



Class Dismissed, Enron Trial on Hold

"For the Fifth Circuit to step in only weeks before the trial is a major signal in the direction of a narrowed scope of liability...and a very big victory for business," says one observer.

[Stephen Taub](#) and [Dave Cook](#), CFO.com

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A federal appeals court has ruled that former Enron shareholders cannot combine their litigation against a number of major investment banks into a class action lawsuit.

According to the Associated Press, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit stated that "class certification may be the backbreaking decision that places 'insurmountable pressure' on a defendant to settle, even where the defendant has a good chance of succeeding on the merits."

"Presuming plaintiffs' allegations to be true, Enron committed fraud by misstating its accounts, but the banks only aided and abetted that fraud by engaging in transactions to make it more plausible; they owed no duty to Enron's shareholders," the judges also asserted, according to *The New York Times*.

The Board of Regents of University of California, the lead plaintiff, had alleged that Merrill Lynch, Credit Suisse First Boston, and Barclays Bank set up false investments in clandestinely controlled Enron partnerships and used offshore companies to disguise loans and facilitate phony sales of phantom Enron assets. As a result, added the university, Enron executives were able to deceive investors by reporting increased cash flow from operations and by moving billions of dollars of debt off Enron's balance sheet, thereby artificially inflating securities prices.

The appeals court ruling overturns last August's decision by U.S. District Judge Melinda Harmon that a class action was appropriate. In February, Judge Harmon ruled that the lawsuit would proceed toward its April 9 start date despite the pending appeal.

"This is a devastating ruling for shareholders," Thomas Ajamie, a Houston securities lawyer, told the *Times*. "It's hard to believe that shareholders won't recover money from an admitted fraud, but this U.S. Court of Appeals circuit has been more hostile to investors than other circuits."

William Lerach, whose law firm represents the California Regents, called the appeals-court decision "wrong under the law" and "unfair to victims in the worst fraud in recent memory," according to *The Washington Post*. Lerach reportedly added that he will appeal the ruling to the Supreme Court.

The *Post* pointed out that the Fifth Circuit, which has jurisdiction over states including Texas and Louisiana, is routinely corporate-friendly on a number of matters, while the Ninth Circuit, which covers a number of Western states, has adopted a looser standard for certifying securities class actions.

The case was originally scheduled for trial in December 2003 but has been postponed three times, according to the *Houston Chronicle*. Since that original trial date, the investor group has settled with many of the defendant banks, notably the Canadian Imperial Bank of Commerce, which [settled for \\$2.4 billion](#), JPMorgan Chase, which [agreed to pay \\$2.2 billion](#), and Citigroup, which [settled for \\$2 billion](#).

The most recent of those settlements was more than 18 months ago, noted the *Post*, which suggested that the remaining defendants may be waiting out the sentiment that has slowly and steadily shifted in their favor.

"For the Fifth Circuit to step in only weeks before the trial is a major signal in the direction of a narrowed scope of liability...and a very big victory for business," Georgetown University law professor Donald C. Langevoort told the paper.