

United States Courts
Southern District of Texas
ENTERED

SEP 13 2005

Michael N. Milby, Clerk

**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 OF FINAL JUDGMENT, DISMISSAL, AND BAR ORDER

THIS MATTER, having come before the Court for hearing pursuant to the Order of this Court, dated July 27, 2005 on the application of the Settling Parties for approval of the Tittle Class Action Settlement Agreement, dated July 6, 2005, by and among the Named Plaintiffs, Enron Corp. ("Enron"), State Street Bank and Trust Company for itself and as Independent Fiduciary of the Enron Plans, and the Official Committee of Unsecured Creditors appointed in Enron's Chapter 11 case (the "Settlement Agreement" or "Agreement"), which, together with the 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, and due and adequate notice having been given to the Settlement Class (as defined in the Agreement) as required in said Order, and the Court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises and good cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

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

2. This Court has jurisdiction over the subject matter of the action, and over all members of the Settlement Class.

3. The notice given to the Settlement Class and to the Non-Settling Defendants and Barred Persons of the Settlement and the other matters set forth in the Agreement was the best notice practicable under the circumstances, including individual notice to all members of the Settlement Class who could be identified through reasonable effort. Said notice provided due and adequate notice of these proceedings and of the matters set forth in the Agreement, including the proposed Settlement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

4. Following the Fairness Hearing and all pleadings and argument submitted in connection therewith, and the record as a whole, the Court grants final approval of the Settlement Class.

5. The Court finds that the Settlement was negotiated at arm's length by Plaintiffs' counsel and counsel for the Settling Defendants. The Court finds that, to the extent any of the transactions required by the Agreement and the Supplemental Amended Plan of Allocation might otherwise constitute a transaction prohibited by ERISA § 406(a), 29 U.S.C. § 1106(a), such transactions satisfy the provisions of Prohibited Transaction Exemption 2003-39. 68 Fed. Reg. 75632 (2003). The Settlement is reasonable in light of the Plans' likelihood of less than full recovery from the Settling Defendants, the risks and cost of litigation, and the value of claims foregone. The terms and conditions of the Settlement are no less favorable to the Plans than

comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances. The Settlement is not part of an agreement, arrangement, or understanding to benefit a party in interest. No extension of credit by the Plans to any party in interest is contemplated by the terms of this Judgment.

6. On July 27, 2005, the Court preliminarily approved the Settlement Class, 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, at any time, participants in the Enron Plans during the period from January 21, 1998 up to and including December 2, 2001, and his or her beneficiaries, alternate payees (including spouses of deceased persons who were Plan participants), 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, beneficiaries, alternate payees (including spouses of deceased persons who were Plan participants), representatives or successors-in-interest, except for spouses and immediate family members who themselves are or were participants in any of the Enron Plans, who shall be considered members of the Settlement Class with respect to their own Enron Plan accounts.

7. The Court finds that certification of the Settlement Class is proper under Fed. R. Civ. 23(a) and (b)(1). The Plaintiffs satisfy all of the requirements under 23(a) in that numerosity, typicality, commonality, and adequacy are established as to the Settlement Class. In addition, the Court finds that class certification is proper under Fed. R. Civ. P. 23(b)(1): the failure to certify the Class would create the risk of inconsistent adjudications with respect to individual class members which would establish incompatible standards of conduct for Defendants, and would as a practical matter be dispositive of the interests of the other members of the class not parties to the adjudications or substantially impair or impede their ability to protect their interests. As a breach of fiduciary duty case brought on behalf of the Plans, pursuant to ERISA §502(a)(2), this case is ideally suited to certification under Fed. R. Civ. P. 23(b)(1).

8. For the purposes of the Agreement and the Settlement Class, the Named Plaintiffs in the Tittle action are appointed to serve as class representatives pursuant to Fed. R. Civ. P. 23.

9. As required by Fed. R. Civ. P. 23(g), the Court has considered: (i) the work Lead Counsel have done in identifying or investigating potential claims in this action; (ii) Lead Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this action; (iii) Lead Counsel's knowledge of the applicable law, and in particular, their knowledge of ERISA as it applies to claims of the type asserted in this action (breach of fiduciary duty claims that pertain to the Plan's investment in company stock); and (iv) the resources counsel have committed to representing the class. Based on these factors, the Court finds that Lead Counsel have fairly and adequately represented the interests of the Settlement Class, and shall continue to serve as class counsel with respect to the Settlement Class and in this action.

10. Pursuant to Fed. R. Civ. P. 23, the Court hereby approves the Settlement as set forth in the Agreement, finds that said Settlement is, in all respects, fair, reasonable, and adequate with respect to the Settlement Class, and directs that the Settlement be consummated in accordance with the terms and conditions set forth in the Agreement.

11. The Court finds that the plans of allocation that pertain to distribution to class members of the Settlement Amount are fair, reasonable, and adequate.

12. The Court hereby dismisses the action in its entirety as to the Defendant Releasees, and against the named Plaintiffs, and the Settlement Class, with prejudice and without costs (except as otherwise provided in the Agreement).

13. The Court hereby enters a Bar Order pursuant to the terms of the Agreement, whose terms are specified below, and finds that each of its terms is fair to the Settlement Class, the Settling Defendants, the Non-Settling Defendants, the Enron Plans, the Barred Persons, and the IBEW and its members arising from the claims asserted in that certain litigation styled Portland General Electric v. International Brotherhood of Electrical Workers, Local 125, Case No. A122868 and Case No. 0205-05732, currently pending in the Court of Appeals of the State of Oregon and Multnomah County Circuit Court.

14. The Court hereby bars all Barred Persons and any Person purporting to act on their behalf or purporting to assert a claim under or through them from bringing (i) any Claims against the Releasees for indemnity and/or contribution arising out of the Tittle Action, (ii) any other Claims arising out of the Released Claims, including, without limitation, any Claims relating to the payment of the Class Settlement Amount (collectively, the “Barred Claims”) and (iii) any Barred Claims against the Releasees in any forum, action or proceeding of any kind;

15. Because the Barred Persons are barred from asserting any Barred Claims against the Releasees, any judgments entered against the Barred Persons under the Amended Complaint in the Tittle Action will be reduced by the Judgment Reduction Amount, which shall mean, with respect to any Barred Person, an amount determined by the this Court or the Bankruptcy Court, as the case may be, at the time of entry of any judgment against such Barred Person, equal to the greatest of (1) the Settlement Credit, (2) the Contribution Credit and (3) the Indemnity Credit, with said terms having the following meanings:

a. “Indemnity Credit” shall mean an amount equal to the value, if any, that the Houston District Court or the Bankruptcy Court, as the case may be, determines that a Barred Person would have been entitled to receive, but for the effectiveness of the Bar Order, with respect to any contractual indemnity claim against Enron with respect to the Barred Person’s liability in the Tittle Action.

b. “Contribution Credit” shall mean an amount equal to the value, if any, that the Houston District Court or the Bankruptcy Court, as the case may be, determines a Barred Person would have been entitled to receive, but for the effectiveness of the Bar Order, with respect to any claim against Enron for contribution or equitable indemnification with respect to the Barred Person’s liability in the Tittle Action.

c. “Settlement Credit” shall mean (1) the dollar value of all distributions received or to be received by the Settlement Class with respect to the Enron Claim, including, without limitation, the amount determined by the Bankruptcy Court to be a reasonable estimate of the value of future distributions to be made on account of the

Enron Claim, and (2) in the event that (a) the Enron Claim is transferred by the Named Plaintiffs to a third party or (b) a cash distribution is elected in accordance with the terms and provisions of Section 4.1 hereof, the greater of (i) the proceeds derived from such transfer and (ii) the amount of the cash distribution elected.

16. Nothing in this Bar Order shall in any manner limit any joint and several liability applicable to any Non-Settling Defendant under ERISA as to the portion of any judgment against such Non-Settling Defendant in the *Title* Action remaining after application of any Judgment Reduction Amount provided for in the Settlement Agreement;

17. The Court hereby permanently enjoins the Settling Defendants from bringing against the Barred Persons, either derivatively or on behalf of themselves, or through any Person purporting to act on their behalf or purporting to assert a Claim under or through them, any of the Barred Claims in any forum, action or proceeding of any kind; provided, however, that a Settling Defendant shall not be enjoined from bringing Barred Claims against a Barred Person if for any reason such Barred Person asserts, or is legally not barred by this Bar Order from bringing, Barred Claims against such Settling Defendant;

18. The Court hereby bars all Claims against the Releasees by the IBEW and its members arising from or relating to the claims asserted in that certain litigation styled Portland General Electric v. International Brotherhood of Electrical Workers, Local 125, Case No. A122868 and Case No. 0205-05132, currently pending in the Court of Appeals of the State of Oregon and Multnomah County Circuit Court, respectively;

19. The Court hereby permanently enjoins the members of the Settlement Class from bringing any Released Claim against any Settling Defendant, either derivatively or on behalf of themselves, or through any Person purporting to act on their behalf or purporting to assert a Released Claim under or through them, in any forum, action or proceeding of any kind;

20. The Court has considered the written and/or oral objections presented by individual class members and finds that the objections are insufficient to disturb the

reasonableness of the Settlement. The objections of Mr. Novotny, Mr. Turbitt, Ms. Rhodes, Mr. Nunley and Mr. Cluett are overruled.

21. The Court has considered Kenneth L. Lay's and Jeffrey K. Skilling's objections to final approval of this partial Settlement and except for their argument concerning the alleged expansion of the class period, which they expressly disclaim for this partial Settlement, overrules their objections on the same grounds as set forth in the Court's Order dated May 24, 2005.

22. The Court has been informed by counsel that The Northern Trust Company and the Settling Defendants have reached an agreement that provides for the withdrawal of The Northern Trust Company's objection to this partial Settlement. Therefore, the Court finds that The Northern Trust Company's objection to the Settlement has been withdrawn.

23. Except as provided herein, the Court shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the Settlement Agreement or any challenges as to the performance, validity, interpretation, administration, enforcement or enforceability of this Bar Order, except to the extent that any such matters relate to the Chapter 11 Cases, the Class Claim, the State Street ERISA Claims and the Employee Claims, all of which shall be subject to the continued jurisdiction of the Bankruptcy Court; and

24. Nothing in this Bar Order shall waive, release or interfere with the independent right of the Secretary of the Department Of Labor to bring claims against any person or entity otherwise released by this or pursuant to the Settlement Agreement absent the Secretary's specific written consent. Nothing in this Bar Order shall release, interfere with, qualify, or bar the prosecution of claims by the Secretary for any type of remedy, monetary or non-monetary, absent the Secretary's specific written consent.

25. Upon the occurrence of the Effective Date and the consummation of the Settlement as provided for in Section 3.1 of the Agreement, each of the Settling Defendants shall be deemed to have, and by operation of this Order of Final Judgment and Dismissal shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Settlement Class Members and counsel to the named Plaintiffs from all claims (including unknown claims)

arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the action, or the Plaintiffs' Released Claims except to enforce the releases and other terms and conditions contained in the Agreement.

26. The Agreement and this Final Order of Judgment and Dismissal 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*.

27. Except as otherwise provided in the Agreement, the Named Plaintiffs, the Settlement Class, the Enron Plans (including those purporting to act on their behalf or for their benefit), are permanently enjoined from bringing any action in any forum relating to Plaintiffs' Released Claims that does not conform to this Order or the covenants of the Agreement.

28. The Order of Final Judgment and Dismissal is a final judgment in the action as to all claims among the Settling Defendants, on the one hand, and the named Plaintiffs and all Settlement Class Members, on the other. This Court finds, for purposes of Fed. R. Civ. P. 54(b), that there is no just reason for delay and expressly directs entry of Judgment as set forth herein.

29. The Court retains exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the Agreement or any challenges as to the performance, validity, interpretation, administration or enforcement or enforceability of the Notice, the Bar Order of the Agreement or the termination of the Agreement.

30. Without affecting the finality of this Order of Final Judgment and Dismissal in any way, this Court retains continuing jurisdiction over: (a) implementation of the Settlement; (b) any award or distribution of the Settlement Trust, including interest earned thereon; and (c) all other proceedings related to the implementation and enforcement of the terms of the Agreement.

31. Without affecting the finality of this Judgment, the Court retains jurisdiction for purposes of implementing the Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Agreement and

Settlement, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

32. Without further Order of the Court, the parties may agree to reasonable extensions of time to carry out any provisions of the Agreement.

IT IS SO ORDERED.

Dated this 12th day of September, 2005.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE