United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk of Court

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

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

**MEMORANDUM OF LAW 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.**

ORIGINAL

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TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW, Plaintiff, the Archdiocese of Milwaukee Supporting Fund, Inc. ("AMS Fund" or "Movant" or "Proposed Lead Plaintiff"), by and through its undersigned counsel, submits this Memorandum of Law in support of its Motion 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"),[1] to be appointed as a lead plaintiff and for approval of its counsel, Scott + Scott, LLC, to serve as lead counsel and for Hoeffner & Bilek, LLP to serve as liaison counsel for the proposed class.

[1]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.

## I. INTRODUCTION.

This Motion is made in accordance with the procedures established by 15 U.S.C. § 77z-1, as outlined below, and on the grounds that the AMS Fund is an adequate plaintiff, as defined by the PSLRA, which should be appointed as lead plaintiff, and is uniquely well suited to protect the interests of the proposed class ("Class").[2] In its capacity as an institutional investor, the AMS Fund is highly qualified to act as a fiduciary and apply its experience in the administration of financial matters, including the distribution of substantial donations and grants, to fulfill its duties to the sole benefit of the class.

The AMS Fund is the only institutional investor that has acted solely to protect the interests of purchasers of publicly traded debt securities of Enron Corp. ("Enron" or "Company") by instituting action under the Securities Act solely with respect to debt offerings issued by the Company and made pursuant to Registration Statements and Prospectuses during the period October 19, 1998 and November 19, 2001 ("Class Period"). See Archdiocese of Milwaukee Supporting Fund, Inc., Individually and on Behalf of All Others Similarly Situated v. Kenneth L. Lay et al., Civil Action No. H-01-4071 (United States District Court for the Southern District of Texas, Houston

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[2]In the action instituted by the AMS Fund, see Archdiocese of Milwaukee Supporting Fund, Inc., Individually and on Behalf of All Others Similarly Situated v. Kenneth L. Lay et al., Civil Action No. H-01-4071 (United States District Court for the Southern District of Texas, Houston Division), the proposed class is defined as the "purchasers of the publicly traded debt securities of Enron Corp." Here, to the extent the Court includes other purchasers of securities (i.e., equities) in the putative class for whom lead plaintiff is to be appointed in this consolidated action, the AMS Fund respectfully suggests that a lead plaintiff representative, such as the AMS Fund, should be appointed to represent and protect the interests of the Class (i.e., the purchasers of debt securities) upon whose behalf the AMS Fund has instituted action.

Division)("Debt Purchasers Action").[3] For this reason alone, the AMS Fund is uniquely well suited to act as one of the lead plaintiffs and protect the interests of all of the purchasers of debt securities during the Class Period. See McDonald v. Chicago Milwaukee Corp., 565 F.2d 416, 421-423 (7th 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"); In re The Pittsburgh And Lake Erie Railroad Company Securities And Antitrust Litigation, 543 F.2d 1058 (3d Cir. 1976)(holding that settlement of shareholder derivative action was unfair to the bondholders).

Finally, the AMS Fund fully meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. Movant's claims are typical of the other members of the Class. Moreover, as explained below, the AMS Fund is an institution solely devoted to charitable purposes and, as a result, is uniquely qualified to fairly and adequately represent the interests of the Class.

## II. BACKGROUND FACTS.

The AMS Fund is a non-profit institution that was formed to support charitable organizations and especially those within the auspices of the Catholic Archdiocese of Milwaukee. See AMS 1999 Annual Report, a true and correct copy of which is attached as Exhibit "A." By supporting charities in the Milwaukee area, as well as throughout the United States, the AMS Fund "hopes to encourage individual responsibility through education, awareness of one's interdependency within the community and the transformative power of intergrating one's spirituality with everyday life." Id. By and through its charitable activities, the Proposed Lead Plaintiff seeks to promote educational and

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[3]By Order entered on December 12, 2001, the Honorable Lee H. Rosenthal consolidated the Debt Purchasers Action with other actions pending against Enron and/or certain of its officers and directors under this action as the lead case.

social service initiatives that primarily are designed to provide assistance to the indigent and others similarly in need of assistance. The AMS Fund is guided by the following seven fundamental principles in pursuing these good works:

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

Guided by these principles, between 1992 to 1999, the AMS FUND distributed $17,999,814.61 for programs supporting educational initiatives and total grants of $40,544,664.14. Id. For example, since 1992, Movant has provided substantial grants to Messmer High School, an inner-city school located in Milwaukee, so that it can deliver a level of education comparable to newer and more affluent suburban schools. Since the AMS Fund began supporting this institution, the Messmer High School has experienced a marked increase in academic performance and eighty-five percent (85%) of Messmer High School students (ninety-six percent (96%) of whom are African American) now matriculate to college upon graduation. Similarly, the AMS Fund is a major supporter of the St. Vincent Family Center, which provides family services, including after school children's programs for working parents and educational services for entire families.

The AMS Fund also provides substantial matching funds for other charities that (a) care for individuals afflicted with AIDS, (b) educate single mothers to assist them in getting off welfare, (c) study the effectiveness of welfare programs, (d) provide vocational training to young adults, (e) train religious leaders, (f) teach parenting skills and (g) provide immigrants with assistance in learning English. Id. These are just several illustrative examples of the AMS Fund's charity that provide insight into the purpose and goals of the Proposed Lead Plaintiff. Id.

To protect its interests and those of the Class, Movant requests that, in addition to being appointed as a lead plaintiff, Scott + Scott, LLC, which serves as the AMS Fund's outside securities counsel, be appointed as lead counsel and that Hoeffner & Bilek, LLP be appointed as liaison counsel for the Class. These law firms filed the Debt Purchasers Action on behalf of the AMS Fund and the Class.[4] Scott + Scott, LLC has been recognized by a number of courts as a highly qualified, appropriate choice as lead counsel. See e.g. Steinbeck v. Emulex Corp. et al., No.SACV-01-219-GLT (United States District Court for the Central District of California)(Order dated May 11, 2001); Twardy v. Priceline.com et al., No. 3:00CV1884 (DJS)(United States District Court for the District of Connecticut)(Order dated September 12, 2001)(approving the selection of Scott + Scott, LLC as lead counsel); In re Sprint Securities Litigation, Master File No. 01-CV-04080 (United States District Court for the District of Kansas)(Memorandum and Order dated September 28, 2001)(appointing Scott + Scott, LLC lead counsel and finding the firm to be "highly qualified" to serve in that capacity); In re Versata, Inc. Securities Litigation, Master File No. 01-1439 (Order dated August 17, 2001)(United States District Court for the Northern District of California)(appointing Scott + Scott,

[4]The AMS Fund incorporates by reference the averments of its First Amended Complaint, which fully details the nature and scope of the claims it asserts against defendants on behalf of debt security holders.

LLC as lead counsel); see also Scott + Scott, LLC Firm Profile, a true and correct copy of which is attached as Exhibit "B." Similarly, Hoeffner & Bilek, LLP has served as attorney-in-charge for a number of significant securities class actions and is extremely well qualified to represent the interests of the AMS Fund. See Hoeffner & Bilek, LLP's Firm Resume, a true and correct copy of which is attached as Exhibit "C." Moreover, as counsel for the AMS Fund, Scott + Scott, LLC and Hoeffner & Bilek already have taken substantial steps to protect the interests of the Class, by joining in the motion by Amalgamated Bank to freeze certain assets of defendants, thereby seeking to preserve the proposed Class' remedies, and Scott + Scott, have attended Congressional Hearings regarding Enron to ensure that the AMS Fund's interests are fully protected.[5]

## III. PROCEDURAL HISTORY.

By Order dated December 12, 2001, this Court consolidated 29 securities class actions ("Actions")[6] filed against Enron, its officers and directors and/or its auditor, Arthur Andersen LLC, including the action instituted by the AMS Fund on behalf of debt securities holders. The first of these Actions was filed on October 22, 2001, shortly after Enron made the shocking announcement,

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[5]In a hearing this month, Neil Rothstein, Esquire of Scott + Scott, LLC appeared in Court and joined in Amalgamated Bank's Ex Parte Application For (1) A Temporary Restraining Order And Order To Show Cause Why A Preliminary Injunction Should Not Be Entered Freezing And Imposing A Constructive Trust Over Insider Trading Proceeds, (2) Accounting Of Insider Trading Proceeds, and (3) Limited Expedited Discovery. The application has been fully briefed, argued and is pending before this Court. Similarly, Jacqueline Scott, Esquire of Scott + Scott attended Congressional hearings this past week on behalf of the AMS Fund.

[6]These consolidated class actions are brought on behalf of persons who purchased or otherwise acquired Enron securities (both debt and equity) during the Class Period. In each of these actions, plaintiffs allege that defendants violated Sections 10(b) and/or 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder, 7 C.F.R. §240.10b-5, and/or Sections 11 and 12(a)(2) of the Securities Act, by issuing a series of false and misleading statements and financial statements that falsely inflated Enron's financial statements by hundreds of millions of dollars in what may prove to be the most serious and egregious scheme of securities fraud ever perpetrated.

on October 16, 2001, that it was taking non-recurring charges of $1.01 billion after-tax, or ($1.11) loss per diluted shares, in the third quarter of 2001 (i.e., the period ending September 30, 2001).[7] Each of these securities class actions alleges claims for violations of Sections 10(b) and/or 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78a et seq., as well as SEC Rule 10b-5 promulgated thereunder, or under Sections 11 and 12(a)(2) of the Securities Act on behalf of purchasers of Enron common stock, bonds and/or preferred securities during the Class Period.

The Securities Act, as amended by the PSLRA, requires prompt publication of notice advising class members of their right to move within sixty (60) days of publication to be appointed lead plaintiff. Section 27(a)(3)(A)(ii) also provides, however, that, if more than one action on behalf of a class asserting substantially the same claims is filed, only plaintiffs in the first-filed action are required to public the notice. 15 U.S.C. §77z-1(a)(3)(A)(ii). Class members who have filed a complaint or made a motion pursuant to Section 27(a)(3)(B) of the Securities Act are eligible to be appointed lead plaintiff. 15 U.S.C. §77z-1(a)(3)(B).

On October 22, 2001 pursuant to Section 21D(a)(3)(A)(i) of the Exchange Act, 15 U.S.C. §78u-4(a)(3)(A)(i), plaintiffs in the action captioned *Mark Newby v. Enron Corp.*, No. 01-3624 published a notice of pendency of the action over the *PR Newswire*. That notice advised class members of the existence of the lawsuit and described the claims asserted. This motion is timely filed since it occurs within sixty (60) days from the publication of that initial notice (i.e., on or before December 21, 2001).

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[7]In the same Order, the Court consolidated eight derivative suits against Enron under Civil Action No. H-01-3645, Pirelli Armstrong Tire Corp. Defined Benefit Plan, et al. v. Kenneth L. Lay et al., and eight employee benefits cases under Civil Action No. H-01-3913, Tittle v. Enron Corp. et al.

## IV. ARGUMENT.

### A. The Securities Act's Standards For Appointment Of Lead Plaintiff(s).

Section 27(a)(3)(B)(i) of the Securities Act provides that this Court should consider any motions brought by plaintiffs or class members for appointment as lead plaintiff that are filed in response to any notice issued pursuant to Section 27(a)(3)(A)(i) of the Act. 15 U.S.C. §77z-1(a)(3)(B)(i). In pertinent part, the PSLRA makes the following provision with respect to the appointment of lead plaintiff:

> the [C]ourt ... shall 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 class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

15 U.S.C. §77z-1(a)(3)(B)(i). Under this provision of the Securities Act, this Court "shall" appoint the "most adequate plaintiff" to serve as lead plaintiff and presume that lead plaintiff is the person ***or group*** of persons meeting the following criterion:

> (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. §77z-1(a)(3)(B)(iii)(I).

The statutory language of the Securities Act explicitly provides that a "member or members" of the class, or a "person or group of persons," may combine to constitute "the largest financial interest" and thereby presumptively be rendered the lead plaintiff(s). *See, e.g., In re The First Union*

*Corp. Sec. Litig.*, 157 F.Supp.2d 638(W.D.N.C. 2000); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 45 (S.D.N.Y. 1998). In the case of *Laborers Local 1298 Pension Fund v. Campbell Soup Company,* 2000 WL 486596 * 3 (D.N.J. April 24, 2000), the Court addressed the issue of whether one or more lead plaintiffs should be appointed and persuasively held that "it [is] desirable to have both an institutional investor ... and individual investors ... included as lead plaintiffs since each may bring a unique perspective to the litigation." Similarly, in *In re Oxford Health Plans, Inc.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998), the Court observed that naming more than one lead plaintiff "allows for broad representation and the sharing of resources and experience to ensure that the litigation will proceed expeditiously...and will assure the Court that any settlement when proposed will be provident." For similar reasons, in In Re Microstrategy Inc. Securities Litigation, 110 F. Supp. 2d 427, 439 (E.D.Va. 2000), the Court held that, by combining representation of different types of investors, the Court could stabilize the litigation and ensure that all of the class members' interests were adequately represented. Here, as explained below, based upon the AMS Fund's unique status and interests, it should be chosen as a lead plaintiff since it will promote broad and diversified representation of the Class.

**B. The AMS Fund's Status As A Representative Of Debt Security Holders Supports Its Appointment As Lead Plaintiff.**

Importantly, the AMS Fund is the ***only*** movant that solely represents the interests of those investors who purchased publicly traded debt securities. At this time, the AMS Fund is not requesting that this Court rescind or modify its consolidation order or "carve out" a special class or subclass for these purchasers. Instead, Movant merely contends that, as the sole institution seeking to be a lead plaintiff in order to protect such interests, it is in the best position to ensure that all of

the rights of those particular purchasers are protected. While other movants have filed complaints on behalf of all securities purchasers or purporting to represent parties holding multiple securities (debt and equity), by appointing the AMS Fund as lead plaintiff, the Court will ensure that the holders of debt securities will have all of their interests adequately represented and, should any conflict in representing the interests of various securities holders arise, the AMS Fund stands ready to serve as the specially designated representative of all debt security holders via designation of a subclass or otherwise. See, e.g., McDonald, supra (it may "be preferable in some actions to fix upon 'pure' shareholders or 'pure' bondholders as representative parties"); In re The Pittsburgh And Lake Erie Railroad Company Securities And Antitrust Litigation, supra (reflecting that shareholder settlements may, at times, be unfair to bondholders).

### C. The AMS Fund Meets And, In Fact, Exceeds All Of The Other Requirements Of Fed.R.Civ.P. 23 Required To Serve As Lead Plaintiff.

Under 15 U.S.C. § 78z-1(a)(3)(B), in addition to satisfying the requirements of the PSLRA, the lead plaintiff also must "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." Federal Rule of Civil Procedure 23(a) provides that a party may serve as a class representative only if the following four requirements are satisfied:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Of the four prerequisites to class certification, only two -- typicality and adequacy -- directly address the personal characteristics of the class representative. Consequently, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule

23(a), and defer examination of the remaining requirements until the lead plaintiff moves for class certification. Lax v. First Merchants Acceptance Corp., 1997 WL 461036 * 20 (N.D. Ill. Aug. 11, 1997); Oxford Health, 182 F.R.D. at 49-50; Fischler v. Amsouth Bancorporation, 1997 WL 118429 (M.D. Fla. February 6, 1997). As detailed below, the Proposed Lead Plaintiff satisfies both the typicality and adequacy requirements of Rule 23. Thus, there is no impediment to the appointment of the AMS Fund as lead plaintiff in this case.

Under Rule 23(a)(3), the claims or defenses of the representative parties must be typical of those of the class. Typicality exists if claims "arise ... from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." See In re Drexel Burnham Lambert Group, Inc., 960 F. 2d 285, 291 (2d Cir. 1992), cert. dismissed sub nom., 506 U.S. 1088 (1993). The claims of the class representative, however, need not be identical to the claims of the Class to satisfy typicality.[8] Instead, the courts uniformly have recognized the following requirements with respect to typicality:

> The typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members. Thus, similarity of legal theory may control even in the face of differences of fact.

De La Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983) (citations omitted); see also Halperin v. Nichols, Safina, Lerner & Co., 1996 WL 634037 (N.D. Ill. Oct. 29, 1996). The Proposed Lead Plaintiff clearly satisfies this requirement because, as is the case of all other class

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[8]Here, any differences in interest that may arise or exist between holders of debt securities and other securities do not in any way affect the general legal arguments to be made to establish defendants' liability. Rather, the differences, if any, that may arise relate to the relative interests of debt security vs. equity security holders and such differences, as explained above, only serve to confirm the AMS Fund's inherent adequacy as a lead plaintiff to represent the interests of debt security holders.

members, it (a) purchased Enron securities on the open market during the Class Period, and (b) thereby suffered damages. Thus, the AMS Fund's claims are typical of those of other class members since their claims and the claims of other class members arise out of the same course of events.

Under Rule 23(a)(4) the representative parties must "fairly and adequately protect the interest of the class." One inquiry to be addressed regarding the adequacy of a proposed lead plaintiff, such as the AMS Fund, is whether any conflicts exist between the interests of the proposed lead plaintiff(s) and the members of the class. Oxford Health, 182 F.R.D. at 80. To the best of the AMS Fund's knowledge, information and belief, no conflicts presently exist between its interests and those of the members of the Class.[9] Moreover, in light of its charitable nature and inherent fiduciary obligations, the AMS Fund will serve as more than an adequate representative of the Class. Simply put, as described above, the AMS Fund is a charitable institution which acts selflessly on behalf of and for others in need. Thus, it is entirely within the scope of the AMS Fund's charitable nature and purpose to act upon behalf of fellow debt security holders that have suffered losses as a result of defendants' misconduct.[10] Furthermore, the AMS Fund has taken significant steps which demonstrate that it has and will protect the interests of the Class, including Movant's retention of

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[9]Movant's interests clearly are aligned with the members of the Class, and there is no evidence of any antagonism between the interests of such lead plaintiff and the Class. As detailed above, the Proposed Lead Plaintiff shares numerous common questions of law and fact with the members of the Class and its claims are typical of the claims of other class members.

[10]As a charitable organization, the AMS Fund is "an organization or fund that helps the needy." See The American Heritage Dictionary (3d Ed.). In contrast to other institutions that invest for their own financial interest, the AMS Fund has a unique fiduciary responsibility to maintain its own financial integrity for the benefit of others. Simply put, it is an institution without any objective for personal gain. By appointing the AMS Fund as lead plaintiff and recognizing its exceptional suitability as a lead plaintiff (in light of its institutional dedication to the interests of others), the Court also will send a powerful message to other charitable institutions, thereby encouraging their involvement in similar litigation regarding other matters in the future.

competent and experienced counsel to prosecute these claims, its actions in seeking to freeze certain assets of defendants and its close monitoring of all developments (including those in Congress) regarding Enron. Thus, the AMS Fund easily satisfies and exceeds the commonality, typicality and adequacy requirements of Rule 23.

### D. The AMS Fund Should Be Deemed To Have The Largest Financial Interest Based Upon The Total Financial Interest Of Any Group Of Lead Plaintiffs Ultimately Appointed By The Court.

It is well established under the PSLRA that, in determining the largest financial interest to be adjudged the presumptive lead plaintiff(s), the Court should make that determination based upon the financial interest of the entire group appointed as lead plaintiff(s), thereby ensuring diversity and adequacy of the class representatives. As the Court in Oxford Health, 182 F.R.D. at 48, persuasively explained:

> 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 the lead 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.

Here, on June 6, 2000, the AMS Fund purchased $55,000 in notes (7.7875% due 6/15/03 at

$99.806) on the initial public offering of this debt and has sustained losses in excess of $70,000.[11] By combining the AMS Fund's losses with the losses of any other lead plaintiffs appointed by the Court to represent holders of any other securities, including common and preferred stock, the Court can easily ensure that the lead plaintiffs (as a group) have the largest financial interest while, at the same time, creating a diverse and representative group to serve as lead plaintiffs in this important litigation, thereby fully protecting the interests of all Class members. Oxford, supra.

### E. The Court Should Approve The Choice Of Lead Counsel And Liaison Counsel Of The Proposed Lead Plaintiff.

Pursuant to 15 U.S.C. § 78z-1(a)(3)(B), the Proposed Lead Plaintiff shall, subject to Court approval, select and retain counsel to represent the Class. In that regard, the AMS Fund has selected and designated Scott + Scott, LLC, a law firm based in the State of Connecticut, to serve as lead counsel on behalf of the Class and Hoeffner & Bilek, LLP, to serve as liaison counsel in this case. The law firms selected by the AMS Fund are among the preeminent plaintiffs' class action law firms in the United States, having taken leading roles in numerous important actions on behalf of defrauded investors. Accordingly, the Court should approve Movant's selection of lead and liaison counsel.

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[11]Arguably, these losses could be deemed the largest financial interest or, at a minimum, one of the largest financial interests, in light of the charitable purpose of the AMS Fund and the direct financial impact that these losses will have upon its charitable beneficiaries. Simply put, unlike other investors the AMS Fund's financial interest is significant, apparent and palpable -- as a direct result of the losses suffered by defendants' malfeasance, the funds available for distribution to the worthy programs and charities that the AMS Fund supports have been diminished and the financial impact of each less dollar available for distribution is simply immeasurable in light of the positive, socially desirable activities to which the AMS Fund is solely devoted. In light of the direct impact that such losses will cause to the recipients of grants and donations from the AMS Fund, Movant respectfully suggests that it clearly has the largest (or one of the largest) financial interests in the relief sought on behalf of debt securities holders and thus, presumptiously is entitled to appointment as one of the lead plaintiffs. 15 U.S.C. §77z-1(a)(3)(B)(iii)(I).

## V. CONCLUSION.

For the foregoing reasons, the AMS Fund respectfully request that this Court: (1) appoint it as lead plaintiff pursuant to Section 27(a)(3)(B) of the Securities Act; and (2) approve its selection of lead counsel and liaison counsel and such other relief to which it may show itself justly entitled.

Dated: December 21, 2001

Respectfully submitted,

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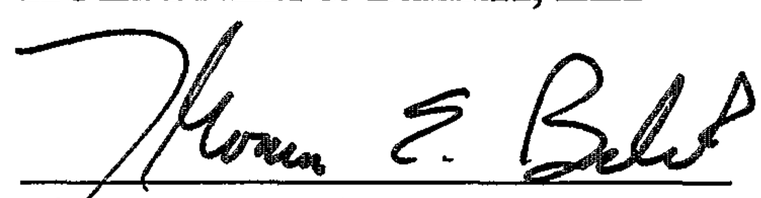

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Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of this instrument has been forwarded to all counsel of record, via certified mail, return receipt requested, and/or via facsimile, and/or via U.S. Mail on this 21st day of December, 2001, properly addressed as follows:

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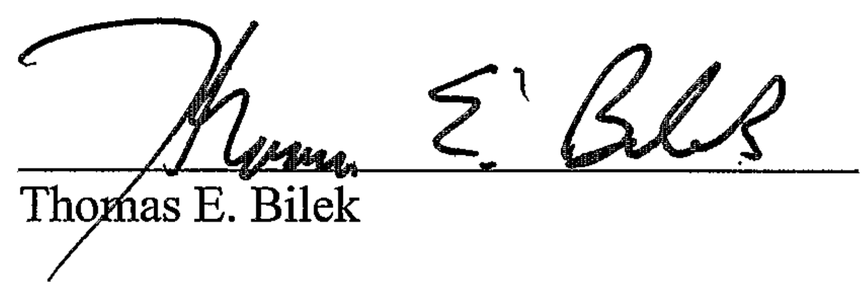

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