

United States Courts
Southern District of Texas
ENTERED

JUN - 3 2004

Michael N. Müby, Clerk of Court

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

PAMELA M. TITTLE, et al.,

Plaintiffs,

v.

ENRON CORP., et al.,

Defendants.

CIVIL ACTION NO. H-01-3913
CONSOLIDATED CASES

**ORDER PRELIMINARILY APPROVING PARTIAL SETTLEMENT
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 Settling Defendants 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 Class Action Settlement Agreement among

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them, dated April 15, 2004 (the "Agreement"), which, together with the schedules and exhibits thereto, sets forth the terms and conditions for a proposed settlement of the action as to the Settling Defendants and for dismissal of the action with prejudice as to the Settling Defendants;

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

WHEREAS, the Court has read and considered the Agreement and the schedules and exhibits thereto 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 Plaintiff Class and Defendants.

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 Agreement, 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 *Title* Settlement Class Members' claims: (1) the prosecution of separate actions by individual *Title* Settlement Class Members would create a

risk of inconsistent or varying adjudications with respect to such individual *Titlle* Settlement Class Members that would establish incompatible standards of conduct for the Settling Defendants; and (2) adjudications with respect to individual *Titlle* Settlement Class Members would, as a practical matter, dispose of the interests of other individual *Titlle* Settlement Class Members, not parties to the *Titlle* action or substantially impair or impede the ability of other such individual *Titlle* Settlement Class Members to protect their interests.

5. With respect to this *Titlle* 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, all persons who were participants or beneficiaries in the Enron Corp. Savings Plan (401K), the Enron Corp. Employee Stock Ownership Plan (ESOP) and/or the Enron Corp. Cash Balance Plan and any and all predecessors and successors to such plans (the "Plans") during the period January 1, 1995 through June 7, 2002.

6. Solely for the purposes of the Agreement, the Named Plaintiffs in the *Titlle* 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 Class Action Settlement annexed to the Memorandum in Support of *Titlle* Plaintiffs' Motion for Preliminary Approval of Proposed Partial Settlement as Exhibit C (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 as Exhibit D (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. The Notice Administrator is empowered to supervise and administer the notice procedure, as set forth below:

(a) Commencing on or before June 9, 2004, the Notice Administrator shall mail or cause to be mailed, by first class mail, postage pre-paid, copies of the Mailed Notice to all Settlement Class Members who can be identified by class counsel, with reasonable effort, at each such Settlement Class Member's known address; and

(b) On or before June 9, 2004, the Notice Administrator shall cause the Publication Notice to be published in the *Houston Chronicle*, in *The Wall Street Journal*, in *The Oregonian*, in *The Omaha World-Herald*, and on class counsels' websites.

(c) At or prior to the fairness hearing (as defined below), class counsel shall file with the Court and serve on counsel for the Settling Defendants 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 9:00 A.M. Thursday, August 19, 2004, 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:

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

(b) finally whether 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) whether the Settlement has been negotiated at arm's length by the Plaintiffs and their counsel on behalf of the Plan and the Plaintiff Class, whether the Plaintiffs have acted independently and that their interests are identical to the interests of the Plan and the Plaintiff Class, and for the Court to determine that the negotiations and consummation of the Settlement by the Plaintiffs on behalf of the Plan and the Plaintiff Class do not constitute "prohibited transactions" as defined by ERISA §§ 406(a) or (b);

(d) whether the Order Approving Settlement as provided under the Agreement should be entered and whether the Released Parties should be released of and from the Plaintiffs' Released Claims, as provided in the Agreement;

(e) whether the Underwriters Released Claims should not release any claims against the Underwriters or any other insurance carriers pertaining to coverage under the fidelity bonds that provide coverage to the Plans, including St. Paul Crime Loss Indemnity Policy, Policy No. 400 JW 6221; Federal Insurance Policy, Policy No. 8109-28-95G; Great American Insurance Company, Policy No. CRP 268-75-60, and any other fidelity bonds that may provide coverage to the Plans;

(f) whether 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*;

(g) whether the bar order provisions in the Agreement should be entered;

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

(i) whether Plaintiffs' 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; and

(j) to rule upon such other matters as the Agreement contemplates and as the Court may deem just and proper.

15. Any 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 July 30, 2004. Copies of such materials shall be available for inspection at the office of the Clerk and on Class Counsels' websites.

16. All papers detailing the plan of allocation for the proceeds of the Settlement Agreement, shall be filed with the Court and served on all counsel of record no later than June 30, 2004. Copies of such plan of allocation shall be available for inspection at the office of the Clerk and on Class Counsels' websites.

17. All papers in response to any objections and briefs in support of Final Approval (the "Final Motion") shall be filed by August 9, 2004.

18. 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 the Order of Final Judgment and Dismissal substantially in the form annexed as Exhibit E to the Memorandum in Support of *Titlle* Plaintiffs' Motion for Preliminary Approval of Proposed Partial Settlement; (3) approve the plan of allocation; or (4) approve Class Counsels' Petition to Establish Reserves 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 July 9, 2004, 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, LLP
1301 5th Avenue, Suite 2900
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:

Kathy Patrick
Michael K. Oldham
Gibbs & Bruns, LLP
1100 Louisiana, Suite 5300
Houston, TX 77002

(on behalf of the Settling Defendants);

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 disclosed from making any objection to the foregoing matters.

19. 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. The Court further reserves the right to enter the Order of Final Judgment and Dismissal, dismissing the action with prejudice as to the Settling Defendants and against the named Plaintiffs and the Settlement Class at or after the settlement hearing and without further notice to the Settlement Class.

20. 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 all Settling Defendants and shall have covenanted not to sue all such Plaintiffs' released claims with respect to all such Settling Defendants, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Plaintiffs' Released Claims against any Settling Defendant.

21. The Fiduciary of the Savings Plan and ESOP shall, within ten (10) calendar days of receiving the Mailed Notice, send a list of the names and addresses of such participants in the Savings Plan, ESOP and Cash Balance Plan to the Notice Administrator, in which event the Notice Administrator shall promptly mail the Mailed Notice to such participants in the Savings Plan, ESOP and Cash Balance Plan.

22. 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.

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

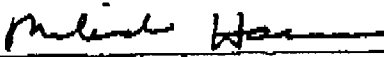
24. If for any reason the Settlement Agreement does not become effective in accordance with the terms of the Settlement Agreement, this Preliminary Approval Order shall be rendered null and void and shall be vacated *nunc pro tunc*.

25. Without further order of the Court, 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.

26. 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 any Settling Defendant, 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 31st day of May 2004.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE