

United States Courts
Southern District of Texas
ENTERED

JUL 08 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

In re DYNEGY, INC. SECURITIES
LITIGATION

§ Master File No. H-02-1571

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CLASS ACTION

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This Document Relates To:

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ALL ACTIONS.

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ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing under this Court's Order, dated May 11, 2005, on the Parties' application for approval of the Settlement set forth in the Stipulation and Agreement of Settlement, dated April 29, 2005 (the "Stipulation"), in the consolidated class action pending before this Court entitled *In re Dynegy Inc. Securities Litigation*, Master File No. H-02-1571 (the "Action"). Due and adequate notice having been given to the Class 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 Judgment incorporates the Stipulation's definitions by reference, and all terms used herein shall have the meanings set forth in the Stipulation.

2. This Court has jurisdiction over the Action's subject matter and over all parties to the Action, including all Settlement Class members.

3. The Court finds the Settlement set forth in the Stipulation is, in all respects, fair, just, reasonable and adequate to the Class and, therefore, finally approves the Settlement under Fed. R. Civ. P. 23.

4. The issuance of Dynegy securities as called for by the Stipulation is exempt from registration pursuant to Section 3(a)(10) of the Securities Act of 1933.

5. Except for any individual claims of Class members (identified in Exhibit 1 hereto) who have validly and timely requested exclusion from the Class, the Action and all its claims, as well as all Released Claims, are dismissed with prejudice. The Parties shall bear their own costs, except as otherwise provided in the Stipulation.

6. The Court finds that the Stipulation, Settlement, and Plan of Distribution are fair, just, reasonable and adequate to each and all Parties, and the Stipulation and Settlement are hereby finally approved in all respects, and the Parties are hereby directed to perform its terms.

7. On the Effective Date, Class Representative and each and all Settlement Class members shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties, whether or not such Settlement Class member executes and delivers the Proof of Claim and Release. All Settlement Class members are hereby forever barred and enjoined from prosecuting any and all Released Claims against any and all Released Parties.

8. On the Effective Date, each and all Released Parties shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Settled Defense Claims against the Settlement Class members and Plaintiffs' Counsel; provided, however, that nothing herein shall release the Parties from their obligations under the Stipulation.

9. On the Effective Date, each Settling Defendant shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged, against each of the other Settling Defendants, all claims known or unknown, accrued or unaccrued, arising from, related to, or in connection with any acts, transactions or occurrences alleged or that could have been alleged in the Action, including without limitation claims for indemnification, contribution or reimbursement of amounts paid in settlement or defense costs (however denominated) arising under the federal securities laws, state law or common law; provided, however, that nothing in this paragraph shall be deemed a release:

(a) by the Officer/Director Defendants, individually or collectively, of the Unreleased Officer/Director Defendant Indemnification Claims;

(b) by the Officer/Director Defendants, individually or collectively, of any claims against Dynegy arising out of or relating to such Officer/Director Defendant's (or Defendants') (i) agreements in respect of such Officer/Director Defendant's (or Defendants') employment (including

as a consultant) or termination of employment by Dynegy, (ii) arbitral awards or judgments against Dynegy arising out of or relating to such employment or termination agreements, including but not limited to the award in the American Arbitration Association proceeding captioned *Bergstrom v. Dynegy Inc.*, Case No. 70 Y 116 00134 03, or (iii) any settlement agreements in respect of any arbitration(s), court actions(s) or other proceedings(s) arising out of or relating to such employment or termination agreements, including, but not limited to the Confidential Settlement Agreement between Charles L. Watson and Dynegy Inc. in respect of the American Arbitration Association proceeding captioned *Watson v. Dynegy Inc.*, Case No. 70 Y 116 00076 03; provided, however, that nothing in this paragraph shall preserve or revive any Released Officer/Director Defendant Indemnification Claims;

(c) by Dynegy of any claims against the Officer/Director Defendants, individually or collectively, that do not arise from, relate to, or have any connection with any acts, transactions or occurrences that were alleged or could have been alleged in the Consolidated Securities Litigation; provided, however, that nothing in this subparagraph shall revive any claims against any one or more Officer/Director Defendant(s) that Dynegy has previously released; or

(d) of any claims arising out of the violation or breach of the Stipulation.

10. The Court has considered and approved the proposed Bar Order and Insurer Bar Order language described in ¶¶6 and 7 of the Stipulation. Under the Bar Order's terms:

(a) To the extent permitted by applicable law, on the Effective Date, all persons or entities shall be forever enjoined and barred from commencing any action or asserting any claim against the Settling Defendants, seeking, as damages or otherwise, the recovery of all or any part of any liability or settlement which such person or persons (or entity or entities) pay or cause to be paid on their behalf or are obligated to pay or agree to pay to the Settlement Class, arising out of or in any way related to such person's or persons' (or entity's or entities') participation in any acts, facts,

statements or omissions that were or could have been alleged in the Consolidated Securities Litigation. Any person or entity so enjoined and barred shall be entitled to appropriate judgment reduction; and

(b) To the extent permitted by applicable law, on the Effective Date, all persons or entities shall be forever enjoined and barred from commencing any action or asserting any claim against the Insurers seeking, as damages or otherwise, any payment under the insurance policies underlying the Insurer Payment.

11. The Notice of Pendency and Settlement of Class Action, Hearing on Proposed Settlement and Attorneys' Fee Petition and Right to Share in Settlement Fund (the "Notice") given to the Class was the best notice practicable under the circumstances, including the individual notice to all Class members who could be identified through reasonable effort, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and the requirements of due process.

12. Any Plan of Distribution, Insurer Bar Order, or attorneys' fees and expenses application submitted by Lead Counsel shall in no way disturb or affect this Order and Final Judgment and shall be considered separate from this Order and Final Judgment.

13. The Stipulation and Settlement, and any act performed or document executed under or in furtherance of the Stipulation or the Settlement or any negotiation, discussion or proceeding in connection with the Stipulation or the Settlement:

(a) does not constitute and shall not be offered against any or all Settling Defendants for any reason including, without limitation, as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any or all of the Settling Defendants with respect to the truth of any fact alleged by Class Representative or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any

defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any or all Settling Defendants;

(b) does not constitute and shall not be offered against any or all Settling Defendants as evidence of, or construed as or deemed evidence of, a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any or all Settling Defendants, or against Class Representative and the Class as evidence of any infirmity in the claims of Class Representative and the Class;

(c) does not constitute and shall not be offered against any or all Settling Defendants as evidence of, or construed as or deemed evidence of, a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties, in any other civil, criminal or administrative action or proceeding (including, but not limited to, any formal or informal investigation or inquiry by the SEC or any other state or federal governmental or regulatory agency), other than such proceedings as may be necessary to effectuate the Stipulation's provisions; *provided, however*, that Settling Defendants may refer to the Stipulation to effectuate the liability protection granted them hereunder;

(d) does not constitute and shall not be offered or construed against any or all Settling Defendants as an admission or concession that the consideration to be given under the Stipulation represents the amount which could be or would have been recovered after trial; and

(e) does not constitute and shall not be offered or construed as an admission, concession or presumption against Class Representative or the Class or any of them that any of their claims are without merit or that damages recoverable under the Complaints would not have exceeded the Settlement Fund. The Settling Defendants may file the Stipulation and/or this Order and Final Judgment in any other action or proceeding that may be brought against them in support of a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,

judgment, bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. Without affecting this Order and Final Judgment's finality in any way, this Court hereby retains continuing jurisdiction over: (i) this Settlement's implementation and any award or distribution of the Settlement Fund, including interest earned thereon; (ii) the Settlement Fund's disposition; (iii) all Parties for the purpose of construing, enforcing and administering the Stipulation and the releases contained therein; (iv) hearing and determining applications by Plaintiffs' Counsel for attorneys' fees, costs, expenses, including expert fees and costs, and interest; (v) hearing and ruling on any proposed plan of distribution of settlement proceeds; and (vi) the Action until the Order and Final Judgment has become effective and each and every act agreed to be performed by the Parties has been performed under the Stipulation.

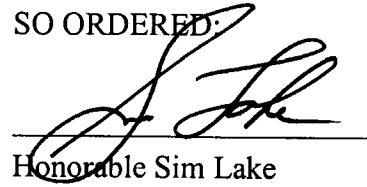
15. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Fed. R. Civ. P. 11.

~~16. If the Settlement does not become effective in accordance with the Stipulation, then (i) this Order and Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation, and (ii) the parties shall immediately revert to their litigation positions as of April 14, 2005.~~

16. ~~17~~. The Court finds, under Rules 54(a) and (b) of the Federal Rules of Civil Procedure, that this Order and Final Judgment constitutes this Action's final adjudication on the merits and should be entered without delay. Accordingly, the Clerk is directed to enter this Order and Final Judgment forthwith.

Dated: July 7, 2005

SO ORDERED:

A handwritten signature in black ink, appearing to read "S. Lake", is written over a horizontal line.

Honorable Sim Lake
United States District Judge

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TO: GIARDI + CO, LLC.
PO Box 803 003
PETALUMA, CA. 94925-8003

JUN 16 2005

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MR. & MRS. CHARLES O. FOSTER
165 PHEASANT HOLLOW
BURR RIDGE, IL 60527

RECEIVED

JUN 21 2005

M. CLAIMS CENTER

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~~MR. & MRS.~~ JANE FOSTER
165 PHEASANT HOLLOW
BURR RIDGE, IL 60527

RE: MASTER FILE # H-02-1571

DYNEX INC. SECURITIES LITIGATION

PLEASE EXCLUDE BOTH OR EITHER OF US
FROM THE "CLASS" LITIGATION LISTED ABOVE.
ABOVE.

THANK YOU, SINCERELY,

Charles O. Foster, Trustee
Jane M. Foster, Trustee

DGIN1/Exclusion

Exhibit 1

1-2

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ORDER AND FINAL JUDGMENT document has been served by sending a copy via electronic mail to www.dynseclit.com on June 30, 2005 pursuant to the Court's service orders.



MO MALONEY