

# Minutes of Proceedings

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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Date: April 6, 2006  
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In re  
Enron Corp., *et al.*,

Debtors.

Case No. 01-16034 (AJG)

Present: Hon. Arthur J. Gonzalez  
Bankruptcy Judge

Jacqueline De Pierola  
Courtroom Deputy

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Court Reporter

Debtors: Enron Corp., et al.

Counsel: Weil, Gotshal & Manges LLP  
By: Brian Rosen, Esq.

Claimants: Patrick Hickey, Claim #265101  
Richard Schmalzel, #541600  
Andrea Yowman, #216001  
Michael Beyer, #1862800  
Christian Holmes, #1602704 – 1602707

Counsel: Pro Se  
Pro Se  
Pro Se  
Pro Se  
Matthew Hoffman, Esq.

**Proceeding:** Debtor's 13<sup>th</sup>, 22<sup>nd</sup>, and 30<sup>th</sup> Omnibus Objections to Proofs of Claim (Claims filed by Current and Former Employees) (Severance Claims)

**Order:** For the reasons set forth in the decision attached hereto as Exhibit A, the relief sought is

Granted       Denied

FOR THE COURT: Kathleen Farrell, Clerk of the Court

BY THE COURT:

s/Arthur J. Gonzalez  
United States Bankruptcy Judge

4/6/2006  
Date

Jacqueline De Pierola  
Courtroom Deputy

## Exhibit A

Before the Court are the Debtor Enron Corp.'s ("Debtor") 13<sup>th</sup>, 22<sup>nd</sup>, and 30<sup>th</sup> Omnibus Objections to Proofs of Claim ("Objections"), filed on August 25, 2003, December 2, 2003, and April 23, 2004, respectively. The Court has previously issued rulings on a substantial majority of those claims objected to and will now address those remaining claims seeking severance payments, unpaid wages, or other employment-related benefits. The following claims will be addressed in this opinion (collectively, the "Severance Claims"): Claim #1862800, filed by Michael Beyer; Claim #265101, filed by Patrick Hickey; Claim #541600, filed by Richard Schmalzel; Claim # 216001, filed by Andrea Yowman; and Claims #1602704, 1602705, 1602706, and 1602707, filed by Christian Holmes. Having reviewed the parties' pleadings and exhibits, and the Objections being fully briefed and argued, the Court concludes that the Severance Claims should be disallowed and expunged.

This Court has previously addressed the issue of severance benefits and wages in its Order of Final Approval, Approving Settlement of Severance Claims of Similarly-Situated Claimants ("Order of Final Approval"), which approved the negotiated settlement ("Settlement") reached on behalf of former Enron employees (as defined in the Order of Final Approval, "Former Employee") by the Debtor and various interested parties, including the Official Employment-Related Issues Committee, the AFL-CIO and the National Rainbow/PUSH Coalition, and the class action representatives of former employees. *See also In re Enron Corp Securities and ERISA*, No. H 01-3913 (S.D. Tex. filed Jan. 2, 2004) (Harmon, J.) (consolidated Enron securities litigation including the ERISA action *Tittle, et al v. Enron Corp, et al* and the related securities actions, *Newby et*

*al v. Enron et al* and *The Regents of the University of California, et al v. Kenneth Lay, et al*). The Settlement provided that, in lieu of litigating its obligation to pay severance benefits to Former Employees, the Debtor would issue payments (as defined in the Order of Final Approval, “Settlement Check”) to those Former Employees who did not opt-out of the Settlement (as defined in the Order of Final Approval, “Settling Former Employee”), in an amount proportional to their severance package under the Enron Corp. Severance Pay Plan but capped at \$13,500.00.

In the Order of Final Approval, this Court ruled that, “Endorsement of the Settlement Check by or on behalf of a Settling Former Employee shall constitute a valid release with respect to the Released Claims in accordance with applicable law.” This Court further ruled that the Released Claims would include “the release and waiver of all rights and claims against Enron arising from the termination of his or her employment.” Similar release language could be found on the reverse of each Settlement Check (“Settlement Check Release”): “RELEASE: By endorsing and/or negotiating this instrument, I waive and release any and all right and claims, whether known or unknown, arising from or in connection with being discharged from Enron.” Whether or not these two releases are coterminous, an issue the Court need not reach, the Court finds that both embrace claims for severance pay, unpaid wages, and other benefits owed under an employment agreement.

The claimants Andrea Yowman and Christian Holmes do not dispute that they endorsed the Settlement Checks they received, nor do they assert inadequate notice of the Settlement approved by this Court. The claimant Christian Holmes argues, however, that his claims for unpaid wages and unpaid health benefits are not included within either the

Settlement Check Release or the Order of Final Approval. Nonetheless, both releases are clear that the employee releases all claims arising out of his or her termination, which category includes Mr. Holmes' claims for benefits due under an employment agreement but not paid following termination. The Court concludes, therefore, pursuant to both the Settlement Check Release and the Order of Final Approval, that by endorsing the Settlement Checks, these claimants have released their right to assert their claim for severance pay, unpaid wages, and unpaid benefits.

The claimant Patrick Hickey endorsed his Settlement Check, but crossed out the Settlement Check Release. Under this Court's Order of Final Approval, however, this is insufficient to opt-out of the Settlement. Moreover, the claimant's unilateral modification of the terms of the Settlement Check Release without the knowledge and consent of the Debtor had no legal effect, and consequentially, the claimant released his claims by endorsing and negotiating the Settlement Check. Finally, the claimant has not alleged that he had inadequate notice of the Settlement, in which the acceptable opt-out procedures were clearly detailed. The Court concludes, therefore, pursuant to both the Settlement Check Release and the Order of Final Approval, that by endorsing the Settlement Check, the claimant released his right to assert his claim for severance pay.

The claimant Michael Beyer negotiated the first, but not the second, Settlement Check he received. Though the claimant now disputes the terms of the Settlement, this Court's Order of Final Approval clearly states, "All Eligible Former Employees who have failed timely to exercise their rights to opt out of the Settlement are hereby deemed to have accepted the Settlement ...." The claimant does not allege that he timely exercised his opt-out rights under the terms of the Settlement or that he received

insufficient notice of the Settlement. The Court concludes, therefore, pursuant to the Order of Final Approval, that by failing to opt-out of the Settlement in a timely fashion, the claimant accepted the provisions of the Settlement and released his right to assert his claim for severance pay.

The claimant Richard Schmalzel asserts a claim for unpaid wages and benefits due under a collective bargaining agreement. The Debtor has averred, and the claimant has not disputed, that this claim is duplicative of the claim the claimant's union filed on behalf of all union members for unpaid wages and benefits. The Court concludes, therefore, that his claim should be disallowed and expunged as duplicative.

In light of the foregoing, the Court concludes that the Severance Claims should be disallowed and expunged. The Objections are granted as to the Severance Claims.