

United States Courts
Southern District of Texas
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPOINT
AMALGAMATED BANK, THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, DEUTSCHE ASSET MANAGEMENT,
HBK INVESTMENTS, AND THE CENTRAL STATES PENSION FUND
AS LEAD PLAINTIFF AND TO APPROVE LEAD PLAINTIFF'S
CHOICE OF CO-LEAD AND CO-LIAISON COUNSEL**

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I. INTRODUCTION

Amalgamated Bank ("Amalgamated"), the Regents of the University of California ("Regents"), Deutsche Asset Management International/Deutsche Asset Management Investors ("Deutsche Asset Management"), HBK Investments L.P. ("HBK") and the Central States, Southeast and Southwest Areas Pension Fund (the "Central States Pension Fund") (collectively, the "Enron Institutional Investor Group" or "Movants") who suffered over \$244 million as a result of their purchases of Enron Corp. ("Enron" or the "Company") securities between October 19, 1998 and November 27, 2001 (the "Class Period,")¹ submit this Memorandum of Law in support of their motion pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act") and §27(a)(3)(B) of the Securities Act of 1933 (the "Securities Act") as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"): (1) to be appointed lead plaintiff, and (2) for approval of their selection of class counsel.

Movants are precisely the type of institutional investors that Congress sought to summon and empower when it enacted the PSLRA. *See Gluck v. CellStar Corp.*, 976 F. Supp. 542, 544 (N.D. Tex. 1997) (Buchmeyer, CJ) ("Congress has unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors."). Moreover, as institutional investors, Movants are accustomed to acting as fiduciaries and their experience in legal and financial matters will substantially benefit the class. *See id.* at 546.

Amalgamated is America's oldest union owned and operated Labor Bank, and it has investment relations with over 200 employee benefit funds, including union plans. Amalgamated purchased over 115,000 shares of Enron stock and \$6 million in Enron bonds during the Class Period and has sustained losses of over \$10 million.

The University of California, the nation's premier public research university, was founded in 1868 and is composed of 10 campuses with a mission of teaching, research and public service.

¹ *See* chart entitled "Movants' Purchases, Sales and Losses" attached as Exhibit A the Declaration of James I. Jaconette in Support of Motion to Appoint Amalgamated Bank, the Regents of the University of California, Deutsche Asset Management, HBK Investments, and the Central States Pension Fund as Lead Plaintiff and to Approve Lead Plaintiff's Choice of Co-Lead and Co-Liaison Counsel ("Jaconette Decl."), filed concurrently herewith.

The University has over 183,000 graduate and undergraduate students, three law schools, five medical schools and the nation's largest continuing education program. The University has more than 155,000 employees and is governed by a 26 member Board of Regents, a majority of which are appointed by the Governor of California and confirmed by the state Senate. The Treasurer is responsible for managing the investments, treasury operation and banking services of the UC system and currently manages a portfolio totaling more than \$54 billion. The investment funds managed consist of the University's retirement, defined contribution and endowment funds, including both actively managed equity portfolios and passively managed index funds. These investments provide substantial benefits to current and retired employees and support the University's mission of education, research and public service. During the Class Period, Regents purchased over 2 million shares of Enron stock during the Class Period and sustained losses of over \$144 million.

Deutsche Asset Management, one of the world's largest institutional investment management firms, purchased over \$2 million shares of Enron stock during the Class Period and has sustained losses of over \$61 million. HBK is a private institutional investor which purchased \$58 million in Enron bonds during the Class Period. HBK's losses exceeded \$13 million.

The Central States Pension Fund is a Taft-Hartley Benefits Fund that was established in 1955. The Central States Pension Fund manages the pension benefits of teamsters and their families who participate in the Fund as part of their collectively-bargained benefits. The Fund is one of the nation's largest Taft-Hartley funds with more than 185,000 active participants and benefit payments to more than 195,000 retirees and surviving spouses each month. Since the Fund's 1995 inception, over \$20 billion in benefits have been paid. Annual benefit payments are approximately \$1.8 billion. The Fund's assets as of December 31, 2000 were in excess of \$20 billion. The Fund purchased over 530,000 shares of Enron stock during the Class Period and has sustained losses of over \$14 million.

Both Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") and Lovell & Stewart have been appointed as lead or co-lead counsel in numerous significant class actions, including in *In re NASDAQ Market-Makers Antitrust Litigation*, where plaintiffs' recovery was the largest ever in an antitrust case. Lovell & Stewart, as lead counsel in *In re Sumitomo Copper Litigation*, achieved the largest class action recovery ever under the Commodity Exchange Act.

Milberg Weiss has been recognized in this Circuit as an appropriate choice as lead counsel and already has taken substantial steps to protect the interests of the class. In October 2001, even before the full magnitude of the Enron debacle had become apparent, Milberg Weiss commenced a full-fledged, nationwide investigation of Enron which has since expanded to include hundreds of interviews with former employees and other knowledgeable persons. Additionally, as counsel to Amalgamated, Milberg Weiss has made substantial efforts to freeze the insider sales proceeds and thereby preserve the class' remedies.²

Section 21D of the Exchange Act, as amended by the PSLRA, sets forth the procedure for the selection of lead plaintiff to oversee class actions brought under the federal securities laws.³ Specifically, §21D(a)(3)(A)(i) provides that, within 20 days after the date on which a class action is filed under the PSLRA,

the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class –

- (I) of the pendency of the action, the claims asserted therein, and the purported class period; and
- (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

15 U.S.C. §78u-4(a)(3)(A)(i).

Further, §21D(a)(3)(B)(i) of the Exchange Act states that this Court should consider any motions brought by plaintiffs or purported class members to appoint lead plaintiff filed in response to any such notice by no later than 90 days after the date of publication. 15 U.S.C. §78u-4(a)(3)(B)(i). Under this provision of the Exchange Act, this Court "shall" appoint the "most

² On December 5, 2001, Milberg Weiss, representing Amalgamated, submitted Plaintiff's *Ex Parte* Application For (1) 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 and is pending before this Court.

³ The PSLRA amended both the Securities Act and the Securities Exchange Act by adding new §§27 (15 U.S.C. §77z-1) and 21D (15 U.S.C. §78u-4) respectively. The amendments are virtually identical. For the sake of convenience we will cite only to the Exchange Act amendments.

adequate plaintiff" to serve as lead plaintiff and presume that lead 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).

Movants suffered losses of over \$244 million as a result of their purchases of Enron securities during the Class Period. Movants believe they have the largest financial interest in the relief sought by the class and "otherwise satisf[y] the requirements of Rule 23"; thus they are presumptively entitled to be appointed lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Movants also seek the Court's approval of their selection of co-lead and co-liaison counsel as provided by the statute.

II. PROCEDURAL BACKGROUND

By Order dated December 12, 2001, this Court consolidated 29 securities class actions filed against Enron, its officers and directors and its auditor, Arthur Andersen LLP. The first of the actions was filed on October 22, 2001, shortly after Enron made the October 16, 2001 announcement that it was taking non-recurring charges of \$1.01 billion after-tax, or (\$1.11) loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001.⁴ Each of the securities class actions alleges claims for violations of §§10(b) and/or 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder, and/or under §§11 and 12(a)(2) of the Securities Act on behalf of purchasers of Enron common stock, bonds and preferred securities during the Class Period.⁵

⁴ In the same order, the Court consolidated eight derivative suits under Civil Action No. H-01-3645, *Pirelli Armstrong Tire Corporation Retiree Medical Benefits Trust v. Kenneth L. Lay, et al.*, and eight employee benefits cases under Civil Action No. H-01-3913, *Tittle v. Enron Corp., et al.*

⁵ Enron Preferred Securities include among others the following classes of stock: (1) Enron Capital LLC, 8.00%, 11/30/43 series, 8 million shares outstanding, traded on the New York Stock Exchange; (2) Enron Capital Trust I, 8.3% Series, 8 million shares outstanding, traded on the New York Stock Exchange; (3) Enron Capital Trust II, 8.1250% series (preferred R), 6 million shares outstanding, traded on the New York Stock Exchange; (4) Enron Capital Trust III, 200,000 shares outstanding; (5) Enron Capital Resources LP, 9.0%, 8/31/24 Series A, 3 million shares outstanding, traded on the New York Stock Exchange; (6) Portland General Electric, 7.75%, 6/15/07 series, 300,000 shares outstanding, traded on the NASDAQ; and (7) Portland General Electric, 8.25%,

The Exchange Act, as amended by the PSLRA, requires prompt publication of notice advising class members of their right to move within 60 days of publication to be appointed lead plaintiff. Section 21D(a)(3)(A)(ii) provides 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 publish the notice. 15 U.S.C. §78u-4(a)(3)(A)(ii). Class members who have filed a complaint *or* made a motion pursuant to §21D(a)(3)(B) of the Exchange Act are eligible to be appointed lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B).

On October 22, 2001 pursuant to §21D(a)(3)(A)(i) (15 U.S.C. §78u-4(a)(3)(A)(i)) of the Exchange Act, plaintiffs in the action captioned *Newby v. Enron Corp.*, No. H-01-3624 published a notice of pendency of the action over the *PR Newswire*. Jaconette Decl., Ex. B. That notice advised class members of the existence of the lawsuit and described the claims asserted. This motion is timely filed within 60 days from the publication of the notice.

III. SUMMARY OF PENDING ACTIONS⁶

These related class actions are brought on behalf of persons who purchased or otherwise acquired Enron securities during the Class Period.⁷ In each of these actions, plaintiffs allege that defendants violated §§10(b) and/or 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5, and/or §§11 and 12(a)(2) of the Securities Act, by issuing a series of false and misleading statements that falsely inflated Enron's reported financial performance by hundreds of millions of dollars.

Enron is an Oregon corporation with its principal place of business at 1400 Smith Street, Houston, Texas. Enron is engaged in electricity, natural gas and communications businesses. The Company began a diversification program in 1997 which included making acquisitions and entering new businesses. As defendants promoted these opportunities and reported favorable financial

12/31/35 Series A, 3 million shares outstanding, traded on the New York Stock Exchange.

⁶ This summary is derived from the amended complaint filed by Amalgamated Bank, Civil Action No. H-01-4198 (the "*Amalgamated Action*"), filed on December 11, 2001. See Jaconette Decl., Ex. C. Citations to that complaint are designated "¶__."

⁷ Although some actions have different class periods, these minor differences will be resolved when the lead plaintiff files a consolidated complaint.

results, Enron's stock price began to increase, reaching \$40 per share by mid-1999. Throughout fiscal year 2000, the price of Enron stock substantially increased – rising from \$43.4375 per share on January 3, 2000 to \$83.125 per share on December 29, 2000. Analysts attributed the price rise to, among other things, interest and expectations fostered by defendants regarding Enron's Broadband Services Division, which had been created to trade bandwidth and, as described by the Company, to "deploy a global network for the delivery of comprehensive bandwidth solutions and high bandwidth applications." Unbeknownst to investors, however, the Broadband Services Division was not performing as defendants had led the market to believe.

Exacerbating the problems at the Broadband Services Division, defendants had caused Enron to enter into a series of complicated financial hedge transactions with two limited partnerships, which were controlled by Enron's Chief Financial Officer, defendant Andrew S. Fastow. These transactions, which defendants did not fully detail for investors, purportedly involved hedging transactions in the broadband market and exposed the Company to increased risk and uncertainty given the weakening market for bandwidth. Moreover, Enron's financial statements did not consolidate the results of these partnerships, nor of other subsidiaries, such that Enron's financial statements were materially misstated.

Defendants' expansion plan for Enron was extremely capital intensive and necessitated raising billions of dollars from debt and equity issuances. To make Enron appear more attractive to investors and to secure better credit ratings to decrease the cost of capital, defendants caused Enron to falsify its financial statements, eliminating unprofitable and debt-ridden subsidiaries from Enron's financial statements.

Defendants also lied about the success of Enron's broadband efforts. The problems at the Broadband Services Division finally began to be revealed on October 16, 2001. On that date, defendants surprised the market by announcing that the Company was taking non-recurring charges of \$1.01 billion after-tax, or (\$1.11) loss per diluted share, in the third quarter of 2001, the period ending September 30, 2001. Defendant Lay commented on the substantial charge, stating:

"After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded our performance and earnings potential of our core energy businesses...." ¶¶30, 90.

The press release further detailed the charge as follows: \$287 million related to asset impairments recorded by Azurix Corp.; \$180 million associated with the restructuring of the Company's Broadband Services Division; \$544 million related to losses associated with certain investments; and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

An article in *The Wall Street Journal*, on October 17, 2001, further explained the nature of the "structured finance arrangements with a previously disclosed entity" that was mentioned in the Company's earnings release. According to the article, the structured finance arrangements involved limited partnerships that were managed by Enron's Chief Financial Officer, defendant Fastow. The article stated in pertinent part as follows:

The two partnerships, LJM Cayman LP and the much larger LJM2 Co-Investment LP, have engaged in billions of dollars of complex hedging transactions with Enron involving company assets and millions of shares of Enron stock. It isn't clear from Enron filings with the Securities and Exchange Commission what Enron received in return for providing these assets and shares. In a number of transactions, notes receivable were provided by partnership-related entities.

¶¶32, 92.

The next day, on October 18, 2001, *The Wall Street Journal* further reported on the nature of defendant Fastow's financial arrangements with the Company. The article reported that "Enron ... shrank its shareholder equity by \$1.2 billion as the company decided to repurchase 55 million of its shares that it had issued as part of a series of complex transactions with an investment vehicle" connected to defendant Fastow. The article stated in pertinent part as follows:

According to Rick Causey, Enron's chief accounting officer, these shares were contributed to a "structured finance vehicle" set up about two years ago in which Enron and LJM2 were the only investors. In exchange for the stock, the entity provided Enron with a note. The aim of the transaction was to provide hedges against fluctuating values in some of Enron's broadband telecommunications and other technology investments.

¶¶33, 93.

In response to the news that Enron would be eliminating more than \$1 billion of shareholder equity and that it might impact the Company's credit rating, on October 18, 2001, the price of Enron common stock declined sharply, falling from \$32.20 per share to \$29.00 per share on extremely

heavy trading volume. As the market continued to digest the information, the price of Enron stock continued to decline, trading as low as \$25.87 per share on October 19, 2001.

Then, on November 8, 2001, defendants announced Enron would restate its results for 1997, 1998, 1999, 2000, and interim 2001, to include losses from partnerships which should have been consolidated into Enron's results during those years pursuant to Generally Accepted Accounting Principles ("GAAP"). On this news, Enron's stock declined to as low as \$8.20 before closing at \$8.41 on November 8, 2001, on volume of 60.9 million shares.

Subsequently, as the lurid details about the magnitude of defendants' financial improprieties reached the market, defendants found it increasingly difficult to raise money for Enron. On November 20, 2001, Enron disclosed it would have to pay some \$9.15 billion in debt before it could complete its merger with Dynegy, money Enron didn't have. On this news, Enron's stock dropped to as low as \$4.55, its lowest price in more than a decade. Then, on November 28, 2001, Enron revealed that Dynegy had terminated the Enron acquisition. Enron has now filed for Chapter 11 bankruptcy and it has been reduced to a penny stock.

While Enron's stock was inflated by defendants' misrepresentations, defendants sold their personal stockholdings, pocketing over \$1.1 billion in illegal insider trading proceeds. Plaintiffs were not so fortunate – they purchased Enron securities at inflated prices during the Class Period and thereby suffered huge losses.

IV. ARGUMENT

A. Movants Should Be Appointed Lead Plaintiff

1. Movants Have the Largest Financial Interest in the Relief Sought by the Class

The PSLRA provides that this Court:

[S]hall 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. §78u-4(a)(3)(B)(i).⁸ Moreover, the statute imposes a rebuttable *presumption* that:

⁸ Emphasis added and citations omitted unless otherwise noted.

[T]he most adequate plaintiff in any private action arising under this chapter is the *person or group of persons* that –

* * *

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class....

15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

Thus, the statutory language 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" entitled to presumptive appointment as lead plaintiff. *See, e.g., In re Baan Co. Sec. Litig.*, 186 F.R.D. 214 (D.D.C. 1999) (adopting SEC position that group of three unrelated individuals may serve as lead plaintiff); *Netsky v. Capstead Mortgage Corp.*, No. 3:98-CV-1716-L, 2000 U.S. Dist. LEXIS 9941, at *28 (N.D. Tex. July 12, 2000) ("select group of investors with significant holdings who have suffered significant losses will satisfy the statutory goal of the PSLRA"); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 45 (S.D.N.Y. 1998).

During the Class Period, Movants purchased Enron securities at prices inflated by defendants' false statements and collectively suffered losses of over \$244 million. *See* Jaconette Decl., Ex. A. Movants believe they have the largest financial interest in the outcome of this litigation and, therefore, are presumptively entitled to appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

2. Movants Are Qualified Under Rule 23

Section 21D(a)(3)(B)(iii)(I)(cc) of the Exchange Act provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the qualifications of the class representative, Rule 23(a) requires generally that the claims be typical of the claims of the class and that the representative will fairly and adequately protect the interests of the class. As detailed below, each Movant satisfies the typicality and adequacy requirements of Rule 23(a), and is qualified to be appointed.

3. The Claims of Movants Are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied when the representative plaintiff's claims arise out of the same event or course of conduct as do the other class members' claims, and are based on the same legal theories. *Krogman v. Sterritt*, 202 F.R.D. 467, 472 (N.D. Tex. 2001); *Durrett v. John Deere Co.*, 150 F.R.D. 555, 558 (N.D. Tex. 1993). The threshold typicality and commonality requirements are not high. Rule 23(a) requires only that resolution of the common questions affect all or a substantial number of class members. *Shipes v. Trinity Indus.*, 987 F.2d 311, 316 (5th Cir. 1993). The questions of law and fact common to the members of the class which predominate over questions which may affect individual class members include the following:

1. Whether the federal securities laws were violated by defendants' acts or omissions;
2. Whether defendants participated in and pursued a common course of conduct and fraudulent scheme;
3. Whether defendants omitted and/or misrepresented material facts;
4. Whether defendants knew, had reason to know or recklessly disregarded that their statements were false and misleading or failed to have a reasonable basis for those statements;
5. Whether the prices of Enron's securities were artificially inflated during the Class Period due to defendants' non-disclosures and/or misrepresentations; and
6. The extent of damage sustained by class members and the appropriate measure of damages.

As a result, there is a well-defined community of interest in the questions of law and fact involved in this case, and the claims asserted by Movants are typical of the claims of the members of the proposed class. Movants and members of the class allege that defendants violated the Exchange Act by publicly disseminating materially false and misleading statements about Enron during the Class Period. Movants, as did all of the members of the proposed class, acquired Enron's securities at prices artificially inflated by defendants' fraudulent misrepresentations and omissions, and were damaged thereby. Because the claims asserted by Movants "arise out of the same event or course of conduct as the class members' claims and are based on the same legal theory," typicality is satisfied. *Durrett*, 150 F.R.D. at 558; *Krogman*, 202 F.R.D. at 472.

4. Movants Will Fairly and Adequately Represent the Interests of the Class

The interests of Movants are clearly aligned with the members of the proposed class and there is no evidence of any antagonism between the interests of these Movants and the proposed class members. As detailed above, Movants share substantially similar questions of law and fact with the members of the proposed class and their claims are typical of the members of the class. Each Movant has amply demonstrated its adequacy as a class representative by signing a certification affirming its willingness to serve as, and assume the responsibilities of, a class representative. *See* Jaconette Decl., Exs. D-H. In addition, Movants have selected firms that are highly experienced in prosecuting securities class actions such as this to represent them. *Id.*, Exs. I and J.

As of this filing, Movants have not been served with any papers on behalf of any other applicant or applicant group for appointment as lead plaintiff. Nor have Movants received any notice that any other potential applicant or applicant group has sustained greater financial losses in connection with the purchase and sale of Enron securities during the relevant time frame.

Therefore, Movants satisfy the requirements of Rule 23 and all of the PSLRA's prerequisites for appointment as lead plaintiff in this action and should be appointed lead plaintiff pursuant to 15 U.S.C. §78u-4(a)(3)(B).

B. This Court Should Approve Movants' Choice of Co-Lead and Co-Liaison Counsel

The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to this Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Thus, this Court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa). In these related cases, Movants have selected the law firms of Milberg Weiss and Lovell & Stewart, LLP ("Lovell & Stewart") as co-lead counsel, and the law firms of Schwartz, Junell, Campbell & Oathout, LLP and Hoeffner, Bilek & Eidman, L.L.P. as co-liaison counsel. Milberg Weiss and Lovell & Stewart possess extensive experience litigating securities class actions and have successfully prosecuted numerous securities fraud class actions on behalf of injured investors. *See* Jaconette Decl., Exs. I and J; *see also* *Holley v. Kitty Hawk, Inc.* 200 F.R.D. 275, 282 (N.D. Tex. 2001) (Solis, J.) (noting "the frequency with which the law firm of Milberg Weiss

appears in the cases discussed in this Court's opinion, which in conjunction with their resume suggests their great experience in the securities class action realm"); *Greebel v. FTP Software*, 939 F. Supp. 57, 64 (D. Mass. 1996) ("the court concludes ... that, in light of the conceded expertise of Milberg, Weiss ... in securities class actions, the court should approve Movants' selection of that firm as lead counsel"); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 396 (S.D.N.Y. 1999) ("the unprecedented effort of Counsel [Lovell & Stewart] exhibited in this case led to their successful settlement efforts and its vast results").

V. CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court: (1) appoint Amalgamated Bank, Regents, Deutsche Asset Management, HBK, and the Central States Pension Fund as lead plaintiff pursuant to §21D(a)(3)(B); and (2) approve their selection of co-lead and co-liaison counsel.

DATED: December 21, 2001

Respectfully submitted,

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[Proposed] Co-Lead Counsel for Plaintiffs

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on December 21, 2001, declarant served the MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPOINT AMALGAMATED BANK, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, DEUTSCHE ASSET MANAGEMENT, HBK INVESTMENTS, AND THE CENTRAL STATES PENSION FUNDAS LEAD PLAINTIFF AND TO APPROVE LEAD PLAINTIFF'S CHOICE OF CO-LEAD AND CO-LIAISON COUNSEL by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of December, 2001, at San Diego, California.



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