

# Enron Court Issues Dual Injunctions to Preserve Interplead Excess D&O Policy Proceeds While Evaluating Payment of Proposed Settlements

---

January 2005

A Texas federal court has preliminarily enjoined claimants from filing additional lawsuits regarding the proceeds of excess D&O policies subject to an interpleader action in order to preserve those proceeds while the court evaluates whether settlements in the underlying litigation should be funded therefrom. *In re Enron Corp. Sec., Derivative & "ERISA" Litig. (Newby v. Enron Corp.)*, 2004 WL 2889891 (S.D. Tex. Dec. 9, 2004). In addition, the court has also enjoined the D&O carriers from making further disbursements of policy proceeds pending that determination.

The excess insurers interplead and unconditionally tendered to the court the full amount of their policy limits on a collective limit of liability of \$200 million as part of the underlying litigation related to the collapse of Enron Corporation. Certain claimants reached settlements in the underlying litigation and sought payment of their settlements from the interplead excess policies. The excess insurers sought an order enjoining anyone claiming an interest in the proceeds of the interplead policies from prosecuting or initiating any lawsuits or arbitration proceedings relating to the policies, the excess insurers, or the settlements under consideration, until further order of the court. The settling parties in the underlying litigation sought an order enjoining the excess insurers from disbursing any funds from their policies until the court determined whether the proposed settlements should be funded by those policy proceeds.

The trial court granted both injunctions. With respect to the excess insurers' request, the court held that under the federal interpleader statute, 28 U.S.C. § 2361, it had broad discretion to issue an injunction because proceedings against the excess insurers would "affect the property, instrument or obligation involved in the interpleader statute." Although noting that it need not undertake a balance of harm analysis under the interpleader statute, the court nevertheless considered traditional standards for granting injunctive relief and found that:

1. By tendering their limits, the excess insurers demonstrated a likelihood that they would prevail on their request for a discharge from all further obligations under the policies.
2. The excess insurers faced a substantial risk of irreparable injury if conflicting demands for policy proceeds were not coordinated in a single proceeding.
3. The threatened injury to the excess insurers outweighed any harm that the injunction might cause to claimants, who retained their right to seek policy proceeds in the interpleader action.
4. An injunction would serve the public interest in prompt and efficient resolution of the competing claims to the excess D&O policy proceeds.

With respect to the settling parties' request, the court applied traditional injunctive relief standards and found that:

1. The settling parties had shown a substantial likelihood of success by reaching settlements requiring funding by the proceeds of the excess D&O policies.
2. The settling parties faced a substantial risk of irreparable harm in that their settlements could be extinguished entirely if other claims eroded the interplead limits while the court considered payment of the settlements.
3. The threatened injury outweighed any damage the injunction would cause the excess insurers or non-settling claimants (who would suffer only a delay in payment).
4. The injunction would serve the public interest by encouraging settlement and providing the court time to consider whether the settlements should be funded by the excess D&O policies' proceeds.

For more information, please contact us at 202.719.7130.