

Enron Court Approves Excess Carriers' Interpleader of Remaining Policy Proceeds

August 2006

The United States District Court for the Southern District of Texas has ruled that Enron's excess D&O insurers properly tendered their remaining policy proceeds into court via an interpleader action when faced with competing demands for coverage that would have exhausted the entire Enron D&O program. *In re Enron Corp. Sec. & Deriv. Litig.*, 2006 WI 1663383 (S.D. Tex. June 12, 2006).

As of October 2004, approximately \$200 million remained in the Enron D&O program. At that time, several parties submitted settlement demands to the excess insurers, and at least two of these demands would have entirely exhausted the remaining policy proceeds. Faced with the competing and mutually exclusive demands for settlement, the insurers filed for interpleader and tendered the \$200 million in remaining policy proceeds into the court's registry. Subsequently, the insurers filed a motion for summary judgment seeking approval of their interpleader as properly filed in response to competing and mutually exclusive demands for coverage.

In granting the insurers' motion for summary judgment, the court noted that Texas law permits insurers to exhaust their policy proceeds on behalf of fewer than all insureds by entering into a reasonable settlement. The court observed the existence of a split in authority as to whether an insurer "can abandon its obligation to a nonsettling insured to defend and/or indemnify that insured against potential liability by tendering its policy limits into the court in an interpleader action." Based on its conclusion that Texas law allows an "insurer to pursue prudent settlements on behalf of and favoring some insureds that may exhaust the policy limits, without regard to the rights of non-settling insureds and ends its obligations to other insureds upon exhaustion of those limits," however, the court held that an interpleader under such circumstances is appropriate as "redundant protection for the insurer." Accordingly, the court granted the insurers' motion for summary judgment with respect to the interpleader.