

Minutes of Proceedings

Date: October 27, 2006

<p>In re:</p> <p>Enron Corp., et al.,</p> <p style="text-align: center;">Debtor</p>	<p>Case No. 01 16034(AJG) Reorganized Debtors</p>
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Present: Hon. Arthur J. Gonzalez _____
 Bankruptcy Judge Courtroom Deputy Court Reporter

Proceedings:

- Motion for Relief from Automatic Stay Filed by _____
- Motion to Void Lien Held by _____
- Motion to Dismiss Filed by _____
- Motion for Summary Judgment Filed by _____
- Motion to Confirm/Modify Plan _____
- Motion to Convert to Chapter _____
- Appearances made, arguments presented
- No appearances
- Oral findings and conclusions made of record
- Witnesses sworn See attached list Exhibits entered See attached list
- Pretrial _____ Status Conference _____
- Other **Opinion rendered regarding objection contained in Reorganized Debtors' Ninety-Second Omnibus Objection, dated March 11, 2005, regarding the classification of certain Fireman's Fund claims.**

Orders:

Based upon the reasons set forth in Exhibit A attached hereto.

- Relief sought in Objection reference above
 - Granted Denied without Prejudice Denied with Prejudice
- Relief sought in _____
 - Granted Denied without Prejudice Denied with Prejudice
- Judgment to enter for:
 - Plaintiff Defendant Applicant Respondent
 - In the amount of \$ _____ Costs in the amount of \$ _____
- Matter taken under advisement
- Confirmation/modification of plan granted denied
- Other _____

FOR THE COURT:
Kathleen Farrell, Clerk of Court

s/Arthur J. Gonzalez
United States Bankruptcy Judge

10/27/06
Date

By: Jacqueline De Pierola
Deputy

EXHIBIT A

This matter concerns the Reorganized Debtors' objection (the "Objection") to proof of claim no. 25077 filed by Fireman's Fund Insurance Company ("Fireman's Fund"), which objection was contained in the Reorganized Debtors' Ninety-Second Omnibus Objection, dated March 11, 2005. By previous stipulations entered into by the parties, various components of this and other claims filed by Fireman's Fund have been resolved. The remaining portion of the Objection concerns performance bonds issued by Fireman's Fund in connection with an agreement with New England Power Pool ("NEPool"). Fireman's Fund issued the bonds for the benefit of, and at the request of, certain affiliates of Enron Corp. (the "Debtor-affiliates") and asserted a claim for losses related to the bonds against the Debtor-affiliates and against Enron Corp. (the "NEPool Claims"). The allowance, amount, and classification of the NEPool Claims as against the Debtor-affiliates was resolved. The NEPool Claim as against Enron Corp. was allowed and fixed in the amount of \$11,252,401.80 in a Stipulation and Order, dated August 10, 2005. The parties, however, reserved their rights to dispute the appropriate classification and treatment of the claim.

The outstanding issue concerns the classification of Fireman's Fund's NEPool Claim against Enron Corp. (the "Claim") under the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors, dated July 2, 2004 (the "Plan"). Specifically, whether the Claim should be classified and treated as a Class 4 claim against Enron Corp., as Fireman's Fund contends, or whether it should be classified as a Class 185 claim, as argued by the Reorganized Debtors.

In the Plan, Class 185 is entitled Enron Guaranty Claims. Section 1.116 of the Plan defines an Enron Guaranty Claim as "[a]ny Unsecured Claim, other than an Intercompany

Claim, against [Enron Corp.] arising from or relating to an agreement by [Enron Corp.] to guarantee or otherwise satisfy the obligations of another Debtor, including, without limitation, any Claim arising from or relating to rights of contribution or reimbursement.”

Fireman’s Fund asserts that the rights and obligations of Fireman’s Fund and Enron Corp. under their General Indemnity Agreement are governed by state law. In accordance with state law, Fireman’s Fund argues that Enron Corp.’s contractual agreement constitutes an indemnification obligation. As such, Fireman’s Fund argues that the Claim is a direct and independent claim against Enron Corp. to pay for losses incurred by Fireman’s Fund by issuing the bonds and should be classified as a Class 4 unsecured claim against Enron Corp. Fireman’s Fund contends that, under the General Indemnity Agreement, Enron Corp. neither guaranteed the obligations of its affiliates, nor did it incur an obligation to otherwise satisfy their obligations.

The Reorganized Debtors concede that the parties rights and obligations under their agreement are governed by state law and that the contractual arrangement is an indemnification obligation. As such, the Reorganized Debtors acknowledge that Fireman’s Fund has a basis to assert a claim against Enron Corp. based on state law, which claim is allowable directly against Enron Corp. under Bankruptcy Code section 502. Nevertheless, the Reorganized Debtors contend that, inasmuch as the Claim is based upon Enron Corp.’s agreement to be co-liable with one of its affiliates, otherwise to pay on that affiliate’s obligation, or satisfy a debt resulting from a reimbursement obligation, the Claim comes within the definition of an Enron Guaranty Claim under the Plan and is therefore properly classified as a Class 185 Claim. The Reorganized Debtors further argue that Fireman’s Fund’s contention that it has rights to a claim and that state law supports its claim has been recognized by the allowance of its claim pursuant to 11 U.S.C.

§ 502. The Reorganized Debtors maintain, however, that the classification of a claim is a separate issue governed by 11 U.S.C. §§ 1123 and 1129, and that if Fireman's Fund had any objection to the classification scheme under the Plan, it should have objected prior to Plan confirmation.

The Court agrees with the Reorganized Debtors that the Claim should be allowed as a Class 185 Claim because it falls within the definition of an Enron Guaranty Claim. If the Debtor-affiliates had been able to pay the claims against them based upon the NEPool Agreements, it would eliminate Fireman's Fund's claim against Enron Corp. Fireman's Fund has a claim against Enron Corp. because Enron Corp. agreed to indemnify Fireman's Fund for losses, including losses sustained because the Debtor-affiliates were unable to pay the claims asserted against them fully. Thus, the General Indemnity Agreement gave Fireman's Fund a claim for reimbursement against Enron for payments made by Fireman's Fund, or costs it incurred, under the relevant underlying bonds. The Plan ensures that a claim of this type, where Enron Corp. entered into an agreement to pay the obligation of an affiliate, or to reimburse a party that satisfies an obligation of an affiliate, would receive a lesser distribution from Enron Corp. than other unsecured claims against Enron Corp. because the claimant held a claim against both Enron Corp. and an affiliate. Fireman's Fund did not object to the Plan and, pursuant to 11 U.S.C. § 1141(a), is bound by its terms which includes the classification scheme. *See In re WorldCom, Inc.*, ___ B.R. ___, 2006 WL 2730306, at * 2, (Bkrtcy.S.D.N.Y. 2006) (citation omitted) (noting that parties are precluded from raising issues they could or should have raised prior to confirmation of a plan of reorganization).

Nor do the previous stipulations entered into by the parties alter the result. The

classification of the claims in any particular settlement agreement was driven by the economics and the negotiated terms of such agreement. The parties agreement further provided that the terms of their stipulation could not be used or referred to in any subsequent proceeding concerning the classification of the Claim. Indeed, one of the previous agreements specifically carved out the issue as to the classification of the Claim which remained subject to separate determination.

Further, the Court notes that the treatment of claims in Claim 185 reflects a compromise of issues related to substantive consolidation. Had the Debtors' cases been fully substantively consolidated, Fireman's Fund's claims against Enron Corp. and its related claim against an affiliate would arguably merge into a single claim against the consolidated entity. Such would be based upon the argument that the claim against Enron Corp. and the claim against the affiliate would effectively represent two agreements with the same entity for the satisfaction of a single underlying obligation. Fireman's Fund disputes this effect under substantive consolidation and alleges it would still have two claims. However, there is no doubt that had full substantive consolidation occurred under the Plan, this issue would have been litigated or otherwise resolved.

Therefore, the Court concludes that the Claim reflects a claim against Enron Corp. based on its agreement, pursuant to the General Indemnity Agreement, to pay Fireman's Fund's losses resulting from the issuance of the bonds. Such losses included, among other things, reimbursement resulting from Fireman's Fund's payment of such bonds in satisfaction of the obligations of the Debtor-affiliates. As such, it falls within the Class 185 claim definition. Thus, the Claim is properly classified in Class 185.