UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Minutes of Proceedings

Date: **February 16, 2006**

In re:		Chapter 11
ENRON CORP., et al.,	Debtors	Case Nos. 01-16034 (AJG)
		Jointly Administered

Present: Hon. Arthur J. Gonzalez _____ _____
Bankruptcy Judge Courtroom Deputy Court Reporter

Appearance:

1. Debtors Enron Corp., et al. John H. Thompson, Esq. Weil Gotshal & Manges LLP
2. Movant United States of America ex rel. Jack J. Grynberg No appearance

Proceedings: ☎ **Motion for Extension of Time to File an Appeal Pursuant to Federal Bankruptcy Rule 8002, Regarding Order, Pursuant to U.S.C. §§ 105(a), 502(c), and 1142 Estimating Certain Contingent or Unliquidated Claims for Purposes of Establishing Reserves – Grynberg Claim No. 383**

Orders: ☎ **For the reasons set forth on Exhibit A hereto, the motion for extension of time to file an appeal is denied**

FOR THE COURT: Kathleen Farrell, Clerk of the Court

BY THE COURT:

s/Arthur J. Gonzalez	2/17/2006	Jacqueline De Pierola
United States Bankruptcy Judge	Date	Courtroom Deputy

EXHIBIT A

Before the Court is the request by Jack J. Grynberg, Relator ("Claimant"), for Extension of Time to File an Appeal (the "Extension Motion"). The order at issue was entered on the Court's docket on January 6, 2006 (the "January 6th Order"). A hearing on the underlying matter was held on January 5, 2006, at which the Court stated on the record that it would render its decision on January 6, 2006. Claimant asserts that he did not receive a copy of the January 6th Order until after his time to file an appeal of that order had run. Under Rule 8002(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), a notice of appeal shall be filed within 10 days of the entry of the order being appealed from. In this case, the 10-day period expired on January 16, 2006.

Claimant states that on January 20, 2006, he received a copy of the January 6th Order from counsel to one of the defendants in the multi-district litigation action (the "MDL Action") commenced by Claimant, and currently pending in the United States District Court for the District of Wyoming (the "District Court"). Such action as it relates to the Debtors forms the basis of the Claimant's proof of claim #383, which was the subject of the Debtors' estimation motion that resulted in the January 6th Order. Upon receipt of the January 6th Order, Claimant prepared and filed the Extension Motion and notice of appeal. By that motion, Claimant seeks an extension based upon excusable neglect, in that he did not receive a copy of the January 6th Order until after the 10-day period under Bankruptcy Rule 8002(a) had expired and that upon receipt of such order he acted promptly in seeking the relief at issue.

On January 6, 2002, the Claimant filed a timely proof of claim, to which is ascribed claim number 383 (the "Claim"), in the amount of $10,590,000,000, among

other amounts, under the False Claims Act, 31 U.S.C. §§ 3729, et. seq. The creditor is identified as the United States of America, ex Rel. Jack J. Grynberg. The Claim is among the more than 25,000 claims that were filed in the Debtors' cases.

On May 15, 2003, the Debtors filed an objection to the Claim (the "Claim Objection"). A hearing on the Claim Objection was scheduled for June 19, 2003.

On June 11, 2003, the Claimant filed a response to the Claim Objection in the form of a motion seeking additional time for discovery. The response was filed by Mollybeth R. Kocialski, Esq., as attorney for Jack J. Grynberg. As further discussed below, it appears that counsel served as "in-house counsel" for Grynberg Petroleum Company ("GPC"), of which Mr. Grynberg is president and co-owner. *See United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1046 (10th Cir. 2004). Further, at times, counsel appears in the Debtors' cases on behalf of GPC. It is unclear as to whether GPC is also a plaintiff in the MDL Action or if the reference to GPC is a reference to counsel's employers.

On June 18, 2003, a Notice of Agenda for June 19, 2003 was filed on the docket indicating that the hearing regarding the Claim Objection was adjourned to July 3, 2003. On July 2, 2003, a Notice of Agenda for July 3, 2003 was filed on the docket indicating that the hearing on the Claim Objection was further adjourned to July 10, 2003. Both adjournments were made on consent.

On July 9, 2003, a Notice of Agenda for July 10, 2003 was filed on the docket indicating that the Claim Objection would proceed as a contested matter. The Court subsequently received a facsimile transmission from Court Conference of the confirmed telephonic appearance schedule (the "Telephonic Appearance Schedule") for the hearing

being held on July 10, 2003. The list indicated that Ms. Kocialski would appear. Notice of the procedures for telephonic appearance were provided on the Court's website and in the Case Management Order, dated February 20, 2002, the Amended Case Management Order, dated February 26, 2002 and the Second Amended Case Management Order, dated December 17, 2002 (the "Case Management Order"). The Notice of Commencement of the Debtors' cases, dated December 7, 2001, and served upon all creditors, stated that a formal notice of appearance needed to be filed for parties to receive notice of pleadings and other papers filed in the Debtors' cases.

The hearing on the Claim Objection went forward as scheduled on July 10, 2003. No appearance, telephonic or otherwise, was made on behalf of Claimant or GPC. Additionally, the Court was not contacted with an explanation as to why no appearance had been made. Since the Telephonic Appearance Schedule had indicated that counsel for Claimant would appear telephonically, the Court assumed that there had been a telephonic problem with the connection or confusion about the procedures involved, and directed the Debtors to settle an order resulting from the July 10, 2003 hearing. On July 14, 2003, the Debtors settled an order on Claimant.

On July 15, 2003, the Claimant received the settled order. That same day Claimant filed an objection to the proposed order, alleging that counsel was aware of the July 10, 2003 hearing, but had not received a confirmation from Court Conference and did not have instructions as to how to participate. Counsel further argued that entry of the proposed order without Claimant having had an opportunity to present oral argument would deprive Claimant of his right to be heard. Upon receipt of the objection, the Court scheduled a hearing for July 24, 2003. As a result, the settled order was not entered.

On July 23, 2003, a Notice of Agenda for July 24, 2003 was filed on the docket indicating that the matter would go forward as one of the contested matters.

The hearing was held on July 24, 2003, with Ms. Kocialski appearing telephonically on behalf of GPC. At the hearing the Debtors argued, among other things, that Claimant had not taken any action to prosecute his claim under the MDL Action, including the lifting of the automatic stay. Claimant's counsel sought additional time for discovery and for certain issues in the MDL Action to come to conclusion, but did not respond to Debtors' argument regarding the lifting of the automatic stay. The Debtors proceeded to suggest that an alternative course of action might be to estimate the Claim, and stated that procedures for estimation were being developed by the Debtors so as to be presented to the Court. No determination was made by the Court, which awaited further action of the parties with regard to the issues raised relating to the alleged automatic stay violation and the estimation procedures.

On May 13, 2005, a special master's report was filed in the MDL Action recommending the dismissal of Enron from the MDL Action for lack of subject matter jurisdiction.

On August 1, 2005, Ms. Kocialski withdrew as counsel for GPC and Claimant. Ms. Kocialski stated that she was no longer employed as in-house counsel to GPC and was now working as in-house counsel for another company. She therefore could no longer continue to represent Claimant. Thereafter, no other counsel appeared before this Court on behalf of Claimant.

On December 15, 2005, the Debtors filed an estimation motion with respect to the Claim (the "Estimation Motion"). The Estimation Motion was scheduled to be heard on

January 5, 2006. The Debtors' Plan had gone effective on November 17, 2004. Paragraph 60(e) of the Confirmation Order provides that the Court retains jurisdiction to estimate claims, among other things. The Debtors moved, pursuant to sections 105(a), 502(c) and 1142 of the Bankruptcy Code, to estimate the Claim at $0.

The Estimation Motion was properly served upon the Claimant. In the motion the Debtors state, among other things, that "[u]nless the Affected Claim is estimated at $0 soon, its size and unliquidated nature will require the Reorganized Debtors to maintain an inordinately large reserve and thus unnecessarily delay and diminish more meaningful distributions to the estates' valid creditors." (Estimation Mtn. ¶ 42.)

Claimant, on his own behalf, filed a timely response, dated December 28, 2005, to the Estimation Motion. In part Claimant argues that "[t]he interests of the United States should not be jeopardized for the sake of Reorganized Debtors' expediency." (Resp. to Estimation Mtn. ¶ 2.) This statement reflects the Claimant's recognition that the Debtors intended to have the issue resolved on an expedited basis. Claimant also cites 31 U.S.C. § 3730(d)(2) in arguing that considerable proceeds would be recoverable. He further cites a treatise on the False Claims Act to support his position. Furthermore, Claimant seeks to distinguish the case law cited by the Debtors in the Estimation Motion. Claimant ultimately seeks to have this Court delay its decision with respect to the Claim until any appeal of the possible dismissal of the District Court action was concluded by the Court of Appeals for the Tenth Circuit.

On January 4, 2006, the Notice of Agenda for January 5, 2006 was filed on the docket indicating that the Estimation Motion would proceed as a contested matter.

The hearing took place as scheduled on January 5, 2006. No appearance was made, either telephonically or in person, on behalf of the Claimant, and there is no indication that the Claimant scheduled a telephonic appearance with Court Conference. The Court stated on the record that it would render its decision on January 6, 2006. On January 6, 2006, the Court read its opinion into the record and granted Debtors' request to estimate the Claim in the amount of $0. Thereafter, the Court entered an order attaching as Exhibit A the Court's opinion as read into the record.

The Telephonic Appearance Schedule for the January 5, 2006 hearing did not indicate that Claimant had made arrangements to participate by telephone at the hearing. No contact was made with the Court, nor is there any indication that any was made with the Debtors, to ascertain the outcome of the proceedings that day.

On January 23, 2006, Claimant filed the Extension Motion, seeking an extension of time to file an appeal pursuant to Bankruptcy Rule 8002. Claimant stated that he had received a copy of the January 6th Order on January 20, 2006 from opposing counsel in the MDL Action.

Claimant seeks the extension based upon excusable neglect, stating that "[n]ot having knowledge of the Court's Order shows excusable neglect in the timing of the filing of a notice of appeal." (Extension Mtn. ¶ 3). Claimant argues in sum that what is at issue is a significant recovery in large part for the benefit of the United States and Native Americans.

Upon receipt of the Extension Motion, the Court scheduled a hearing on February 2, 2006 for Claimant's request. The Court attempted to advise the Claimant of the hearing date by telephone, but was unable to reach the Claimant. Two attempts were

made by the Court, and each resulted in a message that the number had been disconnected. The Court then sent a letter to Claimant, advising him of the date and time of the hearing. At the hearing Claimant stated that the telephone number indicated in the Court's letter was a working number and had been for more than 20 years. Thereafter, Court personnel tried the number again and it did connect. The Court does not know whether its personnel made an error in the two prior calls made to advise the Claimant or if there had been something wrong with the connection during that time.

The hearing proceeded as scheduled on February 2, 2006. The Claimant in both the Extension Motion and his oral presentation made the following points

** The United States would benefit considerably through a recovery from Enron resulting from the MDL action.

** Claimant never received a copy of the January 6th Order until counsel to one of the MDL defendants sent one to him.

** Had counsel to one of the MDL defendants not sent the January 6th Order to him or had they waited until the expiration of the 20 day period after entry, he would not have been able to seek any relief. The Court believes this to be an apparent reference to Bankruptcy Rule 8002(c)(2), which states that "[a] request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time

for filing a notice of appeal otherwise prescribed by this rule . . ." Fed. R. Bankr. P. 8002(c)(2).

** Claimant was pro se. In response to a question from the Court, Claimant stated that he was an engineer and not an attorney.

** In response to the Court's question as to why he did not appear either by telephone or in person, Claimant stated that he did not think he had to appear. If he thought he had to, he would have done so.

Claimant did not specifically discuss any of the elements of excusable neglect, but simply relied on the fact that the Claim was a large one substantially for the benefit of the government and that his failure to file a timely appeal was caused by his not receiving a copy of the court order in time to do so.

The Court agrees with the Debtors that the "excusable neglect" standard set forth in the case of *Pioneer Investment Services Co. v. Brunswick Associates*, 507 U.S. 380 (1993), which addresses a late filed proof of claim, is the appropriate standard to be applied for purposes of Bankruptcy Rule 8002(c)(2). *See generally Joslin v. Wechsler (In re Wechsler)*, 246 B.R. 490 (S.D.N.Y. 2000). The standard set forth in the *Pioneer* case includes consideration of the following factors:

** The danger of prejudice to the debtor;

** The length of delay and its potential impact on judicial proceedings;

** The reason for the delay, including whether it was within the reasonable c control of the movant; and

** Whether the movant acted in good faith.

Pioneer, 507 U.S. at 395. The burden of showing that excusable neglect has taken place rests on the party seeking the extension. *See Xuchang Rihetai Human Hair Goods, Co. v. Sun and Xie (In re Hongjun Sun)*, 323 B.R. 561, 563 (Bankr. E.D.N.Y. 2005) (citing *Hasset v. Far W. Fed. Sav. and Loan Ass'n (In re O.P.M. Leasing Servs., Inc.)*, 769 F2d. 911, 917 (2d Cir. 1985); *In re Hilliard*, 36 B.R. 80, 82 (S.D.N.Y. 1984)).

A. Prejudice to the Debtors

The Debtors argue that the extension of time to file an appeal will require the reestablishment of the claim reserve by the Debtors on the alleged to be worthless $10.5 billion claim. However, in this case focus should not be on the prejudice resulting from an appeal being filed, but rather on the added prejudice to the Debtor if a *late* appeal were permitted to be filed. *See Hart v. Terminex Int'l Co.*, 2002 U.S. Dist. LEXIS 11544, at *4 n.1 (N.D. Ill. June 26, 2002), *rev'd on other grounds*, 336 F.3d 541 (7th Cir. 2003) (when differentiating between a bankruptcy case involving a late-filed proof of claim, stating that "[t]he issue of prejudice to the debtor is a more significant factor in a Chapter 11 bankruptcy case than in other civil litigation because a debtor needs to know the creditors' claims going forward, whereas a late-filed notice of appeal would typically result in only the prejudice of having the judgment 'tested on its merits with due regard to plaintiff's evidence and arguments, rather than being decided in the absence of opposition.'" (quoting *Robb v. Norfolk & W. Railway Co.*, 122 F.3d 354, 357 (7th Cir. 1997))). Even if the pendency of an appeal required a reserve in the amount of the claim calculated based upon its stated amount, the Court does not believe standing alone, this demonstrates the type of prejudice that supports a finding in favor of the Debtors. It is not the kind of change in position or in planning that would constitute prejudice. *Cf.*

Manus Corp. v. NRG Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 188 F.3d 116, 126-28 (3d Cir. 1999) (when considering such factors as debtor's knowledge of the claim and whether late claim would disrupt plan of reorganization, stating that "*Pioneer* requires a more detailed analysis of prejudice which would account for more than whether the Plan set aside money to pay the claim at issue. Otherwise, virtually all late filings would be condemned by this factor . . . .") (internal citations omitted); *Brooks v. Kmart Corp. (In re Kmart Corp.)*, 315 B.R. 718, 722 (N.D. Ill. 2004) ("Prejudice from a late-filed claim is greater when the creditor's delay extends into the period in which the plan of reorganization is being negotiated, drafted, filed or confirmed.") (internal citations omitted).

In order for the prejudice to weigh in favor of the Debtors, there must be some additional prejudice, other than the pendency of the appeal, which would be suffered by the Debtor if such extension were granted, for instance that the Debtors relied on the Claimant's failure to file an appeal to some detriment. However, when you consider the broader issue of prejudice to the Debtor, including the administration of the claims process, one must look at the fact that there were more than 25,000 claims filed in the Debtors' cases, with more than 15,800 claims having been disallowed by the Court. Were the Court to allow late appeals based on a lack of knowledge that an order had been entered, any one of those 15,800 claimants who failed to comply with the Case Management Order and/or failed to monitor any hearing regarding their claims could simply argue that they did not know an order was entered disallowing their claim. Such a standard, that relieves a party of its duty to comply with procedural orders and the independent duty to monitor the Court's docket, would in effect eviscerate both

obligations. Courts have in the past considered "whether allowing a claim would be likely to precipitate a flood of similar claims." *Midland Cogeneration Venture Ltd. P'ship v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 130 (2d Cir. 2005) (citing *In re Kmart Corp.*, 381 F.3d 709, 714 (7th Cir. 2004), *In re Keene Corp*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995); *In re O'Brien Envtl. Energy, Inc.*, 188 F.3d at 128)). While it has been acknowledged that an inquiry into such factors involves "a certain amount of crystal ball gazing," *In re Enron Corp.*, 419 F.3d at 131, this Court does not believe this concern constitutes "improper speculation," and no mitigating evidence has been offered by Claimant as to the number of potential claimants that might come forward if the Court were to rule in Claimant's favor. *See id.* at 131-32.

B. Length of Delay and Impact on Judicial Proceedings

This factor appears to be more relevant in the late-filed proof of claim analysis, such as in the case in the *Pioneer* decision. Here, Rule 8002(c) ultimately limits any delay to a period within 20 days of the expiration of the 10-day period. The length of delay in this situation does not appear to have had an impact on these judicial proceedings, however this is clearly outweighed by the prejudicial impact on the administration of the Debtors' estate, as discussed above.

The result would be much the same if we were to follow the model set forth in the case of *In re Keene Corp.*, in which the inquiry with respect to the *Pioneer* factors was divided into two categories, fault and prejudice. In this analysis, prejudice "concerns not just the harm to the debtor but also the adverse impact that a late claim may have on the judicial administration of the case." 188 B.R. at 910. The *Keene* case noted that while prejudice was not defined by the *Pioneer* case, subsequent cases involving in large part

late-filed proofs of claim have examined several factors, including "the size of the late claim in relation to the estate, whether a disclosure statement or plan has been filed or confirmed with knowledge of the existence of the claim, 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." *Id.* (citing *Greyhound Lines, Inc. v. Rogers (In re Eagle Bus Mfg., Inc.)*, 62 F.3d 730, 737-38 (5th Cir. 1995); *Manousoff v. Macy's Northeast, Inc. (In re R.H. Macy & Co.)*, 166 B.R. 799, 802 (S.D.N.Y. 1994)). When the analysis is approached as in *Keene*, it is clear that while a lengthy delay has not taken place, and the individual Debtors would not be overly prejudiced by the allowance of a late appeal, the "floodgate" effect and resulting prejudice to the Debtors' estate would outweigh these considerations.

C. The Reason for Delay

It is important to note that "[i]n the typical case involving a motion to file a late appeal on the ground of excusable neglect, the four factors identified in *Pioneer* do not carry equal weight; the main focus of inquiry is the third factor, 'the reason for the delay, including whether it was within the reasonable control of the movant.'" *In re Hongjun Sun*, 323 B.R. at 564 (quoting *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003)). This is because the first two factors, the prejudice to debtors and the length of delay, often favor the party seeking to file a late appeal. *See In re Hongjun Sun*, 323 B.R. at 565. "Due to the strict time constraints governing appeals contained in Fed. R. App. P. 4 and Fed. R. Bankr. P. 8002, delay always will be minimal in actual if not relative terms, and the prejudice to the non-movant will often be negligible . . . Thus, knee jerk consideration of the first two *Pioneer* factors would improvidently skew the

balance towards virtual unbridled allowance of out-of-time appeals. The third *Pioneer* factor, the good faith of movant, is rarely at issue in requests to file late appeals." *Id.* (internal citations omitted). Thus, in making its determination, this Court directs particular attention to the reasons set forth by Claimant for his delay in filing the appeal.

Ostensibly, the reason for the delay as argued by Clamant is that he did not receive a copy of the January 6th Order until after the 10-day period under Rule 8002(a)(1) had expired. Here the Court must examine whether the delay was within Claimant's reasonable control. *Pioneer,* 507 U.S. at 395. The relevant rule in this inquiry is Bankruptcy Rule 9022(a), which states that "[i]mmediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. *Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, expect as permitted in Rule 8002*." Fed. R. Bankr. P. 9022(a) (emphasis added).

The lack of notice under Bankruptcy Rule 9022(a) must be attributable to excusable neglect. However, as will be discussed, the Case Management Order specifically directs parties that want to receive notice with how to go about doing so. (*See* Case Management Order ¶ 2(b)) ("Any creditor, equity interest holder or party in interest that, as of the date hereof, is not included on the Service List and wishes to receive notice other than as required in accordance with Bankruptcy Rule 2002 must file a notice of appearance and request for service of papers . . . with the Clerk of the Court . .

.".) In this case, the lack of notice results from a number of errors on the part of the Claimant, including:

** Failure to comply with the Case Management Order regarding the duty to provide, among other things, an electronic mail address in connection with filing a notice of appearance and request for service of papers, unless a request to be exempted from providing an electronic mail address is filed, and that no documents shall be required to be served in paper.

** Failure to appear at the hearing. Telephonic appearance has routinely been afforded parties under the Case Management Order, which Claimant's prior counsel availed herself of by following procedures under the Case Management Order.

** Failure to monitor the hearing, especially when the Debtors sought determination of matter "soon," and, as discussed above, Claimant having recognized this request of the Debtors by stating that the Debtors desire for "expediency" should not be the determining factor.

** Failure to seek clarification if Claimant had any confusion about the rules of the Court.

This is not the first time that Claimant has failed to monitor this Court's hearings with regard to his Claim. As indicated in the recitation of facts, Claimant's counsel failed to appear at the hearing scheduled for July 10, 2003. The Court assumed that there had been a technical or connection problem with the telephonic appearance because Claimant's counsel had been listed as a participant on the Telephonic Appearance Schedule. As a result, this Court ordered that the Debtors settle an order upon Claimant.

This prompted a response and the explanation that counsel had not received a facsimile confirmation for the telephonic appearance.

There are two conclusions that the Court draws from the explanation of Claimant's counsel with regard to her failing to appear at the July 10, 2003 hearing (1) Claimant's counsel believed she had no obligation, even knowing the hearing was proceeding, to ascertain the reason that she may not have been sent the telephonic confirmation, and (2) Claimant's counsel believed she had no duty to contact the Court to address the issue either before or after the hearing. Had the Court entered the order following the July 10, 2003 hearing without it having been brought to counsel's attention, the record does not indicate that any duty of monitoring the Court's docket was recognized by the Claimant's counsel either. It was only because the Court was concerned that an error had occurred with the telephonic arrangements that it required the Debtors to settle the order stemming from the July 10, 2003 hearing.

Furthermore, with regard to the hearing on the Estimation Motion, Claimant provided the Court with no explanation as to why he did not appear at the January 5, 2006 hearing, for which he filed a timely objection. He simply stated that he did not know he had to attend. Yet, Claimant petitions this Court to consider the alleged beneficiaries of his MDL Action, while he does not see fit to appear at a hearing in support of his motion. As discussed previously, Claimant knew that the Debtors sought determination of matter by the Court "soon," so that if the Court ruled in their favor, the April distribution would reflect the reduction in reserves. The fact that Claimant failed to monitor the case weighs strongly against his argument for excusable neglect. *See In re Wechsler*, 246 B.R. at 495 ("[P]lantiff's counsel was in court when the bankruptcy judge

issued his ruling and received a proposed order from defense counsel with notice that the order would be submitted to the Court on March 26. Nonetheless, plaintiff failed to check the docket for weeks. Under these circumstances, we find that the Bankruptcy Court did not abuse its discretion in finding plaintiff did not demonstrate 'excusable neglect.'") (internal citations omitted).

Claimant has sought from the outset to appear before this Court by way of his corporation's in-house counsel or on his own accord. His pleadings with regard to this matter were either prepared by counsel, or result from his own presumably sufficient experience in connection with the MDL Action to set forth his position with clarity and citations to legal authorities. He has been the named plaintiff in a multi-billion dollar litigation against numerous of defendants, where he has asserted a $10.5 billion claim against Enron, yet has failed to monitor the hearings involving his ability to collect any claim in connection with the action. Further, at no time has Claimant, or his former counsel, ever articulated why the automatic stay, which continued under the Debtors' Plan, is not implicated by his post-petition actions regarding Enron in the MDL Action.

The Claimant has not demonstrated any inability on his part to retain counsel. Indeed, he has retained counsel in the MDL Action. *See generally Grynberg*, 389 F.3d 1038. He apparently has not determined that his claim in this Court warrants the same level of representation that is provided in his underlying MDL Action. Certainly this is Claimant's choice, but such is not made without consequence. Additionally, the Claimant's argument that he is a pro se litigant, thousands of miles away from the Court is disingenuous at best. The pleadings Claimant has filed on his own behalf imply a certain level of sophistication. Whether this sophistication results from Claimant's own

effort or an attorney preparing them for Claimant is not relevant. Claimant's submissions to this Court demonstrate that he does not warrant any relaxed standard that may be applicable regarding a "pro se" litigant.

Additionally, while Claimant may be pro se, this does not excuse him from following the rules as set forth in the orders of this Court. *See In re Bucurescu*, 2003 U.S. Dist. LEXIS 9341, at *10 (S.D.N.Y. June 4, 2003) ("Simple ignorance by a pro se litigant of the applicability of an expressly stated time limitation does not constitute excusable neglect.") (internal citations omitted); *Riedel v. Marine Midland Bank*, 1997 U.S. Dis. LEXIS 4551, *4 (N.D.N.Y. April 10, 1997) ("[N]otwithstanding his pro se status, he was required to abide by the bankruptcy court rules.") (citing *In re Ghosh*, 47 B.R. 374 (E.D.N.Y. 1984)); *In re Hongjun Sun*, 323 B.R. at 566 ("The Supreme Court has instructed courts to hold pleadings filed by pro se litigants to a less stringent standard than those filed by lawyers . . . but has never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.") (internal citations omitted).

Furthermore, this Court has extended itself in order to provide ready-access telephonically, so as not to require personal appearances when they are not essential to resolve a matter, especially for those outside of this Court's geographic location. Additionally, the Case Management Order provides information relating to the free website created to provide ready access to all documents within the Court's database relating to the Debtors' cases. A review of the Case Management Order would provide any participant with the information necessary to have a ready mechanism to communicate with the Court, and to monitor those matters before this Court with ease. In

spite of the thousand-mile distance, the Claimant is well aware of his ability to participate in any proceeding by telephone had he desired to do so, as his previous counsel had indeed signed up for such service with regard to the July 3, 2003 hearing. Any failure to appear at any hearing resulted from a lack of effort or intentional disregard to procedures to obtain access to the Court.

D. Good Faith of the Movant

In general, it seems that Claimant has not proceeded with this Court in "good faith." Claimant has not taken any steps to respond to what would appear to be a violation of the automatic stay by his Corrected Third Amended Complaint, filed on May 15, 2003 in the MDL Action. This issue was brought to the attention of Claimant's counsel at the July 24, 2003 hearing before this Court. At that hearing, Claimant's counsel simply generally denied that the automatic stay had been violated, without specifically responding to the issue raised. Further, such amendment occurred after Claimant had filed his proof of claim; therefore, it was filed with knowledge of the bankruptcy proceeding. The Court believes this blatant failure to respond to this alleged violation of the automatic stay reflects an indifference on the part of the Claimant. When combined with the Claimant's failure to follow the rules and procedures of this Court, it evidences a general disregard for both the procedural and fundamental issues raised in this matter. With the issue of a lack of good faith having been raised by the Debtors, Claimant has failed to show that he was acting in good faith in his failure to respond to the allegation regarding the automatic stay and in his failure to monitor the case.

Again, the factors of reason for the delay and good faith of the movant can be combined, as in the *Keene* case, to a category relating to "fault," which "focuses on the

reason for delay, whether it was in the creditor's control, and whether the creditor acted in bad faith." *In re Keene*, 188 B.R. at 909. With regard to cases involving late-filed claims, courts often rely upon "the adequacy of the notice of the bar date, the sophistication of the creditor, and whether the creditor had and followed its own internal procedures for dealing with such notices." *Id.* (citing *Nalco Chem. Co. v. LTV Steel Co. (In re Chateaugay Corp.)*, 1993 U.S. Dist. LEXIS 5302, at *19 (S.D.N.Y. April 22, 1993); *In re Eagle-Picher Indus., Inc.*, 175 Bankr. 943, 945-47 (Bankr. S.D. Ohio 1994); *In re Hills Stores Co.*, 167 B.R. 348, 352-53 (Bankr. S.D.N.Y. 1994)). However, in dealing with our case, this Court determines that Claimant had adequate notice of the procedures as described in the Case Management Order, and that his pro se status does not excuse his refusal to comply with this Court's rules. Moreover, his actions and refusal to follow those rules in this case appear to result from indifference towards this Court and its procedures. The fault category clearly favors the Debtors.

Thus, this Court finds that Claimant's failure to file a timely appeal stems directly from his failure to comply with the rules established by this Court and the failure to fulfill his duty as a party in these cases to monitor the action which goes to the very essence of his claim. Allowing such flagrant indifference might indeed encourage other claimants to act in the same manner, believing that they too could rely on excusable neglect. This would result in a prejudicial effect on the administration of the Debtors' cases. After having considered all of the factors set forth in the *Pioneer* case, with an emphasis on the reason for Claimant's delay, the Court concludes that Claimant has failed to establish that the delay in filing an appeal from the January 6th Order resulted from excusable neglect under Rule 8002(c)(2). Based upon the foregoing, the Motion is denied.