

OCT 17 2003

C.H.

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
AT HOUSTON

In re ENRON CORPORATION
SECURITIES AND ERISA
LITIGATIONS

Civil Action No. H-01-3624
(Consolidated)

This Document Relates To:

CLASS ACTION

MARK NEWBY, Individually and On Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

ENRON CORP., *et al.*,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, *et al.*, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

KENNETH L. LAY, *et al.*,

Defendants.

PAMELA M. TITTLE, *et al.*,

Plaintiffs,

v.

ENRON CORP., *et al.*,

Defendants.

**DECLARATION OF TITTLE CO-LEAD COUNSEL IN SUPPORT OF FINAL
APPROVAL OF PARTIAL SETTLEMENT**

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We, Steve W. Berman and Lynn L. Sarko, under penalty of perjury of the laws of the United States of America, declare as follows:

1. We are the managing partners of Hagens Berman, LLP, and Keller Rohrback, LLP, respectively, and are serving as Co-Lead Counsel in the consolidated *Tittle* ERISA litigation. This declaration is submitted for two reasons: (a) to support Representative Plaintiffs' motion for final approval of the partial settlement with AWSC; and (b) to respond to allegations by certain objectors claiming that the settlement is collusive.

2. The factual matters and assertions in this declaration are true and correct to the best of our knowledge, information, and belief.

3. As the Court is well aware, Hagens Berman and Keller Rohrback were appointed Co-Lead counsel in this litigation on behalf of the proposed class in the *Tittle* ERISA litigation and to head the group of other firms who represent plaintiffs in these consolidated cases. Soon afterwards, the Court authorized discovery related to the ERISA claims as well as limited discovery related to Arthur Andersen's destruction of documents.

4. As a result, our efforts in the case have included not only pursuing that and other discovery, but drafting and filing various complaints, including the First Consolidated and Amended Complaint, responding to defendants' motions to dismiss, moving for class certification and responding to defendants' oppositions thereto, and participating in mediations with various parties, including the Andersen entities.

5. The proposed settlement with AWSC resulted from the mediation with the Andersen entities that the Court ordered on March 22, 2002. After several sessions with the mediator in different locations around the country, the parties were unable to reach a compromise with Arthur Andersen LLP. Nevertheless, the separate negotiations with AWSC that had begun as part of those negotiations were fruitful. As a result, a Memorandum of Understanding to settle for \$40 million was executed on August 30, 2002. Negotiations

concerning the terms of the settlement agreement, including terms affecting how settlement funds would be shared between the ERISA and securities plaintiffs, ensued for many months afterwards. All parties to the proposed settlement were represented by experienced and capable counsel. All of them vigorously represented their constituents during the negotiations. In short, the settlement represents an arm's-length compromise.

6. The named plaintiffs in the *Tittle* litigation were each contacted concerning the settlement and concurred that, under the circumstances, the \$40 million settlement was in the best interest of the proposed class. To our knowledge, no member of the proposed *Tittle* class has objected to the settlement.

7. Contrary to any suggestions otherwise, that compromise reflects studied judgments concerning the relative strengths and weaknesses of the legal claims against AWSC (including AWSC's assertion that the Court should not exercise jurisdiction over it), the risks of litigating those claims, AWSC's relative culpability, and the collectibility of any judgment against AWSC. For instance, during the course of those negotiations counsel interviewed persons with knowledge of the organizational and business relationship between AWSC and Andersen LLP in assessing the risks of continued litigation and in concluding that the proposed settlement was in the best interests of the *Tittle* class.

8. In fact, the wisdom of the settlement is evidenced by the Court's recent Order dismissing the very legal claims the *Tittle* plaintiffs were pursuing against AWSC. Thus, the risks inherent in pursuing those claims was not just theoretical. It has been realized and underscores the fact that at the time we compromised the claims for \$40 million, it was inherently reasonable to do so.

9. Similarly, AWSC's recent liquidation proceedings also validate the concerns that led the parties to agree to settle. AWSC's continuing existence was important when we weighed the value of the settlement against the possibility of future relief. During the course of the settlement negotiations, deep concerns about all of the Andersen entities' deteriorating financial

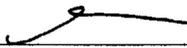
condition surfaced. Class counsel was aware of the possibility that AWSC, Andersen's umbrella organization, could eventually dissolve financially based on the widely reported sell-off of various of its European and Asian member firms. Nevertheless, we had no knowledge that AWSC was prepared to file for liquidation during the negotiations. We first learned of AWSC's liquidation the day of the Court's preliminary approval hearing, well after the terms of the settlement were agreed to.

10. The reasonability of the settlement is also supported by the fact that certain constituents of AWSC wanted to abrogate the settlement during the course of the parties' negotiation of the settlement agreement and appurtenant papers after we had signed the Memorandum of Understanding. Thus, the arms-length negotiations that resulted in the initial agreement continued through the parties' dealings and virtually until the time the papers were submitted to the Court.

11. In addition to canvassing the *Tittle* class representatives concerning the settlement amount, we also communicated with them concerning the \$15 million of the settlement monies allocated to the proposed Expense Fund, the allocation of 19.5% of that amount to the *Tittle* case, and the fact that the *Tittle* counsel have considerable expenses for which we are seeking reimbursement from the portion of the Expense Fund ultimately approved by the Court. The class representatives approved the apportionment and use of the moneys for expenses and understood that the Court would be the final arbiter of whether the expenses for which counsel seeks reimbursement are reasonable. Again, to our knowledge, no member of the proposed *Tittle* class has objected to the allocation of settlement proceeds for the Expense Fund or the apportionment of 19.5% of the Expense Fund to the *Tittle* case.

12. We declare under penalty of perjury that the foregoing is true and correct.

10/10/05
Date and place of execution



Steve W. Berman

10/16/03
Date and place of execution



Lynn L. Sarko

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

PAMELA M. TITTLE, on behalf of herself and
a class of persons similarly situated, *et al.*,

Plaintiffs,

v.

ENRON CORP., an Oregon corporation, *et al.*,

Defendants.

CIVIL ACTION NO. H 01-CV-3913
AND CONSOLIDATED CASES

**DECLARATION OF SERVICE BY E-MAIL, FACSIMILE, UPS OR
WWW.ESL3624.COM WEB SITE**

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 King, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 1301 5th Avenue, Seattle, WA 98043.

2. That on October 16, 2003, declarant caused the following documents to be filed with the Clerk of the Court:

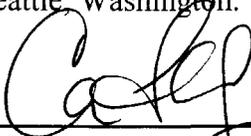
**DECLARATION OF *TITTLE* CO-LEAD COUNSEL IN SUPPORT OF FINAL
APPROVAL OF PARTIAL SETTLEMENT**

DECLARATION OF SERVICE

and to be served by sending via e-mail, facsimile, UPS overnight or posting to the www.esl3624.com web site to the parties as indicated on the attached Service List, pursuant to the Court's April 10, 2002 Order Regarding Service of Papers and Notice of Hearings and the August 7, 2002 Order Regarding Website.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of October, 2003, at Seattle, Washington.



Carrie L. Scheafer

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