

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

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

§
§ CLASS ACTION

This Document Relates To:

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

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

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

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

**DECLARATION OF JAMES E. HOLST IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEY FEES**

I, JAMES E. HOLST, declare as follows:

1. I, James E. Holst, joined the Office of the General Counsel of The Regents of the University of California ("The Regents" or the "University") in January 1964. From June 1985 until June 30, 2006, I served as the University's General Counsel and Vice President for Legal Affairs. Currently I am General Counsel Emeritus. I am a member of the State Bar of California and make this declaration with reference to an award of attorney fees. I have personal knowledge of the facts stated here and, if called, would competently testify to them.

2. The Regents, a public corporation operating under Article IX, Section 9 of the California Constitution, was founded in 1868 and is composed of ten campuses and five medical centers with a mission of teaching, research and public service. The Regents has over 183,000 graduate and undergraduate students, three law schools, five medical schools and the nation's largest continuing education program. The University has more than 155,000 employees and is governed by a 26-member Board of Regents. The Chief Investment Officer of The Regents is responsible for managing the investments and treasury operation of the University of California system and currently manages a portfolio totaling more than \$73 billion. The investment funds managed consist of the University's retirement, defined contribution, and endowment funds. The Chief Investment Officer is the custodian of these funds. These investments support the University's mission of education, research, and public service and provide substantial benefits for retired employees.

3. During my tenure as General Counsel and Vice President for Legal Affairs of The Regents, I observed The Regents' substantial expertise in financial matters and legal affairs. The Regents also had the benefit of relying upon an accomplished professional staff which included financial professionals and a legal staff of 50 or more in-house lawyers. Our legal staff included lawyers with extensive experience in litigation generally and among other specific matters, securities class actions. During my tenure, I had ultimate oversight responsibility for all litigation conducted

on the University's behalf. The volume of such litigation was substantial and much of it was complex, high profile litigation.

4. In December 2001, officers of The Regents held numerous internal discussions as a result of the extraordinary losses to its investment portfolios stemming from the collapse of Enron Corporation. The Regents applied for appointment as Lead Plaintiff in the *Newby* litigation, which had been initiated against Enron Corporation and numerous other defendants. At that time, the Office of the General Counsel, on behalf of The Regents, carefully considered the choice of Lead Counsel and in doing so reviewed the qualifications and resources of a number of class action specialist law firms. The objective of this process was to retain outside class counsel possessing the financial resources, skill, experience, and track record required to obtain optimum results for the Class. The Regents selected as Lead Counsel the firm of Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss"), now Coughlin Stoia Geller Rudman & Robbins LLP ("Coughlin Stoia"), on the basis of the extensive experience of that firm's attorneys in representing plaintiffs in securities litigation, the resources the firm had available to prosecute the case, and the aggressiveness it had already demonstrated in doing so. A critical factor in the process of selecting outside class counsel was a commitment on the part of Lead Counsel to work cooperatively with the Office of the General Counsel and accept the high level of supervision we intended to apply in our role as Lead Plaintiff. Lead Counsel made that commitment and has honored it throughout the litigation.

5. In June 2002, The Regents considered seeking appointment as the Lead Plaintiff in *In re Dynegy Securities Litigation*, No. H-02-1571, ("*Dynegy*") pending before Judge Lake. By that time, we had acquired extensive experience working with Lead Counsel and had observed first-hand the skill and determination of Lead Counsel and their dedication to the best interests of the class. We had developed an extremely effective working relationship with Lead Counsel, and our role in supervision and management of every aspect of the Enron litigation had been welcomed by them.

Based on this experience, as well as the similarity of many issues in the Enron and *Dynegy* cases, we concluded that Lead Counsel in the Enron litigation was also the best choice for Lead Counsel in *Dynegy*. The Regents was ultimately appointed as the Lead Plaintiff in *Dynegy*.

6. In the Enron case, The Regents developed a very effective working relationship with Lead Counsel which has, in my judgment, been extremely beneficial to the prosecution of the case. Since The Regents' appointment as Lead Plaintiff, attorneys from The Regents' Office of General Counsel have participated in all significant settlement discussions and mediation proceedings, attended hearings, reviewed all major pleadings, and approved all major strategic actions. Substantial oversight procedures were established and maintained, including weekly conference calls, periodic meetings, and circulation of documents.

7. During my tenure, The Regents, through attorneys in the Office of General Counsel, actively oversaw and supervised every aspect of the Enron litigation. This oversight included monitoring and directing Lead Counsel's investigation; reviewing and approving the Consolidated Complaint for Violation of the Securities Law and the subsequent First Amended Consolidated Complaint for Violation of the Securities Law; reviewing and approving initial paper discovery; overseeing the response by The Regents' current and former personnel to defendants' document requests and interrogatories; reviewing and approving all pleadings; and conducting weekly status conference calls on case development and the litigation strategy The Regents directed Lead Counsel to pursue. In addition, The Regents participated in settlement discussions and made all decisions on behalf of the Class with respect to the settlements. In short, no significant strategic or tactical decision has been made or important action taken by Lead Counsel in this case without the prior review and approval of The Regents.

8. At the outset of The Regents' involvement in the case, the Office of the General Counsel negotiated a fee agreement with the Milberg Weiss firm. Our objective was to maximize

the eventual recovery for the ultimate benefit of the Class. To achieve that objective, several principles were adhered to in the process of arm's length negotiations. First, we concluded that a fee based on a percentage of the class recovery would more effectively align the incentives of counsel with the interests of the class than a so-called lodestar-based fee calculation. Second, we sought to negotiate a fee percentage that was substantially lower than the prevailing awards in such cases so that the portion of the total recovery going to the Class would be enhanced. Third, we recognized that in light of the complexity and difficulty of the litigation, the fee percentage would have to be sufficient to create adequate incentives for the firm to dedicate the substantial resources, possibly over a long period of time, needed to maximize the Class recovery. Finally, we recognized that, given Enron's bankruptcy, there was no single source of recovery that was likely to be able to provide an acceptable level of compensation for the Class and that achieving recovery above certain levels would become increasingly challenging. We also wanted to avoid a fee structure that would create an incentive for quick, cheap settlements. Therefore, we concluded that the agreement should provide for a modest increase in the marginal fee percentage as the recovery increased to provide counsel an adequate incentive to pursue additional sources of recovery. The structure of the fee agreement sought to implement each of these principles so as to provide the firm with the proper incentives to maximize the class recovery.

9. In addition, The Regents required that Lead Counsel provide all funds (without a cap) for the considerable expenditures necessary to vigorously prosecute this potentially multi-year litigation. The Regents also required that the firm agree that the expenses to be reimbursed only from recoveries be "netted" before applying the fee percentages for award to Lead Counsel with the result that the percentage for fees would be applied to the recoveries after expenses, as awarded, are deducted.

10. The fee agreement The Regents negotiated is as follows:

0-\$1 billion 8%;
\$1-2 billion, 9%;
\$ 2+ billion, 10%.

The higher percentages apply only to the marginal amounts, that is, the amount in excess of the cap on the next lower recovery category.

11. The requested fee of 9.52% is based on application of the percentages in the fee agreement and is consistent with and entirely in accord with the fee agreement.

12. The Regents has taken a number of actions to ensure the independence and oversight of the litigation. Due to the importance of the case, The Regents retained former U.S. District Judge J. Lawrence Irving as a consultant to assist in monitoring and to provide independent, in-depth advice and oversight regarding the litigation.

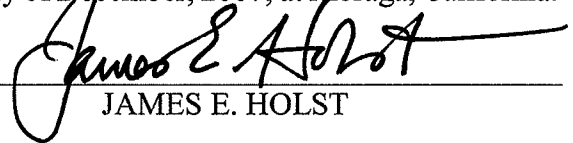
13. Judge Irving was a United States District Court Judge in the Southern District of California from 1982 to 1990. He served as a consultant to The Regents for the purposes described from 2002 until May 2006. In addition, on Judge Irving's recommendation and at his request, The Regents retained two additional professional consultants, attorney Robert Fairbank and investment banking expert Rock Hankin (the "Irving team") as consultants to assist Judge Irving in his independent review of issues pertinent to the case. Judge Irving participated in the weekly conference calls with Lead Counsel and provided valuable insight into the prosecution of the litigation. He also attended key hearings on behalf of The Regents. Critically, Judge Irving has been involved in all mediation and settlement discussions. Both the University and Lead Counsel found the input, advice, and strategic knowledge of Judge Irving and his team invaluable to The Regents and the Class. In May 2006, Judge Irving joined Coughlin Stoia Geller Rudman & Robbins LLP as special counsel to the firm. In that capacity, his advice and insight with respect to the litigation continue to be excellent in all respects.

14. By seeking appointment as a Lead Plaintiff in this action, The Regents responded to the call of Congress for institutional shareholders to actively participate as lead plaintiffs in class action securities litigation and to further ensure that these actions were controlled and supervised by the shareholders for whom they were brought and prosecuted. Here, in seeking appointment as a Lead Plaintiff, The Regents understood its responsibility to serve the best interests of the Class by participating in the supervision of the effective prosecution of this action and actively undertook to do so at all times.

15. As a consequence of the informed and deliberative process that has characterized its participation in the litigation and in consultation with Lead Counsel, The Regents authorized settlements in this action thus far totaling approximately \$7.2 billion.

16. In light of the liability, causation, and damages issues presented in this case as well as the financial condition of certain defendants, the settlements to date represent an outstanding recovery on behalf of the Class and an excellent resolution of those claims that have been resolved by way of those settlements. The total amount of that fee is less than 10% of the total amount recovered with the result that 90% of the recovery will be returned to the Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of December, 2007, at Moraga, California.



JAMES E. HOLST

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing [DECLARATION OF JAMES E. HOLST IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEY FEES](#) document has been served by sending a copy via electronic mail to serve@ESL3624.com on January 4, 2008.

I also certify that a copy of the above-mentioned document has been served via U.S. MAIL on the parties listed on the attached "Additional Service List" on this 4th day of January, 2008.

Deborah S. Granger

DEBORAH S. GRANGER

ADDITIONAL SERVICE LIST

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