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| UNITED STATES BANKRUPTCY COURT<br>SOUTHERN DISTRICT OF NEW YORK | Not For Publication |
| In re | Chapter 11 |
| ENRON CORP., et. al., | Case No. 01-16034 |
| Reorganized Debtors. | |

**OPINION DENYING SPINNAKER EXPLORATION COMPANY, L.L.C.'s MOTION FOR (1) LEAVE TO FILE A LATE PROOF OF CLAIM, AND (2) ALTERNATIVE RELIEF SOUGHT**

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ARTHUR J. GONZALEZ
United States Bankruptcy Judge

The issues before the Court are (1) whether Spinnaker Exploration Company, L.L.C. ("Spinnaker") may file a late proof of claim against Enron Corp. ("Enron") for a guaranty entered into by both parties based on "excusable neglect," or, in the alternative, (2) whether Spinnaker's attachment of an unexecuted guaranty filed with a proof of claim against the Enron North America Corporation's ("ENA") estate constituted an informal proof of claim against the Enron estate. Upon consideration of the pleadings and arguments of the parties, the Court finds that Spinnaker may not file a late proof of claim based on "excusable neglect." Further, the Court finds that Spinnaker's attachment of an unexecuted guaranty to the proof of claim filed against the ENA estate does not constitute an informal proof of claim against the Enron estate.

## I. Jurisdiction

The Court has subject matter jurisdiction over this matter under sections 1334(b) and 157(a) of title 28 of the United States Code and under the July 10, 1984 "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York. This is a core proceeding within the meaning of section 157(b)(2)(A), (B) and (O) of title 28 of the United States Code.

## II. Background

### A. *General Procedural History*

Commencing on December 2, 2001 (the "Petition Date"), Enron, ENA and certain of Enron's direct and indirect subsidiaries (collectively, the "Debtors" or "Debtor," referencing a

single entity) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtors' chapter 11 cases have been procedurally consolidated for administrative purposes. Since the Petition Date, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The Debtors filed "Motion of the Debtors for an Order Pursuant to Bankruptcy Rules 2002(a)(7), 2002(l), and 3003(c)(3) Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Providing Notice Thereof" on July 31, 2002 ("Bar Date Notice Request"). The Bar Date Notice Request provided the following provision: "To avoid confusion and facilitate the Claims reconciliation process, the Debtors request that all creditors ... be required to file separate Proofs of Claim with respect to each alleged claim and against each Debtor." By order dated August 1, 2002 (the "Bar Date Order"), the Court set October 15, 2002 as the bar date (the "Bar Date") by which proof of claims must be filed against certain Debtors and approved the Bar Date Notice Request "in all respects." The Bar Date Order further provided that any creditor who fails to file a proof of claim in accordance with the Bar Date Order by October 15, 2002, "shall be forever barred, estopped and enjoined from asserting such claim against such Debtor (or filing a proof of claim with respect thereto) ... ." On August 10, 2002, the Debtors mailed, *inter alia*, the notice of the Bar Date to potential creditors of the Debtors, including Spinnaker ("Bar Date Notice").

B. *Spinnaker's Proof of Claim*

On June 1, 1999, ENA (as assignee of Columbia Energy Services Corporation) entered into a contract with Spinnaker for the sale and purchase of natural gas ("Contract"). On July 21,

2000, ENA and Spinnaker entered into an ISDA Master Agreement ("ISDA"), pursuant to which Enron executed a guaranty ("Guaranty") on July 26, 2000, promising to "guarantee[] the timely payment when due of the obligations of" ENA. Pursuant to the Contract, Spinnaker supplied ENA with gas for the months of October and November of 2001. ENA filed a chapter 11 case on December 2, 2001. On October 11, 2002, Spinnaker timely filed a proof of claim against ENA in the amount of $3,752,975.42 consisting of (1) $1,660,265.42 allegedly arising from physical gas sold by Spinnaker to ENA in October and November of 2001 under the terms of the Contract and (2) $2,092,810 allegedly arising from financially-settled derivative transactions between ENA and Spinnaker arising out of the ISDA. Spinnaker attached an unexecuted copy of the Guaranty to the proof of claim it filed in ENA's case. Spinnaker, however, failed to file a proof of claim against Enron.

Spinnaker maintains that its failure to file a proof of claim against Enron based upon the Guaranty was a result of its being unable to verify that the Guaranty had in fact been executed by Enron. In particular, Spinnaker explains that Jeffrey Zaruba ("Zaruba"), who is the Vice President, Treasurer and Assistant Secretary of Spinnaker, was the individual responsible for assembling the required information for filing Spinnaker's proof of claim. Spinnaker contends that Zaruba located the ISDA, to which an unexecuted copy of the Guaranty was attached. Although believing that the Guaranty must have been executed with the ISDA, Zaruba could not confirm or verify that it actually was executed. In a sworn affidavit, Zaruba contends that (1) Robert Snell, the Vice President, Chief Financial Officer, and Secretary; (2) Leigh Ann Leinen, Supervisor of SEC Reporting; and (3) Jason Ervin, Manager of Budgeting and Forecasting, all diligently, yet unsuccessfully, searched their files for an executed copy of the Guaranty. In a

sworn affidavit, Mr. Ervin contends that he contacted George Gilbert, who was Spinnaker's contact at ENA, to confirm that the Guaranty had been executed. However, Mr. Gilbert responded that his supervisors would not allow him to respond to Spinnaker's request. Spinnaker's motion states that this contact occurred in November of 2001.

After being unable to procure an executed copy of the Guaranty, Spinnaker maintains it chose not to file a proof of claim against Enron because it "did not believe it was proper to file a proof of claim under penalty of perjury on the Guaranty unless Spinnaker could confirm that the Guaranty had been executed." Spinnaker now attempts to file a proof of claim against Enron since Zaruba has recently located an executed copy of the Guaranty. Spinnaker explains that at the time of the ISDA transaction, Enron returned an executed copy of the Guaranty separately from the ISDA, and the Guaranty was misfiled. The Guaranty was located in the desk files of Spinnaker's then-CFO, who subsequently retired prior to the Bar Date and "apparently neglected to send the Guaranty to the proper file prior to his retirement." Thereafter, on June 16, 2004, Spinnaker filed a motion for leave to file a proof of claim against Enron pursuant to the Guaranty. The original hearing was scheduled for July 15, 2004. However, the parties, upon mutual consent, continuously adjourned the hearing until April 7, 2005, the date it was heard.

## III. Discussion

### A. *Parties' Contentions*

#### 1. *Spinnaker's Contentions*

Spinnaker contends that its diligent search of its files, as well as its contacting Mr. Gilbert at ENA, evidences its good faith. If anything, Spinnaker contends that Enron's good faith is in question since their "failure to produce an executed copy of the Guaranty was counter

to the bankruptcy principles of full disclosure and reducing cost and expense." At the most, Spinnaker's failure to file a timely proof of claim against Enron constituted excusable neglect because it was a result of "inadvertence and carelessness on the part of Spinnaker."

Moreover, Spinnaker argues its proof of claim at this juncture will not prejudice Enron since the Debtors have proposed a liquidating plan. Since, in a liquidating plan, a debtor does not plan on continuing business after discharge, allowing a late proof of claim will only shift the distribution of assets from the debtor's limited pool of funds and will not directly affect the debtor. Further, Spinnaker asserts that its claim for $2.1 million is small in relation to the billions of dollars of unsecured claims against Enron. Therefore, allowing Spinnaker's claim "will have a minuscule impact on distributions to other creditors and no conceivable effect on these judicial proceedings."

In the alternative, Spinnaker contends that the Guaranty that it attached with its proof of claim against ENA constitutes an informal proof of claim against Enron. Spinnaker maintains with respect to each of its bases for relief, that by filing the Guaranty with the ENA proof of claim, Enron was placed on notice that Spinnaker intended to hold them liable under the instrument and therefore, the rationale of section 501 of the Bankruptcy Code was satisfied.

2. *Debtors' Contentions*

The Debtors contend that Enron properly scheduled the Guaranty as a potential claim, thereby putting Spinnaker on notice. Enron scheduled Spinnaker as an unsecured creditor having a "contingent" and "unliquidated" claim on the Guaranty in Schedule F. As stated previously, Spinnaker, however, failed to file a separate proof of claim against Enron. Therefore, Enron argues that since the Bar Date Notice "clearly states that a creditor must file a

separate proof of claim with respect to each such Debtor and identify on the form the particular Debtor against whom the claim is asserted," Spinnaker should be denied its motion for leave to file a proof of claim. Enron addresses Spinnaker's claim that it did not want to file a proof of claim under penalty of perjury when it could not confirm, verify, or procure a copy of the executed Guaranty by arguing that under Bankruptcy Rule 3001(c), Spinnaker could have accompanied its timely filed proof of claim with an explanation as to why it could not find a copy of the executed Guaranty.

Enron contends that allowing Spinnaker to file a proof of claim at this juncture will cause great prejudice. Specifically, Enron maintains that since it only has a "240-day time frame within which to review and object to claims" after confirmation, the allowance of Spinnaker's claim may cause other creditors who hold such guaranties to seek the same relief, thereby impeding the reorganization process. Furthermore, Enron maintains that Spinnaker's inability to timely procure a copy of the executed Guaranty was a result of its "failure to properly file documents," which is a circumstance that was within Spinnaker's reasonable control. Moreover, Enron asserts that Spinnaker has failed to fully explain "why it took almost two years to locate an executed copy of the Guaranty."

Enron further maintains that Spinnaker's attachment of an unexecuted Guaranty against ENA does not constitute an informal proof of claim. Enron asserts that since Spinnaker's proof of claim was filed against a separate entity, namely ENA, it was not put on notice of Spinnaker's Guaranty claim. Furthermore, the proof of claim filed against ENA "does not mention any demand against Enron" and the unexecuted Guaranty attached to the proof of claim "was merely an attachment to an attachment to the ENA Claim, which contains over 150 pages."

B. *Excusable Neglect*

Bankruptcy Rule 9006(b)(1) provides that a bankruptcy court in its discretion may accept a late-filed proof of claim where a claimant establishes "excusable neglect." The burden is on the claimant to prove that he or she did not timely file the claim because of "excusable neglect." *In re Andover Togs, Inc.*, 231 B.R. 521, 549 (Bankr. S.D.N.Y. 1999).

The seminal case interpreting the "excusable neglect" language of Bankruptcy Rule 9006(b)(1) is *Pioneer Inv. Servs. Co. v. Brunswick Associates L.P.*, 507 U.S. 380, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (1993). In permitting a creditor's late filing under Bankruptcy Rule 9006(b)(1), the Supreme Court explained that Congress, "by empowering the courts to accept late filings 'where the failure to act was the result of excusable neglect,' plainly contemplated that courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as by intervening circumstances beyond the party's control." *507 U.S. at 388* (quoting, in part, Bankruptcy Rule 9006(b)(1)). The Supreme Court further clarified that whether a claimant's neglect of a deadline is excusable is an equitable determination, taking account of all the relevant circumstances surrounding the claimant's omission. *See id.* at 395. These equitable considerations include (1) "the danger of prejudice to the debtor," (2) "the length of the delay and its potential impact on judicial proceedings," (3) "the reason for the delay, including whether it was within the reasonable control of the movant," and (4) "whether the movant acted in good faith."

The relative weight, however, to be accorded to the factors identified in *Pioneer* requires recognizing that not all factors need to favor the moving party. *See In re Keene Corp.*, 188 B.R. 903, 909 (Bankr. S.D.N.Y. 1995). As one bankruptcy court concluded, "no single circumstance

controls, nor is a court to simply proceed down a checklist ticking off traits. Instead, courts are to look for a synergy of several factors that conspire to push the analysis one way or the other." *In re 50-Off Stores, Inc.*, 220 B.R. 897, 901 (Bankr. W.D. Tex. 1998).

Recently, the Second Circuit has clarified its position on *Pioneer's* four equitable factors, noting that it has taken a "'hard line' in applying the Pioneer test." *Midland Cogeneration Venture Ltd. v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 122 (2d Cir. 2005). Pursuant to its "hard line" approach, the Second Circuit observed that "in the 'typical' case, 'three of the [Pioneer] factors' – the length of the delay, the danger of prejudice, and the movant's good faith – 'usually weigh in favor of the party seeking the extension.'" *Id.* (quoting *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003), cert. denied sub nom. *Essef Corp. v. Silivanch*, 540 U.S. 1105, 157 L. Ed. 2d 890, 124 S. Ct. 1047 (2004)). Therefore, the Second Circuit has "focused on the third factor: the reason for the delay, including whether it was within the reasonable control of the movant." *Id*. (quoting *Pioneer*, 507 U.S. at 395) (internal quotations omitted). Under this approach, "'the equities will rarely if ever favor a party who fails to follow the clear dictates of a court rule ... .'" *Id.* (quoting *Silivanch*, 333 F.3d at 366-67).

With *Pioneer's* four equitable factors in mind and the Second Circuit's recent clarification of their application, the Court turns to the facts of this case to determine if Spinnaker's failure to file a timely proof of claim was caused by "excusable neglect."

1. *Danger of Prejudice to Debtors*

The Court in *In re Keene Corp.*, 188 B.R. 903 (Bankr. S.D.N.Y. 1995), noted that while *Pioneer* did not define "prejudice," subsequent cases have weighed a number of considerations in determining prejudice, including (1) "the size of the late claim in relation to the estate," (2)

"whether a disclosure statement or plan [of reorganization] has been filed or confirmed with knowledge of the existence of the claim," and (3) "the disruptive effect that the late filing would have on a plan close to completion or upon the economic model upon which the plan was formulated and negotiated." *Keene*, 188 B.R. at 910.

Spinnaker cites to *In re Sacred Heart Hosp.*, 186 B.R. 891 (Bankr. E.D. Pa. 1995), in support of its contention that when the debtor's plan is a liquidating plan, a court's allowance of a late proof of claim will not prejudice the debtor. In that case, the court held that the debtor would suffer no prejudice largely because the debtor's plan was a liquidating plan. *Id*. at 897. The court found "the issue of prejudice to the Debtor as a result of the late filing" to be "the primary consideration which must be made in the Pioneer analysis," thereby going "a long way towards winning the day" for the creditor. *Id*. As a result, the court granted an extension of the bar date to allow the creditor to file a proof of claim. *Id*. at 898. Spinnaker also cites to *Greyhound Lines, Inc. v. Rogers (In re Eagle Bus Mfg., Inc.)*, 62 F.3d 730, 737-40 (5th Cir. 1995), as further support of its position that a late filed proof of claim will cause little or no prejudice to the debtor when the claims are being paid from a limited pool of funds. Similarly to the *Sacred Heart* court, the *Eagle Bus* court also uses prejudice as "the central inquiry" in its *Pioneer* analysis. *Id.* at 737.

Contrary to both of the above decisions, the Second Circuit has recently determined that the primary consideration in conducting the *Pioneer* analysis is the "third factor: the reason for the delay, including whether it was within the reasonable control of the movant." *Midland*, 419 F.3d at 122 (quoting *Pioneer*, 507 U.S. at 395) (internal quotations omitted). Moreover, in *Keene*, the Court cited to the *Sacred Heart* and *Eagle Bus* decisions and "question[ed] the

wisdom of an approach under which the court must ultimately ignore the creditor's culpability and permit the filing of a[] late claim if prejudice is absent." 188 B.R. at 909. The Court agrees with the analysis in *Keene* and does not find either case particularly helpful to Spinnaker's position.

Instead, applying the considerations mentioned by *Keene*, the Court reiterates the conclusion it reached in *In re Enron Corp.*, 298 B.R. 513 (Bankr. S.D.N.Y. 2003), aff'd, *Midland Cogeneration Venture Ltd. v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115 (2d Cir. 2005):

> While Midland's Guaranty claim is not substantial in relation to the Debtors' estate and although the claim was filed before the Debtors filed their proposed plan of reorganization and disclosure statement, the Court nevertheless finds that prejudice to the Debtors is significant here. Specifically, the Court agrees with the Debtors that considering the Debtors might be parties to agreements with guarantees or guarantors of such agreements involving other Debtors, allowing late-filed proof of claims based on such guarantee or guarantor relationships would adversely affect the Debtors' assessment of their liabilities as well as negatively impact their bankruptcy proceedings. The Court, therefore, finds that the prejudice factor weighs in favor of the Debtors.

*Id*. at 525-26. Similarly, the Court finds that prejudice is significant in this case despite the fact that Spinnaker's claim is not substantial in relation to Enron's estate and even though Spinnaker filed its claim before Enron filed its Fifth Amended Plan of Reorganization. The Court, therefore, finds that the prejudice factor weighs in favor of the Debtor.

2. *Length Of Delay And Its Potential Impact On Judicial Proceedings*

The Court finds that the length of delay in filing the proof of claim here is substantial, that is, it was filed more than twenty months after the Bar Date. Again, the Court reiterates the conclusion it reached in *In re Enron Corp.*, 298 B.R. 513 (Bankr. S.D.N.Y. 2003), aff'd, *Midland*

*Cogeneration Venture Ltd. v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115 (2d Cir. 2005):

> The Court ... notes that the Bar Date Order was meant to function as a statute of limitations and effectively exclude such late claims in order to provide the Debtors and their creditors with finality to the claims process and permit the Debtors to make swift contributions under any confirmed plan of reorganization. To find otherwise, that is, outside of the context of excusable neglect, would vitiate the Debtors' reorganization process.

*Id*. at 526. Therefore, the length of delay factor also weighs in favor of the Debtor.

3. *Reason For Delay, Including Whether It Was Within Reasonable Control Of Movant*

Spinnaker asserts that it did not file a separate proof of claim against Enron because it could neither find a copy of the executed Guaranty, nor confirm or verify that one had been executed. To this end, Spinnaker contends that Enron refused to provide a copy of the executed Guaranty, much less confirm or verify that it had been executed. As such, Spinnaker maintains that it did not feel it proper to file a proof of claim under penalty of perjury when it did not know whether the Guaranty had, in fact, been executed. This argument does not help Spinnaker.

First, Enron was under no duty to assist Spinnaker in its effort to confirm, verify, or procure a copy of the executed Guaranty. *See In re Carmelo Bambace, Inc.*, 134 B.R. 125, 130 (Bankr. S.D.N.Y. 1991) (holding a debtor's refusal to provide the creditor with its books and records in order to allow the creditor to determine the liability owed it prior to filing a proof of claim to be justified under 11 U.S.C. § 362(a)). Second, Spinnaker could have sought the intervention of the Court if it believed that the Debtors were not acting properly in responding to any of Spinnaker's alleged inquiries. (In this regard, the Court notes that Spinnaker was an active creditor throughout the pre-confirmation phases of these cases, filing its first pleading on December 6, 2001, the third business day following the petition date.) Third, despite not being

able to verify whether or not the Guaranty had been executed, Spinnaker nonetheless could have filed a proof of claim. *See id*. Enron made Spinnaker aware of the potential claim by scheduling it and sending Spinnaker notice. Moreover, Enron did not dispute that Spinnaker had a potential claim against it, as evidenced by the fact that Schedule F lists the Guaranty claim as "contingent" and "unliquidated" and not "disputed." Furthermore, although Bankruptcy Rule 3001(c) provides that if a claim is based on writing, then the original document or copy must be provided with the proof of claim, the last sentence of that rule provides that "[i]f the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim." Spinnaker could have filed a proof of claim against Enron with a statement describing the circumstances surrounding its efforts to locate a copy of the executed Guaranty. It also could have explained that it was not certain that the Guaranty was executed. To do so would not have caused Spinnaker to commit perjury. *See In re Kilgore Meadowbrook Country Club, Inc.*, 315 B.R. 412, 417 n.7 (Bankr. E.D. Tex. 2004) ("If ... the claimant fails to allege facts in the proof of claim that are sufficient to support the claim, *e.g.* by failing to attach sufficient documentation to comply with [Rule] 3001(c), the claim is not automatically disallowed; rather, it is merely deprived of any *prima facie* validity which it could otherwise have obtained."). Yet, despite being within its reasonable control, Spinnaker made a conscious decision not to file a separate proof of claim against Enron. Therefore, this factor favors the Debtor.

4. *Whether Movant Acted In Good Faith*

The Court finds that there is no indication in the record that Spinnaker acted in a manner other than in good faith in seeking to file this proof of claim. Therefore, this factor favors Spinnaker.

Although Spinnaker acted in good faith, the remaining *Pioneer* factors, that is, danger of prejudice to the Debtors, the length of delay and its impact on the judicial proceedings, and the reason for the delay, all weigh strongly in favor of the Debtor in not permitting Spinnaker leave to file a late proof of claim against Enron for the Guaranty. Therefore, the relief sought by Spinnaker request to file a late proof of claim under "excusable neglect" is denied.

Further, even if all of the factors, except the "reason for the delay," weighed in favor of Spinnaker, the relief sought would not be warranted under "excusable neglect." Spinnaker's failure to file a timely proof of claim against the Enron estate is a direct result of its incorrect determination that it could not file a proof of claim based upon the Guaranty unless it had verification of its execution. And further, even if that determination were correct, which for the reasons discussed above it is not, Spinnaker failed to make a reasonable effort under the circumstances to obtain timely the information it alleged it needed to file such claim.

C. *Informal Proof of Claim*

Alternatively, Spinnaker maintains that the unexecuted Guaranty attached in the proof of claim filed in the ENA case constitutes an informal proof of claim against Enron.

> To qualify as an informal proof of claim, a document purporting to evidence such claim must (1) have been timely filed with the bankruptcy court and have become part of the judicial record, (2) state the existence and nature of the debt, (3) state the amount of the claim against the estate, and (4) evidence the creditor's intent to hold the debtor liable for the debt.

*Houbigant, Inc. v. ACB Mercantile, Inc. (In re Houbigant, Inc.)*, 190 B.R. 185, 187 (Bankr. S.D.N.Y. 1995). Spinnaker contends that since they timely filed a claim against ENA, Enron was put on notice that Spinnaker intended to hold it liable as well for the same debt. The Court does not accept this argument. Assuming, without deciding, that Spinnaker has met factors one

through three, above, it has nonetheless failed to prove its intent to hold Enron liable for this debt. The Bar Date Order sent to all creditors listed in Enron's schedules, of which Spinnaker was one, explicitly and unambiguously stated a creditor must file a separate proof of claim for each specific Enron entity the creditor desired to hold liable. Spinnaker filed a proof of claim in ENA's case and evidenced its intent to hold that particular entity liable. However, Spinnaker did not file a separate proof of claim against Enron, thereby giving Enron and this Court, pursuant to the clear language of the Bar Date Order, reason to believe that Spinnaker did not intend to hold Enron liable under the Guaranty. The fact that Enron may have been on "notice" that Spinnaker filed an unexecuted copy of the Guaranty in its proof of claim in the ENA case does not change the result. *See In re The Drexel Burnham Lambert Group Inc.*, 129 B.R. 22, 27 (Bankr. S.D.N.Y. 1991) ("[M]ere awareness by the debtor of a creditor's claim through general correspondence is insufficient to establish an informal proof of claim."). Enron properly scheduled Spinnaker as an unsecured creditor having a "contingent" and "unliquidated" claim on the Guaranty, and Spinnaker should have filed a separate proof of claim if it sought to hold Enron liable. Therefore, Spinnaker's informal proof of claim argument fails.

## IV. Conclusion

The Court concludes that while Spinnaker acted in good faith, the remaining *Pioneer* factors, that is, danger of prejudice to the Debtors, the length of delay and its impact on the judicial proceedings, and the reason for the delay, all weigh strongly in favor of the Debtor in not permitting Spinnaker leave to file a late proof of claim against Enron for the Guaranty. Furthermore, since the Bar Date Order required Spinnaker to file a separate proof of claim against each individual Enron entity it sought to hold liable, Spinnaker's filing of an unexecuted

Guaranty in ENA's case does not constitute an informal proof of claim against Enron.

The Debtors are to settle an order consistent with this opinion.

Dated: New York, New York
January 31, 2007

**s/Arthur J. Gonzalez**
UNITED STATES BANKRUPTCY JUDGE