

FEB 08 2002

Michael M. Milby, Clerk

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

MARK NEWBY,

Plaintiff,

VS.

ENRON CORP., et al.,

Defendants,

CIVIL ACTION NO.H-01-3624
(Consolidated)

**RESPONSE OF CERTAIN OFFICER DEFENDANTS
IN OPPOSITION TO AMALGAMATED BANK'S
SUPPLEMENTAL BRIEF IN SUPPORT OF EXPEDITED DISCOVERY**

Defendants Richard B. Buy, Richard A. Causey, Mark A. Frevert, Joseph M. Hirko, Stanley C. Horton, Steven J. Kean, Mark E. Koenig, Jeffrey McMahon, J. Mark Metts, Cindy K. Olson, Kenneth D. Rice, Lou Pai, and Joseph W. Sutton ("Officer Defendants")¹ respond to Amalgamated Bank's request for expedited discovery as follows:

I. Introduction And Procedural Background

On December 5, 2001, Plaintiff Amalgamated Bank ("Plaintiff") asked this Court to freeze the proceeds from alleged insider trading by the individual defendants.² Judge Rosenthal denied

¹Mr. Baxter died on January 25, 2002. To the extent Mr. Baxter could still be considered a defendant or the subject of plaintiff's motion, this opposition is also filed on his behalf.

²Plaintiff continues to assert that there are "1.1 billion" of insider trading proceeds. In fact, the individual defendants did not make anything close to \$1.1 billion on the transactions Plaintiff identifies, because the exercise of stock options requires the payment of a strike price and taxes had to be paid on any net gain from exercising options. Plaintiff's allegations of insider trading also conveniently ignore the fact that many of the individual defendants lost large sums of money because they held Enron stock as its price fell.

267

Plaintiff's request because Plaintiff failed to make any showing that any defendant posed any risk of dissipating assets. Judge Rosenthal wrote:

Amalgamated argues that defendants' assets are the "only viable avenue of recovery for Amalgamated's §§ 10(b) and 20A claims and equitable claims under § 11" due to Enron's bankruptcy. (Docket Entry No. 7, at 25). This argument does not show a substantial threat that the proceeds or profits of the individual defendants' Enron trades will be unavailable to satisfy Amalgamated's equitable claims if this temporary restraining order is not granted. This argument does not provide any basis for concluding that each or any defendant is attempting to dissipate or conceal the profits gained from trading Enron stock in the Class Period, so as to make them uncollectible in the event of an award of the equitable relief Amalgamated seeks.

* * *

This affidavit [submitted by Plaintiff] does not distinguish among the defendants on the basis of their involvement in the alleged securities violations, their trades, or their present or future risk of asset concealment or dissipation. Nor do the pleadings and submissions distinguish among the individual defendants on the basis of their current activities or present or future risk of asset concealment or dissipation. A careful review of the record does not disclose the necessary showing that the individual defendants will remove the assets from the reach of the plaintiffs, so as to cause irreparable injury absent an asset freeze.

Andrew S. Fastow is the only defendant against whom Amalgamated made a specific suggestion of a risk of concealment of assets. . . . Amalgamated alleges that Fastow's involvement with these offshore entities shows that Fastow knows how to conduct international financial transactions. So do many individuals and entities; that alone is not a sufficient basis for the relief sought.

(1/8/02 Memorandum Opinion and Order at 39-41).

Amalgamated asked for permission to try again for expedited discovery of the individual defendants. The Court granted that second chance as to a few individual defendants, stating:

Counsel for Amalgamated has requested the opportunity to brief whether, and to what extent, it is entitled to such discovery as to the individual defendants, *particularly as to the officers allegedly liable as control persons, Kenneth Lay, Jeffrey Skilling, and Andrew Fastow*. This court orders Amalgamated to file such a brief, explaining what discovery is requested and why the request should be granted . . .

(1/8/02 Memorandum Opinion and Order at 43-44 (emphasis supplied)).

Despite the Court's prior order, Plaintiff has now returned to the Court to again seek expedited discovery from *all* of the individual defendants. As before, Plaintiff argues that absent such discovery all of the individual defendants may conceal their assets. As before, Plaintiff makes no attempt to distinguish among the twenty-nine individual defendants or provide any evidence that any of the Officer Defendants has done *anything* to conceal *any* assets. With but a single exception,³ the *only* place in Plaintiff's motion where any of the Officer Defendants is listed by name is where Plaintiff lists those who sold stock during the Class Period. As before, this Court should deny Plaintiff's request.

³The only Officer Defendant named outside of the list of stock sales is Mr. Pai. Plaintiff asserts, "Using investment banks such as Oppenheimer and Goldman Sachs as counterparties, top Enron executives, including Lay, Skilling, Fastow and Pai, used these complex derivatives to 'monetize' their Enron securities by obtaining margin loans or by trading derivatives on their underlying shares." (Plaintiff's Brief at pp. 4-5). First, the allegation concerning Mr. Pai is false. Second, as support for the allegation, Plaintiff's counsel cites only to his own declaration which is, by Plaintiff's counsel's own admission, based upon information from persons who provided it anonymously, or from persons who requested that their identities be kept confidential, or "from persons who themselves have not witnessed the transactions first hand." (Karam Declaration at ¶4). Plaintiff claims to have "assessed the reliability of this hearsay," but Plaintiff's counsel do not disclose the results of their assessment, except to say that they "do not claim that all of this information is of evidentiary reliability." (Karam Declaration at ¶ 4). These persons turn out to be three former Enron employees who claim that "certain [unnamed] defendants and [unnamed] Enron executives regularly 'monetized' their Enron shares and stock options by either obtaining margin loans and/or trading derivatives on the shares for cash." (Karam Declaration at ¶5). There is no indication that the anonymous former employees named particular defendants who engaged in these practices. Only Plaintiff's counsel leaps to the conclusion that "[a]s a result of these trades, these Enron executives, including Jeffrey Skilling, Kenneth Lay, Lou Pai, Andrew Fastow, and Kevin Hannon may have received cash for certain rights derived from their stock and options without triggering the need to report the transaction as they would normally be obligated to report insider sales." (Karam Declaration at ¶6 (emphasis supplied)). Finally, and most fundamentally, even if Plaintiff's second-hand hearsay about a rumor someone might have heard were true, it would be irrelevant. Even if Mr. Pai engaged in such transactions, it would not be evidence of either insider trading or any attempt to conceal assets. Plaintiff relies upon an unsupported inferential leap from a rumored premise to an irrelevant conclusion.

II. Argument

A. The PSLRA Mandates A Stay Of Discovery Absent Exceptional Circumstances.

The PSLRA mandates a stay of discovery prior to resolution of a defendant's motion to dismiss unless a party shows that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. PSLRA 21D(b)(3)(B). The legislative history provides that:

Courts must stay all discovery pending a ruling on a motion to dismiss, unless *exceptional circumstances* exist where particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party. For example, the terminal illness of an important witness might require the deposition of the witness prior to ruling on the motion to dismiss.

Statement of Managers—The Private Securities Litigation Reform Act of 1995, 141 Cong. Rec. H13699, H13701 (daily ed. Nov. 28, 1995) (emphasis added).

B. Expedited Discovery Is Not Necessary To Preserve Evidence Of The Officer Defendants.

Plaintiff does not even argue that there is any danger that any evidence in the hands of any of the Officer Defendants will be lost. Undue prejudice does not inherently arise from the fact that securities litigation is complex and often lengthy. Courts have rejected claims of undue prejudice based on speculation that memories may fade or evidence may be lost in the long course of the litigation, even when most of the evidence of alleged fraud is in the custody of the defendants or third parties. See, e.g., *In re CFS-Related Securities Fraud Litigation AUSA v. Bartmann*, 2001 WL 1682815, *3 (N.D.Ok., Dec. 27, 2001) (“ . . . Plaintiffs have not demonstrated a specific instance in which the loss of evidence is imminent as opposed to merely speculative.”).

A plaintiff who raises only the concerns that are presented in all securities cases in which the PSLRA discovery stay is triggered fails to make the requisite showing of undue prejudice. *Id.* at *3-

4. The fading of witnesses' memories, the potential for loss of evidence, and the requirement that plaintiffs wait for disposition of a motion to dismiss to begin their discovery, are all consequences contemplated by the drafters of the PSLRA. *Id.* Therefore, any prejudice that they may create is not "undue." *Id.* Absent a showing of "exceptional circumstances," the stay applies. *Vacold*, at *6.⁴

C. Plaintiff Has Made No Showing Of Undue Prejudice.

Plaintiff's only argument for an exception to the automatic stay is that it will suffer "undue prejudice," because assets might be secreted. This is the precise argument that Judge Rosenthal already rejected and Plaintiff offers no basis for overturning that decision.

The courts have defined "undue prejudice" as those circumstances in which defendants might be shielded from liability in the absence of the requested immediate discovery. *See Vacold LLC and Immunotherapy, Inc. v. Cerami*, 2001 WL 167704 (S.D.N.Y., Feb. 16, 2001) (permitting limited discovery relevant to defendants' motion to dismiss where failure to allow discovery could insulate defendants from liability); *In Re Carnegie Int'l Corp. Secs. Litig.*, 107 F. Supp. 676, 684 (D. Md. 2000) (declining to lift stay on the ground that the requested discovery was irrelevant to the pending motion to dismiss); *Medical Imaging Centers of America, Inc. v. Lichtenstein*, 917 F. Supp. 717, 721 (S.D.Ca. 1996) (declining to lift stay where plaintiff had failed to show that defendants "would be shielded from eventual liability for any material violations of the securities laws.").

⁴Plaintiff cites four cases for the principle that "... precedent for expedited discovery under similar circumstances is well established in the Fifth Circuit." (Plaintiff's Brief at p. 9, fn. 29). Not one of the cited cases involved a discovery stay under the PSLRA, and in two of the cases, discovery was not even at issue. Similarly, of the five cases that Plaintiff cites in support of its argument that discovery should be permitted to prevent the loss of evidence (Plaintiff's Brief at p. 8, f. 25), not one was a PSLRA case, and several did not even involve expedited discovery.

Plaintiff has made no showing that the Officer Defendants will be shielded from ultimate liability unless this Court orders expedited discovery. Plaintiff's argument is, in essence, as follows: The Officer Defendants are sophisticated business people who work or worked for Enron. The Officer Defendants have sold Enron stock over the last three years. *Certain* employees—whom Plaintiff does not identify-- know how to set up off-shore entities. Therefore, this Court should assume, without any evidence to support the assumption, that the Officer Defendants are preparing to move the proceeds of their stock sales offshore.

Plaintiff's argument is fatally flawed both in its premise and in its conclusion. First, Plaintiff's premise is without any factual support. Plaintiff has not shown that any of the Officer Defendants had any expertise in setting up off-shore partnerships.⁵ Second, even if it were true that the Officer Defendants all were adept at establishing "illicit off-shore partnerships," that fact would still not support the relief Plaintiff seeks. As Judge Rosenthal noted, "Amalgamated alleges that Fastow's involvement with these offshore entities shows that Fastow knows how to conduct international financial transactions. So do many individuals and entities; that alone is not a sufficient basis for the relief sought." (2/8/02 Memorandum Opinion and Order at 41). Even sophisticated defendants are not presumed to be guilty of hiding assets. The adoption of Plaintiff's argument would make expedited discovery available to any securities fraud plaintiff who alleged that the defendant was sufficiently sophisticated to know how to hide his assets, despite the complete

⁵Plaintiff has not even alleged that the Officer Defendants are using any offshore entities to hide assets; Plaintiff has alleged merely that some of them may be familiar with such entities. Plaintiff includes in its request for expedited discovery Cindy Olson, who was in charge of Human Resources and Community Relations. Plaintiff cannot seriously contend that by virtue of her position, Ms. Olson would have knowledge of "illicit off-shore partnerships."

absence of evidence indicating any intent to do so. Where the Reform Act was designed to make expedited discovery “extraordinary,” Plaintiff attempts to make it the usual procedure.

D. The Discovery Requested Is Sweeping, Not Particularized.

Even if a plaintiff demonstrates that undue prejudice would result from the imposition of the PSLRA discovery stay, permissible discovery is limited to that discovery necessary to prevent the demonstrated undue prejudice. *See, e.g., Faulkner v. Verizon Communications, Inc.*, 156 F. Supp.2d 384, 404 (S.D.N.Y. 2001). Broad discovery requests are not “particularized,” and they are not permitted. *Bartman* at *8. Plaintiff seeks discovery of vast amounts of financial information from each of the individual defendants. In its requests, Plaintiff asks for (a) documents pertaining to accounts held by the individual defendants’ current or former spouses and minor children, even though those persons are not before this Court or accused of any wrongdoing; (b) documents concerning any payment from any off-shore partnership, regardless of whether or not it is in any way related to this litigation; (c) documents pertaining to all non-public entities in which any Officer Defendant was an officer, director, partner, limited partner, trustee, principal, or beneficial owner, or from which he received any compensation, commission or remuneration, regardless of whether those entities are related to this litigation; (d) all income tax returns and related schedules for such entities (public or private); (e) documents concerning any safety deposit boxes, storage facilities or third-party trusts, whether related to this litigation or not, held not only by the twenty-nine individual defendants, but also their current or former spouses and minor children; and (f) documents identifying all attorneys, accountants, tax professionals, brokerage firms or financial advisors that the individual defendants or their current or former spouses have consulted in the last twelve years. Plaintiff’s Interrogatories are equally broad.

These discovery requests are not particularized; they are sweeping. They are not designed to prevent the kind of undue prejudice for which PSLRA provides an exception to the discovery stay; they are designed to generate enormous volumes of financial material which have nothing to do with Plaintiff's ability to state a claim.

E. The Bankruptcy Stay Also Precludes The Discovery Plaintiff Seeks.

A bankruptcy stay suspends not only claims against the debtor, but also claims against such non-debtor parties who share such an identity of interest with the debtor that litigation against non-debtor parties would directly affect the debtor, its assets, and its ability to pursue successful reorganization. *In re Continental Airlines*, 177 B.R. 475, 481 (D. Del. 1993). In affirming the bankruptcy court's decision to extend the stay to officers and directors of the debtor corporation, the District Court in *Continental* cited the following factors relevant to this litigation: (1) the allegations in the pleadings cited misleading statements by the corporation, indicating that the corporation was the real target of the litigation; (2) since the officers and directors were heavily involved in the corporate reorganization, discovery against them would substantially interfere not only with their efforts, but also with the efforts of the corporation to emerge successfully from bankruptcy; and (3) because the corporate debtor had agreed to indemnify the officers and directors, its assets would likely be depleted by the litigation against the officers and directors. *Id.*; see also *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986) (affirming preliminary injunction staying tort litigation on grounds that the burden that the continued litigation would impose on the bankruptcy estate outweighed any burden the stay would impose on the tort claimants); *In re Johns-Manville Corp.*, 26 B.R. 420 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984).

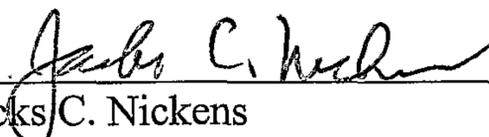
One court has described the cases in which a stay has been granted as those in which, “[n]umerous lawsuits were pending against the Chapter 11 debtors’ officers and directors [and] [p]ermitting the maintenance of those suits would have, in all likelihood, resulted in a massive depletion of estate assets and inhibited key personnel from the important business of getting the corporate debtor back on its feet.” *In re First Central Financial Corp*, 238 B.R. 9 (E.D.N.Y. 1999); *see also, e.g., A.H. Robins*, 788 F.2d at 996 (commenting on the “avalanche of actions” filed nationally and internationally, which compelled extension of the stay in order to allow the reorganization to go forward).

This litigation against the Enron Officer Defendants falls squarely within the case law granting an extension of the bankruptcy stay to non-debtor defendants who share an identity of interest with the debtor. For the reasons stated by the courts in *Continental*, *Johns-Manville* and *Robins*, the bankruptcy stay prohibits the discovery that Plaintiff seeks.

III. Conclusion

Plaintiff has asked for extensive and expedited discovery from the Officer Defendants without making any showing that Plaintiff will suffer undue prejudice if discovery proceeds in due course. Plaintiff has not offered anything more than it offered when Judge Rosenthal denied Plaintiff’s request. The discovery that Plaintiff seeks is foreclosed by the Private Securities Litigation Reform Act, by the United States Bankruptcy Code, and by cases decided under both laws. Plaintiff has shown no extraordinary circumstances that would warrant a lifting of either stay.

Respectfully submitted,



Jack C. Nickens
State Bar No. 15013800
Nickens, Lawless & Flack, L.L.P.
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191 (phone)
(713) 571-9652 (fax)

ATTORNEY IN CHARGE FOR DEFENDANTS
J. CLIFFORD BAXTER, RICHARD B. BUY,
RICHARD A. CAUSEY, MARK A. FREVERT,
JOSEPH M. HIRKO, STANLEY C. HORTON,
STEVEN J. KEAN, MARK E. KOENIG,
JEFFREY MCMAHON, J. MARK METTS,
CINDY K. OLSON, LOU L. PAI,
KENNETH D. RICE, JOSEPH W. SUTTON

OF COUNSEL:

Paul D. Flack
Nickens, Lawless & Flack, L.L.P.
1000 Louisiana Street, Suite 5360
Houston, Texas 77002
(713) 571-9191
(713) 571-9652 (fax)

CERTIFICATE OF SERVICE

I certify that on February 8, 2002, I caused to be delivered a copy of the foregoing pleading to counsel herein (listed on the attachment hereto) by fax.



Paul D. Flack

NICKENS, LAWLESS & FLACK, L.L.P.

A Registered Limited Liability Partnership
1000 LOUISIANA, SUITE 5360
HOUSTON, TEXAS 77002

TELEPHONE (713)751-9191
TELECOPIER (713)751-9652

FAX TRANSMITTAL SHEET

FROM: Paul D. Flack

DATE: February 8, 2002

NUMBER OF PAGES (INCLUDING COVER SHEET): 14

RE: *Mark Newby v. Enron Corp., et al. (Consolidated)*

James Baskin (512) 322-9280	Frederic S. Fox (212) 687-7714	Peter D. Fischbein (201) 288-8208
Jack McGehee/Tim Riley (713) 868-9393	Daniel Krasner/Jeffrey Smith (212) 545-4653	Thomas Bilek (713) 227-9404
Robert Rodriguez (212) 719-4677	Tom Cunningham/Richard Zook (713) 255-5555	Thomas Shapiro (617) 439-0134
Steven Schulman/Samuel Rudman (212) 868-1229	William Lerach/Darren Robbins (619) 231-7423	Klari Neuwelt (212) 593-9131
Marc Edelson (215) 230-8735	Robin Harrison (713) 752-2330	Lynn Sarko/Britt Tinglum (206) 623-3384
R. Douglas Dalton (602) 248-2822	Roger Claxton (214) 953-0583	Samuel Sporn (212) 267-8137
G. Sean Jez (713) 621-9638	Leo Desmond (561) 712-8002	Paul Geller (561) 750-3364
Fred Stoops (918) 493-1925	Deborah Gross (215) 561-3000	Alfred Yates (412) 471-1033
Richard Frankel (713) 528-2509	Sherrie Savett (215) 875-4604 or 875-4608	Andrew Schatz (860) 493-6290
Jules Brody (212) 490-2022	Joseph Weiss (202) 682-3010	Mike Egan (212) 779-3218
Peter Bull (212) 213-9405	Robert Roseman (215) 496-6611	Steven Toll (202) 408-4699
Anthony Bolognese (215) 814-6764	Robert Harwood (212) 753-3630	Joseph McBride (212) 682-1892
Kenneth Elan (212) 385-2707		George Barrett (615) 252-3798

Stuart Savett (215) 923-9353	Jonathan Suder (817) 334-0401	Karen Morris (302) 426-0406
Jeffrey Kaiser (713) 227-0488	w. Kelly Puls (817) 338-1416	Paul Paradis (212) 684-5191
James Bashian (212) 921-4249	James Wren (254) 741-6300	David Scott (619) 231-7243
John Emerson, Jr. (501) 907-2556	Steve Berman (206) 623-0594	Thomas Sankey (713) 223-7737
Solomon Cera (415) 777-5189	Edward Goldstein (713) 877-1145	William Federman (405) 239-2112
Kirk B. Hulett (619) 338-1139		Roger Greenberg (713) 752-0327
Stephen Susman (713) 654-6666	Craig Smyser (713) 221-2320	Elizabeth Baird (202) 383-5415
Eric Nichols (713) 951-3720	Charles Richards (302) 651-7856	John McKetta (512) 478-1976
James Coleman/ Ken Carroll (214) 855-1333	Rusty Hardin/Andy Ramzel (713) 652-9800	Helen Foster (512) 478-1976
Richard Drubel (603) 643-9010	Jeffrey Kilduff (703) 287-2402	Robert Stern (202) 383-5414
J. Clifford Gunter/Abigail Sullivan (713) 221-1212	Mike Carroll/Daniel Kolb (212) 450-4800	Ronald Woods (713) 864-8738
Jeffrey Zwerling (212) 371-5969	Alex Kapetan (954) 428-3929	Damon Young (903) 792-5098
Weiss & Yourman (212) 682-3010	Frederick Gerkins (212) 753-3630	Scott Shepherd (610) 891-9883
Clay Ragsdale (205) 251-4777	Marvin Frank (212) 682-1892	George Niblock (501) 444-7608
Christopher Lovell (212) 719-4677	Marc Henzel (610) 660-8080	Frank Morgan (281) 367-2453
	Curtis Trinko (212) 986-0158	Charles Piven (410) 685-1300
Lynn Sarko (202) 623-3384	Laurence King (415) 677-1233	Corey Holzer (404) 847-0036
Eli Gottesdiener (202) 537-1989	Gwendolyn Giblin (415) 777-5189	George Fleming (713) 621-9638
Jeffrey Krinsk (619) 238-5425	Vincent Capucci (212) 894-7273	Michael Donovan (215) 732-8060
Steven Cauley (501) 312-8505	Michael Pucillo (561) 835-0322	Joseph Tabacco (415) 433-6382

Glen DeValerio/Jeffrey C. Block (617) 542-1194	Zach Wright (503) 972-3741	F. Michael Kail (202) 429-3902
Paul Yetter (713) 238-2002	N. Selinger/S. Lowey (914) 997-0035	James M. Finberg (415) 956-1008
M. Chitwood/J. Konis (404) 876-4476	Melvin I. Weiss (212) 594-5300	J. Eisenhower/S. Liebesman (302) 622-7100
Robert N. Rapp (216) 241-0816	Joe R. Whatley, Jr. (205) 328-9669	Jeffrey O.C. Lane (360) 586-3593
Ronald J. Kormanik (713) 752-2199	Richard Schiffrin/A. Barroway (610) 667-7056	Ernest Wotring (713) 980-1701
Roger W. Kirby (212) 751-2540	Michael J. Behn (312) 427-1850	M. Beirne/B. Tartt (713) 960-1527
Robert C. Finkel (212) 486-2093	Robert B. Weintraub (212) 545-4653	Jeffrey C. Zweling (212) 371-5969
Neil Rothstein (860) 537-4432	Theodore C. Anderson (214) 953-0133	Joseph A. McDermott (713) 527-9633
Robin Gibbs/Kathy Patrick (713) 750-0903	Sharon Katz (212) 450-3633	David Mattax (512) 477-2348
Derek Emge (619) 595-1480	Richard M. Heimann (415) 956-1008	Sean F. Greenwood (713) 650-1400
Bruce Hiler (202) 383-5414	H. Bruce Golden (713) 223-5002	Frederick W. Gerkens, III (212) 753-3630
Paul A. Scarlato (215) 545-6535	Louis F. Burke (212) 808-4280	Joshua M. Lifshitz (212) 213-9405
Andrew N. Friedman (202) 408-4699	Jay S. Cohen (215) 496-6611	Harold B. Obstfeld (212) 679-8998
Francis J. Farina (610) 695-9023	Hector Gancedo (626) 685-9808	Peter A. Lennon (610) 325-5221
David B. Kahn (847) 501-5086	Mazyar Hedayat (312) 322-0575	Stanley Grossman (212) 661-8665
Patrick V. Dahlstrom (312) 377-1184	David Jaroslawicz (212) 732-6746	Mark C. Gardy (212) 684-5191
Jonathan M. Plasse (212) 818-0477	Richard E. Norman (713) 651-1775	Stephen Oestreich (212) 687-3080
Charles King/James Pennington (713) 225-8488	Lionel Glancy (310)	

This message is intended only for the use of the individual(s) to whom it is addressed and contains information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any unauthorized disclosure, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error,

please notify us immediately by telephone at (713) 571-9191, and return the original message to us at the above address via the U.S. Postal Service. Thank you.