center for the Study of the Passion of Christ & the Holy  
 Shroud, Inc.  
 Foundations and Donors Interested in Catholic Activities, Inc.  
 Mount Senario College  
 Sacred Heart School of Theology  
 Saint Dominic Center/Vietnamese Dominican Sisters  
 Woodstock Theological Center  
 The Gregorian University Foundation  
 AIDS Resource Center of Wisconsin, Inc.  
 Alliance for the Mentally Ill of Greater Milwaukee, Inc.

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Congress for a Working America  
CorpCare Distributions, Inc.  
Housing with Help, Inc.  
Messmer High School  
Next Door Foundation  
LaFarge Lifelong Learning Institute  
Our Space, Inc.  
Saint Catherine's Residence  
Camillus House, Miami, Florida  
Missionaries of Africa  
Santa Fe Communications, Inc.

This Corporation shall be "operated in connection with" the Archdiocese, as the primary Supported Organization, as the term "used in connection with" is defined under section 509(a)(3) of the Code.

2. Without limiting the generality of the foregoing or the powers permitted by law, the Corporation shall have the powers to:

a. Receive, hold, manage, invest, and administer gifts and grants of money or any other form of property to be dedicated to its purposes.

b. Make distributions from its income and principal in such amounts and at such times and for such specific programs and purposes as the Corporation may deem best for the support and benefit of the Supported Organizations, provided that such distributions shall be made exclusively for the benefit of, or to carry out the charitable, educational, and religious programs and purposes of, the Supported Organizations.

c. Employ officers, staff, agents, advisors, consultants, and counsel to assist in managing its assets, planning and operating its activities, and performing other functions in support of its operations.

d. Indemnify and hold harmless directors, officers, staff, agents, advisors, consultants, and counsel of organizations or persons making grants or donations to the Corporation of money or any other form of property to be dedicated to its purposes, as provided in Article VII.

e. Do any and all acts that are lawful for a not-for-profit corporation under the laws of Wisconsin and an organization qualified under sections 501(c)(3) and 509(a)(3) of the Code and that are deemed by the Corporation to be necessary, proper, useful, incidental and advantageous to the above-stated purposes.

**1.02 Dedication.** The properties and assets of this non-profit Corporation are irrevocably dedicated to the charitable purposes set forth in Section 1.01. No part of the net earnings,

properties or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of any Director or Officer of this Corporation or any other private person or individual. In the event of the dissolution, liquidation or termination of this Corporation, whether voluntary, involuntary or by operation of law, the Board of Directors shall, after paying or making provisions for the payment of all of the legal obligations of the Corporation, distribute, as the Board of Directors shall so determine, at least one-third (1/3) of the assets of the Corporation to the Archdiocese (provided the Archdiocese is then in existence and qualified to receive gifts deductible for federal income, estate and gift tax purposes as charitable contributions, and if the Archdiocese is not then in existence or is not so qualified, to the successor to the Archdiocese within the Roman Catholic Church, as determined by the Board of Directors of the Corporation) and any remaining assets of the Corporation, if any, to such of the other Supported Organizations as the Board of Directors shall determine.

## ARTICLE II

### OFFICES

2.01 Business Offices. The Corporation may have such principal or other business offices, either within or without the State of Wisconsin, as the Board of Directors may designate or as the Corporation may require from time to time to fulfill its purposes.

2.02 Registered Office. The registered office of the Corporation may but does not necessarily have to be the same as the Principal Office of the Corporation.

## ARTICLE III

### MEMBERS

3.01 Members. The Corporation shall have no members.

## ARTICLE IV

### DIRECTORS

4.01 Number. The Corporation shall have a minimum of three (3) Directors who shall collectively be known as the Board of Directors or the Board. The initial Board of Directors shall consist of the three persons named in the Articles of Incorporation and, thereafter, the exact number of Directors shall be fixed from time to time within the limits of this Section 4.01, by majority vote of the Board. The Directors shall be divided into two (2) classes, Individual and Archdiocesan. The number of Archdiocesan Directors shall always be not less than one-third (1/3) of the total number of Directors. The initial Individual Directors named

in the Articles of Incorporation are Erica P. John and Paula N. John. The initial Archdiocesan Director named in the Articles of Incorporation is Archbishop Rembert Weakland.

**4.02 Term.** Directors shall serve for five-year terms, and until their successors have been duly elected and taken office.

**4.03 Election.** The Individual Directors shall be elected by the affirmative vote of a majority of the Individual Directors then in office, or if there is only one remaining Individual Director, by such remaining Individual Director. An Individual Director then in office may vote to elect himself or herself to a succeeding term or terms. If a vacancy or vacancies shall occur in the position of Individual Director and cannot be filled because there are no remaining Individual Directors then in office, such vacancy or vacancies shall be filled by the affirmative vote of a majority of the then living children of Erica P. John who have attained age twenty-one (21) and who are then competent to act. The then-acting Archbishop of the Archdiocese, from time to time, shall appoint the Archdiocesan Director or Directors to serve for the succeeding five-year term.

**4.04 Compensation.** Directors shall be entitled to expense reimbursements and reasonable compensation for their services, as determined from time to time by the Board of Directors.

**4.05 Vacancies.**

(a) Vacancies in the Board of Directors shall exist:

- (1) on the death, removal or resignation of any Director; or
- (2) whenever the number of authorized Directors is increased.

(b) A Director may be removed from office only for cause by vote of a majority of the other Directors then in office. For purposes of this Section, the term "cause" shall mean (1) conviction of a felony, (2) gross and willful misconduct which results in a material injury to the Corporation, (3) a finding of gross dishonesty or breach of trust which results in a material injury to the Corporation, (4) willful malfeasance or gross negligence, or failure to act involving material non-feasance, provided that in the case of such gross negligence or material non-feasance, it would at the time have a material adverse effect on the Corporation, or (5) total disability of a Director continuing for a period in excess of sixty (60) days. For purposes of this Section, "total disability" shall mean that as a result of any medically determinable physical or mental impairment, sickness or bodily injury requiring care and treatment by a physician, the disabled Director

lacks the skills or abilities he or she previously possessed such that the Director is unable to perform any substantial and material part of his or her duties as a Director of the Corporation. The above notwithstanding, no Archdiocesan Director may be removed for cause without the consent of the then-acting Archbishop of the Archdiocese.

(c) A vacant Director position shall be filled in accordance with the procedures for election of successor Directors, as set forth in Section 4.03 above.

**4.06 Reduction.** A reduction of the number of authorized Directors shall not result in the removal of any Director prior to the expiration of his or her term.

**4.07 Directors to Control.** The Directors shall have control and management of the affairs and property of the Corporation and, except as otherwise provided in Section 4.10 of the By-Laws, may act only at a duly constituted meeting. They shall appoint such agents (which may be either persons or corporations), and officers as its business requires, and shall employ such persons as may be necessary in the conduct of its affairs. The compensation of such persons shall be as fixed from time to time by resolution of the Board.

**4.08 Meetings.**

(a) Meetings shall be held at the Principal Office of the Corporation, provided that any such meeting held elsewhere shall be valid if held on the consent of a majority of all Directors. No notice other than this By-Law shall be required of the meeting place for all meetings held at the Principal Office of the Corporation.

(b) A regular meeting of the Board shall be held each year at such time and on such day during the last fifteen (15) days of January, as may be designated by the President and stated in the notice of the meeting.

(c) Special meetings of the Board of Directors may be called by or at the request of the President, the Secretary, any two Directors, or a majority of the Archdiocesan Directors. The President, Secretary or Directors calling any special meeting of the Board of Directors may fix any place, either within or without the State of Wisconsin, as the place for holding any special meeting of the Board of Directors called by them, and if no other place is fixed, the place of meeting shall be the Principal Office of the Corporation.

(d) Unless otherwise provided in the Articles, the Secretary or the person or persons calling a meeting of the Board of Directors shall give each Director notice of the time and place

of such meeting by written notice delivered personally or mailed or given by telefax to such address as the Director shall have designated in writing filed with the Secretary, in each case not less than one (1) week prior thereto. If mailed, such notice shall be deemed to be delivered twenty-four (24) hours after the time deposited in the United States mail so addressed, with postage thereon prepaid. Whenever any notice whatever is required to be given to any Director of the Corporation under the Articles of Incorporation or By-Laws or any provision of law, a waiver thereof in writing, signed at any time, whether before or after the time of meeting, by the Director entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting and objects thereat to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

(e) A majority of the number of Directors authorized pursuant to Section 4.01 shall constitute a quorum for the transaction of business, provided that unless waived in writing, at least one Archdiocesan Director is present at the meeting in person, by means of a telephone conference, or in any other manner permitted by these Bylaws or at law.

(f) Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum of the Directors is present is the act of the Board of Directors, unless the law, the Articles of Incorporation of this Corporation or these By-Laws require a greater number, or require action to be taken by a specific class of Directors.

(g) Except as otherwise expressly provided in these By-Laws or in the Articles of Incorporation of this Corporation, or by law, no business shall be considered by the Board at any meeting at which a quorum is not present, and the only motion which the Chairperson shall entertain at such meeting is a motion to adjourn. However, a majority of the Directors present from time to time at such meeting may without further notice adjourn the meeting from time to time until its business is completed.

(h) Meetings shall be presided over by the President of the Corporation or in his absence by the Vice President, or in the absence of both, by a Chairperson chosen by a majority of the Directors present. The Secretary of the Corporation shall act as Secretary of the Board of Directors. In case the Secretary is absent from any such meeting, the presiding officer may appoint any Director present to act as Secretary for the meeting.

(i) A Director of the Corporation who is present at a meeting of the Board of Directors or a committee thereof of which such Director is a member at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such Director's dissent shall be entered in the minutes of the meeting or unless such Director files a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof, or forwards such dissent by registered or certified mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

**4.09 Executive Committee and Other Committees.** The Board of Directors by resolution adopted by the affirmative vote of a majority of the number of Directors determined pursuant to Section 4.01 may designate an Executive Committee and one or more other committees, each committee to consist of at least 1/2 of the number of Directors determined pursuant to Section 4.01, including at least one Archdiocesan Director. The Executive Committee shall have and may exercise, when the Board of Directors is not in session, the powers of the Board of Directors in the management of the business and affairs of the Corporation, provided that in no case shall the Executive Committee or any other committee act in respect to election or removal of Principal Officers or the election or removal of Members of the Board of Directors or committees created pursuant to this section. Subject to the foregoing, the other committees, if any, shall have and may exercise such powers as may be provided in the resolution of the Board of Directors designating such committee, as such resolution may from time to time be amended and supplemented by the Board of Directors or as the Board may otherwise provide from time to time. The Board of Directors may elect one or more of its Members as alternate Members of any such committee who may take the place of any absent Member or Members at any meeting of such committee, upon request by the President or upon request by the Chairperson of such meeting. Each such committee shall elect a presiding officer from its Members, shall fix its own rules governing the conduct of its activities and shall make such reports to the Board of Directors of its activities as the Board of Directors may request.

**4.10 Unanimous Consent Without Meeting.** Any action required or permitted by the Articles of Incorporation or By-Laws or any provision of law to be taken by the Board of Directors or any committee thereof at a meeting or by resolution may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or members of such committee entitled to vote with respect to such action.

**4.11 Telephone Meetings.** Directors may participate in and hold meetings by means of a conference telephone or similar communications arrangement by means of which all persons partici-

pating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the sole and express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE V

### OFFICERS

5.01 Number. The Principal Officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer. The Corporation may also have, at the discretion of the Board of Directors, a Chairperson of the Board (who shall be considered a Principal Officer) one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as may be elected or appointed by the Directors. Any number of offices may be held by the same person, except that the President may not serve concurrently as either the Vice President or Secretary.

5.02 Selection. Officers shall be elected or appointed by the Directors and each such officer shall hold office until he resigns, is removed or is otherwise disqualified to serve as an officer, or until his successor officer shall be elected and qualified, whichever occurs first.

5.03 Vacancies. Any vacancy in any office caused by death, resignation, removal or otherwise shall be filled by the Board of Directors.

5.04 President. The President shall be the chief executive officer of the Corporation and shall, in general, subject to the control of the Board of Directors, supervise and control all of the business and affairs of the Corporation. The President shall perform all duties incident to such office and such other duties as may be assigned from time to time by the Board of Directors.

5.05 Vice Presidents. Vice Presidents shall, in the absence of or disability of the President and in the order of rank as fixed by the Board of Directors, perform all the duties of the President and, when so acting, shall have the powers of, and be subject to the restrictions on, the President. They shall have such other powers and perform such other duties as may be imposed by law, by the Articles of Incorporation of this Corporation, or by the By-Laws or as may be prescribed from time to time by the Board of Directors or the President.

**5.06 Secretary.** The Secretary shall:

(a) Certify and keep at the Principal Office of the Corporation the original or a copy of these By-Laws as amended or otherwise altered to date.

(b) Keep at the Principal Office of the Corporation or at such other place as the Board of Directors may order, a book of the minutes of all meetings of the Directors and the Executive Committee, recording therein the time and place of holding, whether regular or special, and how authorized, the notice given, the names of those present and the proceedings thereof.

(c) See that all notices are duly given in accordance with the provisions of these By-Laws or as required by law.

(d) Be custodian of the records and of the seal of the Corporation.

(e) Exhibit at all reasonable times to any Director of the Corporation, or to such Director's agent or attorney, or to any person or agency authorized by law to examine them, on request therefor, the By-Laws, the minutes of the proceedings of the Directors and other records of the Corporation.

(f) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these By-Laws, or which may be assigned from time to time by the Board of Directors.

**5.07 Treasurer.** The Treasurer, subject to the provisions of Article VII of these By-Laws shall:

(a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

(b) Receive, and give receipt for, moneys due and payable to the Corporation from any source whatever.

(c) Disburse or cause to be disbursed the funds of the Corporation as may be directed by or under authority of the Board of Directors, taking proper vouchers for such disbursements.

(d) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

(e) Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to a Director's agent or attorney, or to any person or agency entitled by law to examine the same, on request therefor.

(f) Render to the President and Directors whenever they so request an account of any or all transactions as Treasurer and of the financial condition of the Corporation.

(g) If required by the Board of Directors, give a bond for the faithful discharge of such Treasurer's duties in such sum and with such surety or sureties as the Board of Directors shall determine.

(h) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these By-Laws, or which may be assigned from time to time by the Board of Directors.

**5.08 Assistant Secretaries and Assistant Treasurers.** The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties and have such authority as shall from time to time be delegated or assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

**5.09 Other Assistants and Acting Officers.** The Board of Directors shall have the power to appoint any person or act as assistant to any officer, or as agent for the Corporation in such officer's stead, or to perform the duties of such officer whenever for any reason it is impracticable for such officer to act personally, and such assistant or acting officer or other agent so appointed by the Board of Directors shall have the power to perform all the duties of the office to which he is so appointed to be assistant, or as to which he is so appointed to act, except as such power may be otherwise defined or restricted by the Board of Directors.

**5.10 Compensation.** The compensation of the Principal Officers shall be fixed from time to time by the Board of Directors or by a duly authorized committee thereof, and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a Director of the Corporation.

## ARTICLE VI

### CONFLICT OF INTEREST

**6.01 Conflict of Interest.** No Director, officer or employee of the Corporation shall have or acquire any interests, direct or indirect, in any project which the Corporation is

operating or promoting, or in any contract relating to any such project of the Corporation without making written disclosure to the Corporation of the nature and extent of his or her interest. No Director who has such interest shall vote on any matter relating to it nor be present during the final deliberations and vote on the matter. Further, no Director, officer, or employee of the Corporation shall violate the conflict of interest provisions established by any funding sources or set forth in Wisconsin Statutes Section 181.225, as amended from time to time. Notwithstanding this Section 6.01, service by an Archdiocesan Director as an officer, director or employee of a Supported Organization shall not require non-participation by the Archdiocesan Director in voting on grants to such Supported Organization.

## ARTICLE VII

### INDEMNITY

**7.01 Certain Definitions.** All capitalized terms used in this Article and not otherwise hereinafter defined in this Section 7.01 shall have the meaning set forth in Wis. Stat. § 181.041. The following capitalized terms (including any plural forms thereof) used in this Article are defined as follows:

(a) "Board" shall mean the entire then elected and serving Board of Directors of the Corporation, including all members thereof who are Parties subject to the Proceeding or any related Proceeding.

(b) "Breach of Duty" shall mean the Director or Officer breached or failed to perform his or her duties to the Corporation and his or her breach of or failure to perform those duties is determined to constitute misconduct under Wis. Stat. § 181.042(2)(a) 1, 2, 3 or 4.

(c) "Corporation" as used herein shall mean this Corporation, including, without limitation, any successor corporation or entity to this Corporation by way of merger, consolidation or acquisition of all or substantially all of the assets of this Corporation.

(d) "Director or Officer" shall have the meaning set forth in the Statute (as defined hereinbelow); provided, that, for purposes of this Article, it shall be conclusively presumed that any Director or Officer serving as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of a Donor (as defined hereinbelow) or of any other corporation or organization shall be so serving at the request of the Corporation.

(e) "Disinterested Quorum" shall mean a quorum of the Board who are not Parties to the subject Proceeding or any related Proceeding.

(f) "Donor" shall include, without limitation, any person, corporation, partnership, joint venture, employee benefit plan, organization, trust or other enterprise that directly or indirectly through one or more intermediaries, has made distributions, grants, or donations of money or any other form of property to the Corporation to be dedicated to its purposes.

(g) "Party" shall have the meaning set forth in the Statute; provided, that, for purposes of this Article, the term "Party" shall also include any Director or Officer who is or was a witness in a Proceeding at a time when he or she has not otherwise been formally named a Party thereto.

(h) "Proceeding" shall have the meaning set forth in the Statute; provided that, for purposes of this Article, the term "proceeding" shall also include all Proceedings (i) brought to enforce rights hereunder; (ii) any appeal from a Proceeding; and (iii) any Proceeding in which the Director or Officer is a plaintiff or petitioner because he or she is a Director or Officer, provided that such Proceeding is authorized by a majority vote of a Disinterested Quorum.

(i) "Statute" shall mean Sections 181.041 through 181.053, inclusive, of the Wisconsin Nonstock Corporation Law, Chapter 181 of the Wisconsin Statutes, as the same shall then be in effect, including any amendments thereto, but, in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than the Statute permitted or required the Corporation to provide prior to such amendment.

**7.02 Liability of Directors and Officers.** No person shall be liable to the Corporation for any loss or damage suffered by it on account of any action taken or omitted to be taken by him or her as a Director or Officer of the Corporation, or of any Donor when he or she serves such Donor at the request of the Corporation, unless such act or omission constitutes or results in: (a) a willful failure to deal fairly with the Corporation in connection with a matter in which the Director or Officer has a material conflict of interest; or (b) a violation of criminal law, unless the Director or Officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful; or (c) a transaction from which the Director or Officer derived an improper profit; or (d) willful misconduct. The foregoing shall not be construed as a limitation on the immunity provided to Directors and Officers pursuant to Section 181.287 of the Wisconsin Statutes, nor shall it be deemed exclusive of any other rights and defenses which such Director or Officer may be entitled under any other statute, agreement or otherwise.

**7.03 Indemnity of Directors and Officers.** Every person who is or was a Director or Officer of the Corporation and any person who may have served at its specific request as a director or officer of a Donor or of another corporation, shall (together with the heirs, executors and administrators and guardians and conservators of any deceased or former Director, Officer, or other person who himself or herself would have been entitled to indemnification) be indemnified by the Corporation against all costs, damages, liabilities and expenses asserted against, incurred by or imposed upon him or her in connection with or resulting from any Proceeding, to which he or she is made or threatened to be made a Party by reason of his or her being or having been such Director or Officer to the extent that he or she has been successful on the merits or otherwise in the defense of the Proceeding. In cases where the Director or Officer is unsuccessful in his or her defense, in cases where the Proceeding was settled in exchange for a payment from the Director or Officer, or in criminal cases terminated by a plea of no contest or an equivalent plea the Corporation shall also indemnify the Director or Officer to the extent set forth above unless the Director or Officer breached or failed to perform a duty he or she owes to the Corporation and the breach or failure to perform constitutes or results in (a) a willful failure to deal fairly with the Corporation in connection with a matter in which the Director or Officer has a material conflict of interest; or (b) a violation of criminal law, unless the Director or Officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful; or (c) a transaction from which the Director or Officer derived an improper personal profit; (d) willful misconduct; or (e) any act of self-dealing, as that term is defined in Section 4941(d) of the Code. This indemnity shall include reimbursement of all reasonable amounts and expenses incurred and paid in settling any Proceeding, including, without limitation, attorney fees. A determination as to whether a person is entitled to indemnification shall be made in accordance with Section 181.043 of the Wisconsin Statutes. In any such determination there shall exist a rebuttable presumption that the Director's or Officer's conduct did not constitute a Breach of Duty and that indemnification against the requested amount is required. The burden of rebutting such a presumption by clear and convincing evidence shall be on the Corporation or other person asserting that such indemnification should not be allowed. The determination that indemnification is required hereunder shall be binding upon the Corporation regardless of any prior determination that the Director or Officer engaged in a Breach of Duty. Upon compliance with the requirements of Section 181.044 of the Wisconsin Statutes, the Corporation may advance, pay or reimburse any Director's or Officer's reasonable expenses, including without limitation, attorney fees, incurred in such Proceeding as such expenses are incurred.

more of its Directors are Members or employees, or in which they are interested, or between the Corporation and any corporation or association of which one or more of its Directors are shareholders, members, directors, officers, or employees, or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such Director or Directors at the meeting of the Board of Directors of the Corporation which acts upon, or in reference to, such contract or transaction, and notwithstanding his or their participation in such action if the fact of such interest shall be disclosed or known to the Board of Directors and the Board of Directors shall, nevertheless, authorize, approve and ratify such contract or transaction by a vote of a majority of the Directors present, such interested Director or Directors to be counted in determining whether a quorum is present, but not to be counted in calculating the majority of such quorum necessary to carry such vote. This Section shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

**7.08 Severability.** If any provision of this Article shall be deemed invalid or inoperative, or if a court of competent jurisdiction determines that any of the provisions of this Article contravene public policy, this Article shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such provisions which are invalid or inoperative or which contravene public policy shall be deemed, without further action or deed by or on behalf of the Corporation, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable.

**7.09 Nonexclusivity of This Article.** The rights of a Director or Officer (or any other person or firm) granted under this Article shall not be deemed exclusive of any other rights to indemnification against liabilities or allowance of expenses which the Director or Officer (or such other person or firm) may be entitled to under any written agreement, Board resolution, or otherwise, including, without limitation, under the Statute. Nothing contained in this Article shall be deemed to limit the Corporation's obligations under the Statute to indemnify against liabilities or allow expenses incurred by a Director or Officer under the Statute.

**7.10 Contractual Nature of This Article; Repeal or Limitation of Rights.** This Article shall be deemed to be a contract between the Corporation and each Director and Officer (or other person or firm protected or given rights herein) and any repeal or other limitation of this Article, or any repeal or limitation of the Statute or any other applicable law, shall not limit any rights of indemnification or allowance of expenses then existing or arising out of events, acts or omissions occurring prior to such repeal or limitation, including, without limitation, the right to indemnification or allowance of expenses for Proceed-

ings commenced after such repeal or limitation to enforce this Article with regard to acts, omissions or events arising prior to such repeal or limitation.

## ARTICLE VIII

### EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

**8.01 Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of the Corporation, and such authorization may be general or confined to specific instances. In the absence of other designation, all deeds, mortgages and instruments of assignment or pledge made by the Corporation shall be executed in the name of the Corporation by the President or one of the Vice Presidents and by the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer; the Secretary or an Assistant Secretary, when necessary or required, shall affix the corporate seal thereto (if there shall be one); and when so executed no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer or officers.

**8.02 Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner, including by means of facsimile signatures, as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

**8.03 Loans.** No indebtedness for borrowed money shall be contracted on behalf of the Corporation and no evidences of such indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authorization may be general or confined to specific instances.

## ARTICLE IX

### GIFTS

**9.01 Gifts.** The terms and conditions under which bequests, donations and gifts will be accepted, and the manner in which they shall be administered, shall be determined from time to time by the Board of Directors; provided that such acceptance and such manner of administration shall be consistent with the general and specific purposes and the powers of this Corporation as provided by law, the Articles of Incorporation of this Corporation and these By-Laws.

**ARTICLE X**

**CORPORATE SEAL**

**10.01 Seal.** The Board of Directors may adopt, use and at will alter a corporate seal.

**ARTICLE XI**

**FISCAL YEAR**

**11.01 Year.** The fiscal year of the Corporation shall end on December 31.

**ARTICLE XII**

**AMENDMENTS**

**12.01 Effective Date.** These By-Laws shall become effective immediately upon their adoption. Amendments to these By-Laws shall become effective immediately upon their adoption unless a later time is specified in the amendment. Nothing in these By-Laws shall be deemed to contradict any requirement or right provided for non-profit corporations by the Wisconsin Non-Stock Corporation Law.

**12.02 Amendment.** These By-Laws may be amended or repealed and new By-Laws adopted by the Board of Directors, provided that either the Archdiocesan Directors or the Archbishop of the Archdiocese consents to any amendment that would reduce the rights and powers of the Archdiocesan Directors or modifies the primary Supported Organization status of the Archdiocese set forth in the Articles of Incorporation or By-Laws.

**12.03 Implied Amendments.** Any action taken or authorized by the Board of Directors, which would be inconsistent with the By-Laws then in effect but which is taken or authorized by the affirmative vote of not less than the number of directors required to amend the By-Laws so that the By-Laws would be consistent with such action, shall be given the same effect as though the By-Laws had been temporarily amended or suspended so far but only so far as is necessary to permit the specific action so taken or authorized.

**ARTICLE XIII**

**CONSTRUCTION**

**13.01 Construction.** As used in these By-Laws:

(a) The present tense includes the past and future tenses, and the future tense includes the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural and plural number includes the singular.

(d) The word "shall" is mandatory and the word "may" is permissive.

(e) The words "Board" and "Directors" as used in relation to any power or duty requiring collective action mean the Board of Directors.

BOSTON CO.

## EXHIBIT B

THE ARCHDIOCESE OF MILWAUKEE SUPPORTING FUND,  
INC.

## INVESTMENT OBJECTIVES, GUIDELINES AND RESTRICTIONS

I. INVESTMENT OBJECTIVES.

The primary investment objective of the account is safety of principal. AMSFI desires limited portfolio volatility and a high and secure level of current income. Selection of this objective implies a willingness to assume a level of risk less than that of common stocks in general. Liquidity and marketability should be prime considerations in the selection of individual securities.

II. DIVERSIFICATION REQUIREMENTS/QUALITY.

It is understood that fixed income securities will constitute at least forty percent (40%) but not more than sixty percent (60%) in value of the Account investments from time to time hereunder. The required diversification within the equity and fixed income security portions of the Account is addressed by the Investment Advisory Agreement here preceding and shall be subject to the applicable provisions thereof as well as the investment objectives hereinabove stated.

With regard to the fixed income portion of the Account, all issues shall have a maturity of not longer than fifteen (15) years unless the written consent of AMSFI shall first have been obtained. The following shall constitute acceptable fixed income investments:

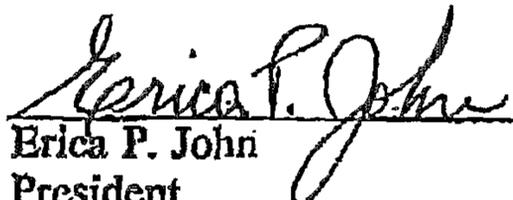
- (A) Securities of the United States Government or agencies thereof,
- (B) Fixed income securities are to carry a minimum rating of BAA by Moody's and BBB by Standard & Poor's.
- (C) Investments in commercial paper and variable demand notes are restricted to domestic corporations rated A-1 or P-1, or, if unrated, restricted to those issuers whose long-term debt is rated BAA or higher by one of the major rating agencies.
- (D) Bankers' acceptances and certificates of deposit of major domestic banks meeting the quality criteria put forth in item ("C") and meeting criteria as determined by Advisor are acceptable.

- (E) Money market funds adhering to the quality guidelines described above are acceptable.
- (F) Repurchase agreements one hundred percent (100%) collateralized with direct U.S. Government securities.

This statement of investment objectives and guidelines will be reviewed with AMSFI on a periodic basis and can be changed at any time upon the mutual agreement of AMSFI and Advisor.

THE ARCHDIOCESE  
OF MILWAUKEE SUPPORTING FUND,  
INC.

Dated: December 15, 1992

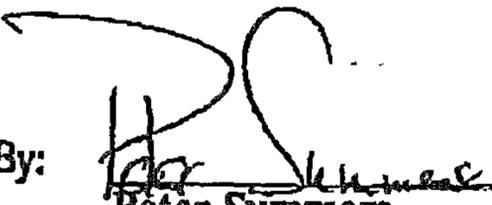
By:   
Erica P. John  
President

Dated: December 15, 1992

By:   
Paula N. John, Secretary

THE BOSTON COMPANY  
INSTITUTIONAL INVESTORS,  
INC.

Dated: December 15, 1992

By:   
Peter Summers  
President

## KILGORE & KILGORE, PLLC

The education, professional background and experience of the Kilgore & Kilgore, PLLC, attorneys who practice in the areas of complex business transactions and litigation are as follows:

W. D. Masterson was admitted to the State Bar of Texas in 1956. Following his admission he joined the firm of Kilgore & Kilgore, (the "Firm"). He has practiced with the Firm continually since 1956 to date, and presently serves as President of the Firm. He holds a B.A. Degree from Southern Methodist University, a J.D. Degree from SMU School of Law, and a Master of Science Degree from the University of Texas at Dallas. He is a member of Phi Beta Kappa, and served as an associate editor of the Southwestern Law Journal. He has practiced law in Dallas over forty (40) years, with emphasis on litigation in both the state and federal courts, including numerous securities fraud class action suits, antitrust suits and corporate litigation. His practice also emphasizes oil and gas law, real estate law, general corporate law and employment law.

Theodore C. Anderson was admitted to the State Bar of Texas in 1986 and has practiced with the Firm since that date. He holds a B.A. Degree, cum laude, from the State University of New York at Albany, where he was a Regents Scholar, and a J.D. Degree from Southern Methodist University. His practice has emphasized business transactions and litigation, including antitrust suits.

John H. Crouch was admitted to the State Bar of Texas in 1992 and has practiced with the Firm since admission. He holds a B.A. Degree in Mathematical Economic Analysis, cum laude, from Rice University and obtained his J.D. Degree with high honors from the University of Texas School of Law, where he was a member of the Order of the Coif. His practice has emphasized litigation and business transactional work.

D. Elizabeth Masterson was admitted to the State Bar of Texas in 1994 and has practiced with the Firm since that date. She holds B.A. Degrees in Economics and Art History from Stanford University and a J.D. Degree from the University of Texas, where she was a member of the Legal Research Board. Her practice has emphasized litigation, primarily in the fields of antitrust and employment law, and estate planning, including property law.

Kilgore & Kilgore, is a firm of six (6) active attorneys. Kilgore & Kilgore, PLLC, is rated "a/v" in the current edition of Martindale-Hubbell Law Directory. Kilgore &

Kilgore, has a complete staff of secretarial and paralegal personnel who are fully qualified and capable of supporting the complex litigation and transactional work.

Kilgore & Kilgore, is experienced and able counsel in the fields of business law, securities litigation, antitrust law, oil and gas law, and employment law. Furthermore, Kilgore & Kilgore is comprised of diverse and versatile counsel who engage in a general practice of law and who are qualified in litigation, contract work, oil and gas deals, real estate transactions, trusts, and wills and estates.

Kilgore & Kilgore has engaged for many years in the practice of business law and in securities litigation. Judge Higginbotham, while on the trial bench in the Northern District of Texas found that Kilgore & Kilgore is "experienced and able counsel." In re LTV Securities Litigation, 88 FRD 134, 150 (N.D.Tex. 1980).

Kilgore & Kilgore was appointed counsel for the Mercantile Life Insurance Company shareholder class in Garrett, et al. v. Republic National Life Insurance Company, CA3-74-206-B, in the Northern District of Texas, Dallas Division. This action was subsequently consolidated for pre-trial purposes by the Judicial Panel on Multi-District Litigation in the Southern District of New York where the Honorable Milton J. Pollack appointed Kilgore & Kilgore as "spearhead counsel" in the consolidated Multi-District Litigation with special accelerated rights of discovery. A settlement was achieved for the Mercantile Security shareholders in six (6) months from the inception of discovery, even though the litigation was hard fought, and involved complex issues of law, accounting and fact. This action was returned to Judge Sarah T. Hughes in the Northern District of Texas for hearing on the settlement, and Judge Hughes found in her Order and Final Judgment with Respect to Award of Attorneys' Fees and Expenses that Kilgore & Kilgore "ably represented the Plaintiff and the Plaintiff Class throughout the litigation of this action..." and were "primarily responsible for the creation of the Settlement Fund pursuant to the Settlement."

Kilgore & Kilgore served as liaison counsel in the Texas Instruments, Inc. Securities Litigation in Judge Sanders' Court in which a \$12 Million settlement fund was obtained for the plaintiff class which we believe to be the largest or one of the largest securities fraud settlement funds obtained to that time in the Northern District. Kilgore & Kilgore also served as liaison counsel in the Cook Data Service, Inc. Securities Litigation in which a substantial settlement was quickly achieved and approved by Judge Porter. Kilgore & Kilgore served as co-counsel for the plaintiff class in the Delta Drilling Company Securities Litigation in which a settlement was approved by Judge Fish, and in the Pioneer Corporation Securities Litigation in which a settlement of a derivative claim was approved by Judge Maloney.

In 1987, Kilgore & Kilgore served in the State District Courts as plaintiffs' liaison counsel in the Southland Corporation Securities Litigation, where a settlement was reached with a value in excess of \$20 million. In 1988, Kilgore & Kilgore served as plaintiffs' liaison counsel in the Cullum Companies Securities Litigation in which a settlement was reached promptly to increase the tender offer price to be paid for shares held by public shareholders by a sum in excess of \$5 million.

In 1990, Kilgore & Kilgore served as co-counsel for the plaintiff class in Finkel v. Docutel/Olivetti Corporation et al., 817 F.2d 356 (5th Cir. 1987), cert. den., 108 S.Ct. 1220, 485 U.S. 959, 99 L.Ed.2d 421, in which a settlement was approved by Judge Maloney. Finkel was argued before the Fifth Circuit which adopted the "fraud on the market" doctrine. Finkel was appealed to the United States Supreme Court and considered by the Supreme Court in connection with its decision recognizing the "fraud on the market doctrine" on a nationwide basis.

Kilgore & Kilgore served as co-counsel for the plaintiff class in Teichler v. DSC Communications Corp. in which a \$30 million settlement was approved by Judge Maloney. In 1992, Kilgore & Kilgore served as co-counsel in the International Telecharge, Inc. Securities Litigation in which a settlement was approved by Judge Cummings, and as co-counsel in the Berl v. Southland, Healthvest Securities Litigation, and Lomas Securities Litigation cases in which settlements were approved by Judges Sanders and Fish, and as sole counsel in Loran v. Furr's Bishop's, Inc. in which a settlement was approved by Judge Solis.

In 1992, Kilgore & Kilgore acted as liaison and trial counsel in the Southmark Securities Litigation and served as liaison counsel in Lomas & Nettleton Mortgage Investors Litigation cases in which settlements were approved by Judge Fish. The Southland case had been called to trial when that settlement was reached.

Thereafter, Kilgore & Kilgore has acted as liaison counsel in the Amre, Inc. Securities Litigation, the Convex Computer Corp. Securities Litigation, the Eljer Industries, Inc. Securities Litigation, Net Worth Securities Litigation, the Triton Energy, Inc. Securities Litigation, and the Tenneco, Inc. Securities Litigation. The firm was also co-lead counsel in the Search Capital Securities Litigation. More recently, Kilgore & Kilgore was named lead counsel in a securities and insurance fraud class action styled Thibodeau, et al. v. Great American Life underwriters, Inc., et. al., in which a settlement was obtained for the class in excess of \$1 million.

Kilgore & Kilgore has enjoyed significant success in the field of antitrust. In 1995, Kilgore & Kilgore served as lead counsel in Thermex Energy Corp. v. ICI Explosives U.S.A., Inc., a large and complex antitrust suit. After hearing over six

weeks of testimony, the jury rendered a verdict of \$488 million, which was approved and entered by Judge Woodlock.

Kilgore & Kilgore has also achieved large judgments in the employment field. In the case of Jensen v. Eckerd's, a judgment was rendered in an amount exceeding \$17 million.

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