

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

FILED

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Michael N. Milby, Clerk

U.S. COURTS
 SOUTHERN DISTRICT
 OF TEXAS

In re Enron Corporation §
 Securities Litigation §

Mark NEWBY, §
 Plaintiff, §

v. §

ENRON CORP., et al., §
 Defendants. §

AMERICAN NATIONAL §
 INSURANCE COMPANY, et al., §
 Plaintiffs, §

v. §

ARTHUR ANDERSEN, L.L.P., et al., §
 Defendants. §

Consolidated Lead No. H-01-3624

Civil Action No. G-02-0084

STATE OF ILLINOIS)
 : ss
 COUNTY OF COOK)

AFFIDAVIT OF BRYAN P. MARSAL IN OPPOSITION TO THE AMERICAN NATIONAL PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND REQUEST FOR HEARING AND LEAD PLAINTIFF'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Bryan P. Marsal, being duly sworn, deposes and says:

1. I, Bryan Marsal, make this Affidavit in opposition to the American National plaintiffs' Emergency Motion for Temporary Injunction and Request for Hearing and in

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opposition to Lead Plaintiff's Ex Parte Application for a Temporary Restraining Order and Order to Show Cause.

2. I am a founding partner of the firm of Alvarez & Marsal, Inc., 599 Lexington Ave. #2700, New York, New York 10022 ("A&M"). A&M was formed in 1983 to provide financial and operational services to financially troubled companies. We have provided advice in this area to numerous businesses in a wide array of industries. A copy of my firm's brochure is attached hereto as Exhibit A. A description of my background and work experience is attached hereto as Exhibit B.

3. My firm has been retained by Arthur Andersen LLP ("Andersen LLP") to provide advice with respect to various issues surrounding the loss of business that Andersen LLP has recently experienced following the collapse of Enron Corporation ("Enron"). Specifically, my firm has been asked to advise Andersen LLP on the most effective ways to address the rapidly changing business of Andersen LLP, in light of the precipitous loss of clients and revenues which has and is occurring subsequent to the government's indictment of the firm. The assignment requires intensive examination of the new and evolving cost structure of Andersen LLP's business, the most effective ways in which it can be restructured, and ultimately the most beneficial ways in which Andersen LLP can downsize its firm in line with its expected ongoing professional activities. It is a multifaceted and complicated task, the goals of which are to maximize the asset values associated with the firm as it has existed, in order to benefit the interests of all the firm's constituencies – creditors, clients, partners and employees – while providing an efficient structure for the firm to continue to serve the clients it has and can attract.

4. Andersen LLP is a professional services firm, the most valuable assets of which are the partners and other personnel who provide those services. As with any professional services firm, Andersen LLP relies on individuals, the work that they do, and the relationships they maintain with their clients to stay in business.

5. Since Enron's collapse, and especially since it was indicted in mid-March of this year, Andersen LLP has lost a substantial number of public clients. This has caused a significant drop in Andersen LLP's business activity.

6. The precipitous decline in business has resulted in Andersen LLP having a cost structure that is incommensurate with its current volume of business. For example, Andersen LLP is still obliged to pay salaries and related benefits, even though many of the personnel entitled to these payments are not engaged in activities generating any substantial revenue.

7. As a partial solution to this situation, and as reported throughout the country, Andersen LLP has had to lay off several thousand employees in recent weeks. Further, an extensive effort is being made to realize a fair value for those parts of the business that may not be part of Andersen LLP going forward. Negotiations have and will occur in connection with the sale or transfer of lines of Andersen LLP's business, as well as groups of Andersen LLP's professional and non-professional personnel. All of these transactions must be evaluated in terms of the fairness of any consideration they may provide and also the impact they will have on the firms's realization of value for other assets like receivables and work in progress, as well as, the impact on liabilities like lease expenses, severance costs and the like.

8. In many of these potential transactions, our approach would require any buyer

to acquire some or all of the partners from a specific local office, or the partners engaged in a particular line of business, as well as the related group of employees who provide support for the professional personnel. (These groups, generally numbering six to eight employees, are referred to as “pyramids.”) Further, Andersen LLP is seeking to ensure that potential buyers will purchase the property and equipment and assume leases relating to locations that may be acquired, and to assume obligations relating to employment benefits currently owing to employees, such as vacation accruals and severance. These and similar terms will help in to relieve Andersen LLP of the substantial obligations it currently has, to ensure employment for those personnel transferred in any transaction, and bring value into the firm. Andersen LLP has also engaged the services of Gleacher & Co., investment bankers, to evaluate the fairness of any proposed transactions and to assist in overall effort to negotiate and execute transaction that will benefit Andersen LLP to the greatest extent possible.

9. I cannot emphasize too strongly that time is of the essence in our efforts. The longer the downsizing process takes, the greater the cash drain and loss of overall value. As even more clients leave, receivables and work in progress will not be realized and Andersen LLP’s business activity and prospects will decline even further.

10. Moreover, the longer Andersen LLP takes to complete the necessary transactions, the greater the possibility that its partners and other employees could decide to leave the firm or find new employment outside of the structure of our process. Andersen LLP partners are subject to non-compete covenants that are intended to prevent them from leaving the firm and taking their clients with them. If managed effectively, these obligations can be utilized in connection with our own downsizing efforts to make sure the firm receives fair

value from departing parties. Andersen has not and will not consider a blanket waiver of such covenants, but will seek, on a particularized basis, to achieve a fair value in return for any waiver of the covenants for departing partners. This is central to our effort to manage the assets of the firm and to achieve value for them as the firm restructures its business.

11. I understand that the American National plaintiffs are seeking a temporary restraining order enjoining Andersen from: (1) transferring any assets to foreign subsidiaries or affiliates, (2) releasing foreign subsidiaries or affiliates from obligations to Andersen, or (3) releasing any partners or employees from non-compete agreements, without the Court's express permission. I further understand that Lead Plaintiff is seeking an order granting a temporary restraining order preserving the "status quo" of defendants Andersen LLP, Andersen Worldwide Société Coopérative, Switzerland ("Andersen S.C.") and Andersen's member firms and affiliates and enjoining Andersen's efforts to dissolve or spin off businesses.

12. If granted, this relief would delay, forestall, or preclude Andersen LLP's execution of transactions such as those described above and would have a potentially devastating effect on Andersen LLP's ability to derive value from its assets, to the detriment of all its constituencies.

13. The "status quo" at Andersen is not a relevant concept and cannot in any real sense be "preserved." The firm is undergoing a wrenching restructuring in light of the severe changes which have and are occurring to its business. The work is being done by teams of Andersen's professionals, along with my firm, assisted by experienced independent financial and legal advisors. Every effort is being made to obtain fair value for assets which the firm

has no role for going forward, and there is no reason to believe that we will not be able to achieve this. In contrast to plaintiffs unsupported assertions, Andersen is not "in dissolution" or in liquidation. On the contrary, every effort is being made to restructure the firm, achieving the most value for its unneeded assets, and to preserve value for Andersen's continuing business, its creditors, its partners and employees.

Dated: April 16, 2002
Chicago, IL


BRYAN P. MARSAL

Sworn before me this
16 day of APRIL, 2002

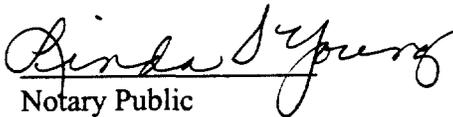

Notary Public



EXHIBIT A



ALVAREZ & MARSAL



INTRODUCTION

Alvarez & Marsal, Inc. ("A&M") was formed in 1983 to provide financial and operational services to troubled companies. A&M has grown to global scope and renown with offices in New York, Los Angeles and Paris. Our product offerings have broadened to include creditor advisory, trustee and performance improvement services. While assisting troubled companies remains our core business, in recent years companies and fund sponsors have sought our assistance to improve the performance of operations not in crisis.

Our experience spans the spectrum of industries, including telecommunications, healthcare, retailing, high-tech, hard and soft goods manufacturing and financial services. Through our myriad of turnaround experiences, we have grown adept at advising and operating both publicly and privately held entities. Although we prefer to restructure a client's operations and finances outside the venue of the courts, our firm has accomplished numerous successful turnarounds using the bankruptcy process. Whatever the industry, size or circumstances of a company, our professionals bring a unique combination of sophistication, analytical skills, crisis management experience and proven business judgement to solve complex corporate problems. This has earned A&M a reputation as pre-eminent in improving the performance of both troubled and under performing companies.

A&M'S SERVICES

-  Turnaround Consulting
-  Interim Management
-  Creditor Advisory
-  Trustee and Examiner
-  Performance Improvement Services



TURNAROUND CONSULTING

A covenant default or liquidity shortfall usually stems from a combination of fundamental operational problems and an inappropriate debt structure. Whatever the specific problem, for most managers these are situations which are unfamiliar and uncomfortable.

A turnaround consultant is uniquely prepared to confront the circumstances and pressures that arise when a company's performance falls short of projected results. An experienced and objective turnaround consultant not only can assist management in rectifying the problem, but his or her presence immediately sends a signal to creditors that an organization recognizes the seriousness of its position and is actively addressing it. As turnaround consultant, A&M advises clients on short-term difficulties such as cash management, vendor relations, asset dispositions and operating cost reductions. For long term financial solutions, A&M applies a tested approach for identifying the root causes of the under performance, remedying the problems, and repositioning the organization for growth.

Beyond simply delivering a report or presenting recommendations, A&M is frequently asked to lend its substantial "hands-on" expertise to assist management in the implementation of the turnaround plan. With this approach, the client's managers are able to focus on the core business while A&M concentrates on the restructuring process.

Typically, the first step is to arrest cash outflow and provide management time to evaluate operating alternatives. Having stabilized the situation, we then assist management in developing a business plan that affords long-term viability. This plan generally calls for redirecting and refocusing resources and developing a disposition plan for non-core assets. A&M works with management to define an appropriate cost structure to support this newly rationalized asset base and with management orchestrates the necessary cost reduction program. Finally, with the cash flow potential clearly defined, we assist our client in tailoring and negotiating a financial restructuring appropriate for the needs of the company and its stakeholders.

Throughout the turnaround, A&M participates in management of the overall creditor process. We typically lead negotiations with our client's creditors to achieve an out-of-court restructuring. If a restructuring can only be implemented through the bankruptcy court, we are equally adept at managing that process, working in tandem with legal counsel. More often than not companies require additional liquidity to survive the bankruptcy process and to implement a successful turnaround plan. A&M has a proven ability to raise new cash through debtor-in-possession and exit financing.

In addition to the above, A & M's European Operation provides a reliable, effective compliment to our domestic capabilities to the extent that the borrower has interests in this region.



INTERIM MANAGEMENT

A&M is uniquely positioned to help manage a company through a period of restructuring or financial crisis. Our role as interim manager is an outgrowth of the services that we provide as a turnaround consultant with two added benefits: we fill critical management vacancies immediately and we shorten the lead-time for implementing specific actions. Once the situation has stabilized and the turnaround is under way, A&M facilitates a smooth transition to a permanent management team. A&M professionals may fill one or more of the critical senior management positions, such as chief executive officer, chief operating officer or chief financial officer. In situations in which an able operating team is in place, A&M may supplement the team through a crisis period in the interim role of chief restructuring officer.

During this interim period, our management position gives us a unique perspective to assess the strengths and weaknesses of the organization. Key issues such as incentive compensation, retention programs, company communications and employee morale demand attention early in a crisis. Our professionals have the experience and sensitivity to minimize the negative effects that a troubled situation has on employees.

In addition to the above, A & M's European Operation provides a reliable, effective complement to our domestic capabilities to the extent that the borrower has interests in this region.



CREDITOR ADVISORY

As financial advisor to a creditor group, A&M offers both an operational and financial perspective on the viability of a Company's operating plan

We are frequently asked to evaluate the risks and opportunities associated with a business plan. This has two important aspects.

- Are the projected financial results credible?
- Can the Company's management execute the proposed plan from both an amount and timing standpoint?

A&M's ability to answer the second question provides a distinct advantage over most other creditor advisory firms. A&M's ability to help creditors evaluate the difficult question of execution is augmented by our expertise in helping debtors improve their performance. This vantage point enables us to assess a borrower's proposals with the acuity gained by hands-on experience. The A&M operational fact base, together with an independent assessment of the business plan, enables creditors to reach an informed decision.

Other activities that are frequently asked of A&M in the creditor advisory role include the following:

- (1) review of the Company's short-term cash receipts and disbursements plan,
- (2) review of the Company domestic and foreign asset base for potential enhancement to a collateral package;
- (3) valuation of the Company's collateral package on a liquidation basis whether on an individual asset or partial going concern basis;
- (4) assistance in negotiating amendment and forbearance agreements;
- (5) review and assessment of restructuring alternatives, and
- (6) monitoring of performance relative to plan, once the business plan has been implemented.

A&M's European operation provides a reliable, effective complement to our domestic capabilities to the extent that the borrower has interests in this region.



TRUSTEE AND EXAMINER

A&M has broadened its capabilities to include Trustee and Examiner services in bankruptcy proceedings. Our experience working with financially troubled companies uniquely qualifies A&M to serve as a Trustee or Examiner in a bankruptcy proceeding. In the fiduciary capacity, as Trustee A&M maximizes the recovery value of the estate's assets, determines the legitimacy of claims filed by creditors and distributes the estate's proceeds. A&M develops a fact base and makes recommendations as to the various proposals or requests made by the debtor or creditors. In addition, A&M can fulfill the role of Examiner when dictated by the circumstances of a bankruptcy situation.



PERFORMANCE IMPROVEMENT CONSULTING

Based on A&M's experience in improving its clients' operating performance, A&M has developed a practice designed for companies that are under performing, but not in financial crisis. In such cases, A&M has been retained directly by a company or on the recommendation of its parent organization, fund sponsor, or Board of Directors. A&M's engagements in this practice area can be segmented as follows:

Performance Improvement Consulting / Interim Management

In either an advisory or management role, A&M works with company management to develop a comprehensive profitability improvement plan. This plan incorporates traditional cost reduction components (outsourcing, right-sizing, benchmarking, process redesign, working capital reduction, zero-based budgeting) and customer/channel product profitability analysis. The customer/product profitability analysis provides a platform from which to right-size the business, identify areas of profitable activity and appropriately scale the supporting cost structure for improving future profitability.

Strategy / Plan Development

A&M, in an advisory capacity, works with management to develop an operating plan incorporating revenue enhancement and cost reduction components. The strategy/plan typically involves the development of a detailed one-year operating budget and a 3-5 year financial plan.

Strategy / Plan Implementation

A&M works either as an advisor to the company/parent organization or as interim management to implement a strategy or operating plan. The use of an independent resource such as A&M can prove invaluable when a plan is being implemented such as a major downsizing or cost reduction program and existing management lacks sufficient experience.



A&M HISTORICAL ASSIGNMENT PROFILE

A&M has provided a wide range of services to clients across a diverse spectrum of industries. We have developed concentrated industry expertise in manufacturing, telecommunications, retailing and healthcare which stems from our success on high profile assignments in sectors of the economy that have experienced major restructurings. A&M prides itself in serving a wide range of clients with the expertise required to maximize their value.

Manufacturing

AM Cosmetics, Inc
Anthony's Manufacturing Co., Inc.
Dravo Line Corp
Electrolux Corporation
Florida Steel Corporation
Florida Tile (Illinois Tool Works Inc.)
Fruchauf
Gardner Industries
Gilbert & Bennet Manufacturing Co
Heartland Steel, Inc.
Leiner Health Products, Inc
Precor (Illinois Tool Works Inc)
Regina Corporation
Tunex Corporation
Town & Country Corporation
West Bend (Illinois Tool Works Inc)

Telecommunications

Dakota (Genesis)
Global Telesystems, Inc
Iridium LLC
MobileMedia, Inc.
Telegroup
Western Union Corporation
Winstar Communications, Inc.

Technology Products / Services

Applied Graphics Technologies, Inc
Bridge Information Systems, Inc.
Jostens Learning
Memorex-Telex BV
Panurgy
Physician Computer Network

Retailing

Alexander's Inc
Almac's, Inc.
Ames Department Stores, Inc.
Camelot Music, Inc
Color Tile, Inc.
E&B Manne, Inc.
Fedco, Inc
Harvest Foods, Inc.
Homeland Stores, Inc
Liquor Barn
Phar-Mor, Inc
RB Furniture, Inc
Wherehouse Entertainment, Inc

Apparel

Bidermann Industries, Inc. (Cluett American)
Ithaca Industries, Inc
Kasper A S L Ltd
London Fog Industries
The Cutano Group, Inc
The Warnaco Group, Inc.

Gaming & Food

Core-Mark Industries
DAKA International, Inc
Resorts International, Inc

Financial

Baldwin United
Integrated Resources

Healthcare

Affiliated Medical Enterprises
Allegheny (AHERF)
Charter Medical Corporation
Glenbeigh, Inc
Healthcare International, Inc.
Integrated Health Services, Inc
Michigan Health Care Corporation
Republic Health Corporation (ORNDA)

Energy / Chemical

Cedar Chemical Corporation
Gearhart Industries, Inc
Petrolane, Inc
Pioneer Companies, Inc
Seiscom Delta
Universal Petroleum Company
Western Company of N A

Other

Ancora Capital & Management Group, LLC
Consolidated Freightways, Inc
Marvel
Phillips Colleges, Inc
Premium Standard Farms
Raymond International
Scholastic, Inc
Todd Shipyards Corporation
Western Publishing



ALVAREZ & MARSAL

599 Lexington Avenue
Suite 2700
New York, NY 10022

880 Apollo Street
Suite 227
El Segundo, CA 90245

EXHIBIT B

Bryan P. Marsal, *Founding Partner*

Mr. Marsal is one of the co-founders of Alvarez & Marsal, Inc. ("A&M"), which commenced operations in 1983. Since its founding, Mr. Marsal has led numerous A&M engagements in the healthcare, manufacturing, retailing, apparel, communications and oil field services industries. Mr. Marsal has served as Chairman and CEO of Cluett American Corp. (formerly Bidermann Industries), Republic Health Corporation (renamed OrNdaHealthCorp.), Anthony Manufacturing, Gitano and COO of Alexander's Dept. Stores. He currently serves on the boards of Timex Corp., Cluett American Corp. (Gold Toe Socks) and Aearo Safety Products.

Mr. Marsal has been involved as an advisor or manager in high profile, large creditor cases. In this professional capacity, presentations to sophisticated creditor committees and testimony in Federal Bankruptcy Court have frequently been required.

Prior to co-founding A&M, Mr. Marsal was Director of Operations Control of Norton Simon Inc. Prior to joining Norton Simon in 1982, he was a Vice President in the loan recovery division of Citibank. At Citibank, Mr. Marsal managed a workout team and was directly involved in a number of large problem loan situations. Mr. Marsal received both a B.B.A. and an M.B.A. from the University of Michigan.