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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AMALGAMATED BANK, as Trustee for the
LONGVIEW COLLECTIVE INVESTMENT
FUND, LONGVIEW CORE BOND INDEX
FUND and CERTAIN OTHER TRUST
ACCOUNTS, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

KENNETH L. LAY, JEFFREY K. SKILLING,
ANDREW S. FASTOW, RICHARD A.
CAUSEY, JAMES V. DERRICK, JR., J.
CLIFFORD BAXTER, MARK A. FREVERT,
STANLEY C. HORTON, KENNETH D. RICE,
RICHARD B. BUY, LOU L. PAI, ROBERT A.
BELFER, NORMAN P. BLAKE, JR., RONNIE
C. CHAN, JOHN H. DUNCAN, WENDY L.
GRAMM, ROBERT K. JAEDICKE,
CHARLES A. LEMAISTRE, JOE H. FOY,
JOSEPH M. HIRKO, KEN L. HARRISON,
MARK E. KOENIG, STEVEN J. KEAN,
REBECCA P. MARK-JUSBASCHE,
MICHAEL S. MCCONNELL, JEFFREY
MCMAHON, CINDY K. OLSON, J. MARK
METTS, JOSEPH W. SUTTON and ARTHUR
ANDERSEN, LLP,

Defendants.

§ Civil Action No. H 01-4198

CLASS ACTION

**PLAINTIFF'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**

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By counsel and pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure, plaintiff submits this *ex parte* application for a temporary restraining order and order to show cause why a preliminary injunction should not issue, and for particularized expedited discovery, with memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This action was filed by Amalgamated Bank, a Trustee for the LongView Collective Investment Fund, Longview Core Bond Index Fund and certain other trust accounts ("Amalgamated"), on behalf of a class of all persons who purchased Enron Corporation's ("Enron" or the "Company") publicly traded securities between October 19, 1998 and November 27, 2001 (the "Class Period"). Amalgamated is America's oldest union owned and operated Labor Bank, and it has investment relationships with over 200 employee benefit funds, including union plans. Amalgamated purchased over 113,000 shares of Enron stock and \$6 million in Enron bonds during the Class Period and lost over \$10 million as a result of what appears to be one of the most serious securities frauds in history. By this *ex parte* application, plaintiff seeks a temporary restraining order imposing a constructive trust on over \$1.1 billion in insider trading proceeds of obtained by the Individual Defendants¹ in this action, pending a hearing on an Order to Show Cause why a preliminary injunction should not issue. Plaintiff also seeks an order providing for an accounting of the insider trading proceeds obtained by the Individual Defendants and expedited, particularized discovery pursuant to PSLRA §21D(b)(3).²

¹ The Individual Defendants are: Kenneth L. Lay; Jeffrey K. Skilling; Andrew S. Fastow; Richard A. Causey; James V. Derrick, Jr.; J. Clifford Baxter; Mark A. Frevert; Stanley C. Horton; Kenneth D. Rice; Richard B. Buy; Lou L. Pai; Robert A. Belfer; Norman P. Blake, Jr.; Ronnie C. Chan; John H. Duncan; Wendy L. Gramm; Robert K. Jaedicke; Charles A. LeMaistre; Joe H. Foy; Joseph M. Hirko; Ken L. Harrison; Mark E. Koenig; Steven J. Kean; Rebecca P. Mark-Jusbasche; Michael S. McConnell; Jeffrey McMahon; J. Mark Metts; Cindy K. Olson; and Joseph W. Sutton.

² "PSLRA" refers to the Private Securities Litigation Reform Act of 1995, codified at 15 U.S.C. §78u-4.

A. Basis for the Temporary Restraining Order³

1. Summary of Facts Concerning the Enron Fraud and Individual Defendants' Insider Trading

a. Enron's Record Earnings 1997-2001

Enron was an "energy merchant" which traded in natural gas, electricity and communications to wholesale and retail customers. In the four quarters of 2000 and first and second quarters of 2001, Enron reported sales and net income, respectively, of \$13 billion and \$338 million, \$16 billion and \$289 million, \$30 billion and \$292 million, \$41 billion and \$347 million, \$50 billion and \$406 million, and \$50 billion and \$404 million. *Jaconette Decl.*, Exs. 1-6. And, in the past four years, Enron's reported annual revenue grew fivefold, from \$20 billion to \$101 billion. *Jaconette Decl.*, Ex. 7. Those financial results, attested to by the Company's officers and directors as being in conformity with Generally Accepted Accounting Principles ("GAAP"), were manipulated and falsely inflated by hundreds of millions of dollars.

b. The Bogus Transactions and Accounting Falsities

To inflate Enron's reported profits and hide the Company's true debt burden, Fastow, Skilling, and other top Enron executives created limited partnerships which they called Special Purpose Entities ("SPE"). The purported SPEs were actually "strawmen" and were not independent from Enron. *See* *Jaconette Decl.*, Ex. 14; Ex. 13 at 9-13, 18-20; Ex. 13 at Ex. 99.1 (Enron press release). Enron executives controlled the limited partnerships with the Company and Enron financed their operations. *Jaconette Decl.*, Ex. 13 at 9-12.⁴ The limited partnerships borrowed huge sums to purchase assets such as Broadband network cable used by Enron. They also did billions of dollars in paper transactions with Enron, such as trading Enron stock or assets in exchange for notes

³ The cited assertions made by plaintiff in this section, in addition to being supported by the Exhibits attached to the Declaration of James I. *Jaconette* ("*Jaconette Decl.*"), are supported by information gathered from the investigation of plaintiff's counsel.

⁴ Indeed, as reported by securities analysts, two "strawmen" being investigated by the SEC, are Cayman Islands limited partnerships "LJM Cayman LP" ("LJM1") and "LJM2 Co-Investment LP" ("LJM2") formed and operated by defendant Fastow, former Chief Financial Officer of Enron, which were named with the initials of each first name of Fastow's children. *See* *Jaconette Decl.*, Ex. 14. Enron "now" believes that Fastow made in excess of \$30 million from the limited partnerships while serving as Enron's CFO. *Jaconette Decl.*, Ex. 13 at 10.

receivable to Enron which Enron then falsely reported as "assets" on Enron's balance sheet. Jaconette Decl., Ex. 13 at 7-8 ("Accounting Basis for \$1.2 Billion Reduction in Shareholders' Equity"), at 11-12 ("General Summary of LJM Transactions" and "Sale of Assets").

Two of the limited partnerships alone, "Chewco" and "JEDI," concealed hundreds of millions of dollars of both debt and losses during 1997-2000. Jaconette Decl., Ex. 13 at 5 ("Table 1"). In 2000-2001, Enron's falsified balance sheet reflected over \$1 billion in equity which did not exist. *Id.* In 2000 and 2001, Enron's falsified balance sheet reflected \$728 million and \$1 billion in assets, respectively, which also simply did not exist. *Id.* Bogus transactions with Fastow's "LJM1" limited partnership in 1999 alone were used to inflate the assets on Enron's balance sheet by \$222 million. *Id.* Using these bogus transactions to inflate the Company's reported net income and assets on its balance sheet, Enron sold billions of dollars of debt and stock on the public securities markets. ¶17.⁵

c. Insider Trading of the Individual Defendants Exceeded \$1.1 Billion

Enron's consistently improving reported financial performance artificially inflated the price of the Company's stock to as high as \$90.75 during the Class Period.⁶ *Meanwhile, Enron's top insiders sold 17.3 million shares of their Enron stock for proceeds of \$1.1 billion.*

<u>Defendant/Position</u>	<u>Shares Sold</u>	<u>Proceeds</u>
Pai , CEO, Enron Accelerator	5,031,105	\$353,712,438
Lay , Chairman of the Board, CEO (86-2/01)	1,810,793	\$101,346,951
Rice , CEO, Enron Broadband Services	1,138,370	\$ 72,786,034
Mark , Vice Chairman, Director	1,410,262	\$ 79,526,787
Harrison , CEO, Enron subsidiary, Director	1,004,170	\$ 75,211,630
Skilling , Pres, COO (98-2/01), CEO (2/01-8/01)	1,119,958	\$ 66,924,028
Frevert , CEO, Enron Wholesale Services	830,620	\$ 50,269,504
Belfer , Director, Executive Comm. Member	1,052,138	\$ 51,080,967
Horton , CEO, Enron Transportation Services	734,444	\$ 45,472,278

⁵ All paragraph references ("¶__") are to the Class Action Complaint for Violations of the Federal Securities Laws filed by Amalgamated.

⁶ All share and per share amounts are adjusted to reflect Enron's 2-for-1 stock split in August 1999.

<u>Defendant/Position</u>	<u>Shares Sold</u>	<u>Proceeds</u>
Sutton, Vice Chairman	614,960	\$ 40,093,346
Baxter, Vice Chairman, Chief Strategy Officer	577,436	\$ 35,200,808
Hirko, CEO, Enron Broadband Services	473,837	\$ 35,168,721
Fastow, CFO (98-10/01)	561,423	\$ 30,463,609
Causey, Chief Accounting Officer	197,485	\$ 13,329,743
Derrick, General Counsel	230,660	\$ 12,656,238
Koenig, Vice President	129,153	\$ 9,110,466
Olson, Vice President	83,183	\$ 6,505,870
Kean, Director	64,932	\$ 5,166,414
Duncan, Director	35,000	\$ 2,009,700
Buy, Chief Risk Officer	54,874	\$ 4,325,328
McMahon, Treasurer, Enron	39,630	\$ 2,739,226
McConnell, President, Enron Global Markets	30,960	\$ 2,353,431
Blake, Director	21,200	\$ 1,705,328
Foy, Director	31,320	\$ 1,639,590
Metts, Vice President, Director	17,711	\$ 1,448,937
LeMaistre, Director, Compensation Comm.	17,344	\$ 841,768
Jaedicke, Director, Audit Comm. Member	13,360	\$ 841,438
Chan, Director, Audit Comm. Member	8,000	\$ 337,200
Gramm, Director, Audit Comm. Member	10,256	\$ 276,912
TOTALS:	17,344,584	\$1,102,544,672

See Jaconette Decl., Ex. 24 (detailing insider sales by date and amount). See also Ex. A attached hereto (graph depicting the Individual Defendants' massive insider selling as the price of Enron's stock peaked and just before revelation of the fraud).

Enron's directors accounted for over \$300 million of Enron's insider sales, including three members of Enron's audit committee, who reportedly "*are not independent, according to corporate*