

CLERK, U. S. DISTRICT COURT  
 SOUTHERN DISTRICT OF TEXAS  
 04/20/06  
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**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF TEXAS  
 HOUSTON DIVISION**

In re ENRON CORP. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL – 1446
<p>PAMELA M. TITTLE, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ENRON CORP., et al.,</p> <p style="text-align: right;">Defendants.</p>	CIVIL ACTION NO. H-01-3913 AND CONSOLIDATED CASES

**ORDER PRELIMINARILY APPROVING PARTIAL SETTLEMENT WITH  
 NORTHERN TRUST, CONDITIONALLY CERTIFYING CLASS FOR PURPOSES OF  
 SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE, AND  
 SCHEDULING HEARING ON FAIRNESS OF SETTLEMENT PURSUANT TO  
 FEDERAL RULE CIVIL PROCEDURE 23(E)**

WHEREAS, consolidated class actions are pending before this Court, including *Tittle, et. al. vs. Enron Corp., et. al.*, No. H-01-3913 (Southern District of Texas); and

WHEREAS, the *Tittle* Named Plaintiffs and The Northern Trust Company ("Northern Trust") have applied to the Court, pursuant to Fed. R. Civ. P. 23, for an Order approving the

Partial Settlement of the above-named action as to them in accordance with the terms and provisions of that certain Tittle Class Action Settlement Agreement, dated April 13, 2006, by and among the Named Plaintiffs and Northern Trust (the "Settlement Agreement" or "Agreement"), which sets forth the terms and conditions for a proposed settlement of the action as to Northern Trust and for dismissal of the action with prejudice as to Northern Trust;

WHEREAS, the Agreement provides for the conditional certification of the Settlement Class, solely for the purposes of settlement; and

WHEREAS, the Court has read and considered the Agreement and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed in the premises, and with good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order (the "Preliminary Approval Order") incorporates by reference the definitions in the Agreement, and all capitalized terms used herein shall have the same meanings set forth in the Agreement.

2. The Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including all members of the proposed Settlement Class and Northern Trust.

3. The Court preliminarily approves the Agreement, including the releases contained therein, and the settlement as being fair, reasonable, and adequate to the Settlement Class.

4. Solely for the purposes of the settlement, the Court now finds and concludes that:

a) With respect to the Plaintiffs' Released Claims, particularly in light of the Agreement: (1) the members of the Settlement Class are so numerous that joinder of all Class members in this action is impractical; (2) there are questions of law and fact common to the Settlement Class; (3) the claims of the Named Plaintiffs are typical of the claims of the Settlement Class; and (4) in negotiating and entering into the Agreement, the Named Plaintiffs

and their Counsel have fairly and adequately represented and protected the interests of all Settlement Class members;

b) With respect to the Settlement Class members' claims: (1) the prosecution of separate actions by individual Settlement Class members would create a risk of inconsistent or varying adjudications with respect to such individual Settlement Class members that would establish incompatible standards of conduct for Northern Trust; and (2) adjudications with respect to individual Settlement Class members would, as a practical matter, dispose of the interests of other individual Settlement Class members, not parties to the *Tittle* action or substantially impair or impede the ability of other such individual Settlement Class members to protect their interests.

5. With respect to the Settlement Class members' claims, the Settlement Class is hereby conditionally certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(1) in accordance with the following definition:

"Settlement Class" means, collectively, (a) all Persons who were at any time participants in any of the Enron Plans during the period starting on January 1, 1995 through and including December 2, 2001; and (b) as to each Person within the scope of subsection (a) of Section 1.32 of the Agreement, his, her or its beneficiaries, alternate payees, Representatives and Successors-In-Interest, provided, however, that the "Settlement Class" shall not include any Defendant in the *Tittle* Action, or any of their immediate family members, beneficiaries, alternate payees, Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves are or were Participants in any Enron Plan, who shall be considered members of the Settlement Class with respect to their own Enron Plan Accounts.

6. Solely for the purposes of the Agreement, the Named Plaintiffs in the *Tittle* action are certified as class representatives pursuant to Fed. R. Civ. P. 23(b)(1).

7. The Court approves, as to form and content, the Notice of Proposed Partial Class Action Settlement annexed to the Memorandum in Support of *Tittle* Plaintiffs' Motion for Preliminary Approval of Proposed Partial Settlement (the "Mailed Notice").

8. The Court approves, as to form and content, the Publication Notice annexed to the Memorandum in Support of *Titlle* Plaintiffs' Motion for Preliminary Approval of Proposed Partial Settlement (the "Publication Notice").

9. The date and time of the Fairness Hearing shall be added to the Mailed Notice and the Publication Notice before they are mailed and published, respectively, in accordance with paragraph 11(a) and (b) below.

10. The Court finds that the mailing, publication, and distribution of the Mailed Notice and Publication Notice substantially, in the manner and form set forth in paragraphs 11(a), (b), and (c) below, constitutes the best notice practicable under the circumstances, including individual notice to all Settlement Class members who can be identified through reasonable effort, and constitutes valid, due, and sufficient notice to all persons entitled thereto, complying fully with the requirements of Fed. R. Civ. P. 23 and due process.

11. Lead Counsel is empowered to supervise and administer the notice procedure, as set forth below:

(a) Commencing on or before May 5, 2006, the Mailed Notice shall be mailed, by first class mail, postage pre-paid, to all Settlement Class members who can be identified by Lead Counsel, with reasonable effort, at each such Settlement Class member's known address; and

(b) On or before May 5, 2006, the Publication Notice shall be published in the *Houston Chronicle*, the *Oregonian*, the *Omaha World Hearld*, *The Wall Street Journal* and on Lead Counsels' websites.

(c) At or prior to the Fairness Hearing (as defined below), Lead Counsel shall file with the Court and serve on counsel for Northern Trust proof by declaration or affidavit of the mailing and publication described in paragraphs 11(a) and 11(b) above.

12. Settlement Class members who wish to comment or object to the Agreement must do so in accordance with the instructions contained in the Mailed Notice.

13. All persons who fall within the definition of the Settlement Class and who do not timely object, and/or comment, in accordance with the instructions in the Mailed Notice, shall be subject to and bound by the provisions of the Agreement, the Releases contained therein, and the Judgment with respect to all released claims.

14. A hearing (the "Fairness Hearing") shall be held at 1:30 (time) P.M. 24 day, July, 2006, before The Honorable Melinda Harmon, United States District Judge, at the United States District Court for the Southern District of Texas, Bob Casey, United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002, to determine whether:

(a) the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

(b) this Action satisfies the applicable pre-requisites for class action treatment under Fed. R. Civ. P. 23(a) and 23(b)(1) for purposes of the Settlement;

(c) the Settlement has been negotiated at arm's length by the Named Plaintiffs and their Counsel on behalf of the Plan and the Settlement Class members, the Named Plaintiffs have acted independently, the Named Plaintiffs interests are identical to the interests of the Plan and the Settlement Class members, and the negotiations and consummation of the Settlement by the Named Plaintiffs on behalf of the Plan and the Class members do not constitute "prohibited transactions" as defined by ERISA §§ 406(a) or (b);

(d) an Order Approving Settlement should be entered and whether the Named Plaintiffs and Northern Trust should be released of and from the released claims, as provided in the Agreement;

(e) the Settlement Agreement does not release, bar or waive any Claim that can or has been asserted under the state or federal securities laws by the Enron Plans, the Enron Plans' Trustees, or any individual member of the Settlement Class directly or derivatively in the *Newby* Action;

(f) the Bar Order provisions in the Agreement should be entered;

(g) the proposed Plan of Allocation of the Settlement is fair, reasonable, and adequate and should be approved by this Court;

(h) Counsels' application for an award of attorneys' fees and expenses pursuant to the common fund doctrine is fair, reasonable, and adequate and should be approved by the Court;

(i) the request by Counsel for additional compensation to the Class Representatives in the amount of \$7000 each for their continued efforts in this litigation is reasonable and fair; and

(j) for the Court to rule upon such other matters as contemplated by the Agreement or as the Court deems just and proper.

15. The application by Counsel for Plaintiffs with respect to attorneys' fees and expenses, and all papers in support thereof, shall be filed with the Court and served on all counsel of record no later than June 9, 2006. Copies of such materials shall be available for inspection at the office of the Clerk and on Lead Counsels' websites.

16. All papers in response to any objections and briefs in support of Final Approval (the "Final Motion") shall be filed and served upon the parties set forth below by 5:00 P.M. Central Time on July 14, 2006.

17. Any Settlement Class member may appear and show cause (if he, she, or it has any) why the Court should or should not: (1) approve the proposed settlement as set forth in the Agreement as fair, reasonable, and adequate; (2) enter an Order of Final Judgment and Dismissal; (3) approve the plan of allocation; (4) grant the additional compensation to the Class Representatives; or (4) approve Lead Counsels' Petition for Attorneys' Fees and Expenses, not to exceed the amount set forth in the Mailed Notice and Publication Notice; provided, however, that no person shall be heard with respect to, or shall be entitled to contest, the foregoing matters, unless on or before 5:00 P.M. Central Time on June 29, 2006, that person has served by hand, or by first class mail notice of his, her, or its intention to appear, setting forth briefly each

objection and the basis therefore, together with copies of any briefs and papers in support of said objections and proof of membership in the Settlement Class, upon:

Steve Berman and Clyde Platt  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 5<sup>th</sup> Avenue, Suite 2929  
Seattle, WA 98101;

and

Lynn Lincoln Sarko and Britt L. Tinglum  
KELLER ROHRBACK, LLP  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101

(on behalf of the Plaintiffs in the *Tittle* action);

and upon:

Linda L. Addison  
Reagan M. Brown  
Fulbright & Jaworski  
1301 McKinney, Ste. 5100  
Houston, TX 77002-3095

(on behalf of Northern Trust);

and has filed said objections, papers, and briefs with the Court, upon:

Clerk of the Court  
United State District Court  
Southern District of Texas – Houston Division  
515 Rusk Avenue  
Houston, TX 77002.

Unless otherwise ordered by the Court, any Settlement Class member who does not make his, her, or its objection in the manner provided for herein, shall be deemed to have waived such objection and shall forever be enjoined from making any objection to the foregoing matters.

18. The Court may adjourn the Fairness Hearing from time to time and without further notice to the Settlement Class. The Court reserves the right to approve the settlement at or

after the Fairness Hearing with such modifications as may be consented to by the settling parties and without further notice to the Settlement Class, to enter an Order of Final Judgment and Dismissal, dismissing the action with prejudice as to Northern Trust and against the named Plaintiffs and the Settlement Class, and to approve Counsels' application for attorneys' fees and expenses at or after the settlement hearing and without further notice to the Settlement Class.

19. Upon entry of the Order of Final Judgment and Dismissal, the Named Plaintiffs and each of the Settlement Class members, on behalf of themselves, their successors, assigns, and any other person claiming (now and in the future) through or on behalf of them, and regardless of whether any such named Plaintiff or Settlement Class member ever seeks or obtains by any means any distribution from the Settlement Trust, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Plaintiffs' Released Claims against Northern Trust and shall have covenanted not to sue all such Plaintiffs' Released Claims with respect to Northern Trust, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Plaintiffs' Released Claims against Northern Trust.

20. All reasonable costs and expenses incurred in identifying and providing notice to Settlement Class members and in administering the Settlement Fund shall be paid as set forth in the Agreement.

21. The Court retains jurisdiction over all proceedings arising out of or related to the Settlement Agreement.

22. If for any reason the Settlement Agreement does not become effective in accordance with the terms of the Settlement Agreement, this Preliminary Approval Order shall be rendered null and void and shall be vacated *nunc pro tunc*.

23. Without further order of the Court or without further notice to the Settlement Class, the settling parties may agree to reasonable extensions of time to carry out any of the provisions of this Preliminary Approval Order or the Agreement.



24. Pending final determination as to whether the settlement, as set forth in the Settlement Agreement, should be approved, no Settlement Class member shall commence, prosecute, pursue, or litigate any Plaintiffs' Released Claims against Northern Trust, whether directly, representatively, or in any other capacity, and as regards to whether or not any such Settlement Class member has appeared in the action.

**IT IS SO ORDERED.**

Signed this <sup>th</sup> 20 day of April, 2006.

  
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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE