UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS

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IN THE MATTER OF: * NO. 05-17697

ENTERGY NEW ORLEANS, INC., *

DEBTOR. *

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Excerpt of the proceedings taken in the above captioned matter on **Wednesday, July 12, 2006,** the Honorable Jerry A. Brown, United States Bankruptcy Judge, presiding.

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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P R O C E E D I N G S

(Wednesday, July 12, 2006)

(EXCERPT)

* * * * *

MOTION FOR AN ORDER AUTHORIZING AND DIRECTING THE SETOFF OF CERTAIN FROZEN FUNDS ON DEPOSIT AT HIBERNIA NATIONAL BANK

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MS. FUTRELL: Your Honor, Elizabeth Futrell for the Debtor, Entergy New Orleans.

I think that leaves us with the Debtor's motion to permit it to pay Hibernia the pre-petition amounts it's owed by using certain frozen funds. Would you like me to proceed now?

MR. JOHNSON: Your Honor, Pat Johnson on behalf of Capital One. Is there anywhere I can make one procedural point before you proceed with the motion?

THE COURT: Certainly.

MR. JOHNSON: And that is, Your Honor, that I just want to point out to the Court that clearly involved in this matter are issues concerning ownership and other interests in the funds, $13.5 million. Rule 7001 is clear that it requires an adversary proceeding. That's what Capital One is asking for. We respectfully request the Court not get into any of the issues, allow the adversary proceeding to go forward as required by Rule 7001. The Court can protect everybody's interests. If somebody's concerned about accrual of interest

in favor of Hibernia Committee Bondholders, the Court can address it in the adversary proceeding. You can disallow anything you want, disallow attorney's fees; you can protect everybody. But if you decide this issue today without the discovery and the evidence that Capital One needs to present to prevent this maneuver among these three Entergy entities, it will be an unfortunate situation and violate the due process rights of Hibernia. And that's why Rule 7001 requires an adversary proceeding in this situation.

THE COURT: Well, who are the other parties, they're affiliates?

MS. FUTRELL: Your Honor, first of all this is not a procedural issue he's raising, this is the entire opposition --

THE COURT: Well, no, he's raising --

MS. FUTRELL: -- the merits of the opposition that he raised.

THE COURT: -- he's raising the question of whether it should go off by motion or whether it requires an adversary. And an adversary has already been filed?

MR. JOHNSON: Yes, sir, it has.

MS. FUTRELL: A complaint was filed the day after I believe this motion was filed.

THE COURT: By the bank?

MS. FUTRELL: By Hibernia. Yes, sir, by Hibernia.

MR. JOHNSON: By us, yes, sir, against all three

Entergy entities involved.

THE COURT: All right.

MR. JOHNSON: The motion only involved Capital One and the Debtor.

THE COURT: Well, why would not the bank's rights be protected -- well, let me go back to scratch. In whose name was this account, the Debtor?

MS. FUTRELL: I beg your pardon?

THE COURT: In whose name was the account?

MS. FUTRELL: The account is in the name of Entergy New Orleans, Your Honor, and no one contests that.

THE COURT: Okay.

MS. FUTRELL: No one contests that the money in the account that is frozen -- and in fact, Your Honor, not only is it on the schedules of the Debtor as an asset, but when we had the interim DIP hearing on September 26th, Hibernia made certain that in the interim DIP order there was a paragraph added, it's Paragraph 14 I believe, that specifically says that the money will be held in a specific account that's an ENOI account. It was in one account owned by ENO and it was moved over to another account owned by ENOI.

THE COURT: Were these other affiliates ever on the account?

MS. FUTRELL: No. There's really no contest that the money was on deposit at accounts owned by in the name of

Entergy New Orleans. The Debtor, you know -- there's also no contest, Your Honor, that the Hibernia has a security interest in those -- that the money on deposit in those accounts and a security interest in some receivables that were quite substantial. So, we have a situation where, Your Honor --

THE COURT: To secure a debt of the Debtor?

MS. FUTRELL: To secure a debt of Entergy New Orleans, a pre-petition debt of about $15 million. We have --

THE COURT: And was all the security also in the name of the Debtor?

MS. FUTRELL: All the security? There was a --

THE COURT: Yeah, the accounts receivable.

MS. FUTRELL: Yes, sir. I'm sorry, right.

THE COURT: Was there any third party --

MS. FUTRELL: No.

THE COURT: -- guaranties or third party pledges?

MS. FUTRELL: No. There's no third party pledge.

Your Honor, they have taken the position in their complaint that they had certain rights of setoff against funds held by other parties, other Entergy entities. But there was a loan, a $15 million line of credit made to Entergy New Orleans. There's no guarantee of that loan. Okay, the collateral was, obviously, the money on deposit in the accounts at Hibernia Bank. There were several. The other collateral was all of the gas receivable money and all of the electrical receivable

money. The Debtor does not contest these security interests. They're good and valid security interests. We do not contest them.

This Debtor believes that it would be in the best interest of the estate, and this is supported by the Committee, the Bank of New York as indenture trustee one of the major bondholders who's here today, that it would be in the best interest of the estate for the money that is in the Debtor's accounts that had been frozen, that money is frozen pursuant to orders entered by this Court at Hibernia's request, frozen so the Debtor can't use the money. The money is sitting there. We can't use the money. It's in a non-interest bearing account. In the meantime we've got a $15 million debt accruing interest at a prime rate of interest. That's a no-win situation for the Debtor and the creditors of this estate.

All we want to do is take the money and pay the Debtor with it -- I mean pay Hibernia with it. And now we're in this bizarre situation where we have the bank who's over-secured saying, "You know what? I don't want your money. I don't want your money until I resolve an adversary proceeding."

And if you look at the complaint, Your Honor, the real issues are not with the Debtor, Entergy New Orleans, they're with Entergy Corporation and Entergy Services. They don't even involve the Debtor. But they want us to wait to pay this debt off while interest continues to accrue at this prime

rate. That's quite a substantial amount of interest on a $15 million debt. We just want to take the money and pay off the Hibernia.

They cannot contest that these are accounts in the name of Entergy New Orleans; they are. They can't contest that the have a right of setoff, because they scrupulously throughout this case protected that right of setoff in the interim DIP order and in the final DIP order. Not only that, have made certain that the money was frozen so it couldn't be used by anybody, so they would have their hands ready to use the liquid asset sitting right there. So, that's all we want to do, Your Honor, is take the money and pay Hibernia.

And, finally, Your Honor, on the application of those funds, in the motion I requested that the procedure be that first we would pay the interest that accrued as of the petition date and then pay principal. But if Your Honor has a problem with that, we can resolve the application of those funds at a later time when we object to their proof of claim. We do not need to resolve that today.

What we do need to do is do what's in the best interest of the estate and pay off the debt that's owed and over-secured.

MR. JONES: May we --

MR. JOHNSON: Well, no, I'd like to respond, Your Honor, if I may, because I made a point --

THE COURT: Yeah, and -- all right.

MR. JOHNSON: -- Ms. Futrell has tried to answer a question of yours and has omitted very key facts.

Have you had a chance to read our opposition, Your Honor, or the complaint attached, because --

THE COURT: I think so, let me see and make sure. I've got -- that was -- I'm pretty sure I read that.

MR. JOHNSON: Because to say there's no dispute as to the ownership of the funds is directly contrary to the allegations in the complaint and the opposition.

Your Honor, what occurred was Hibernia on September 21, 2005 debited the RPC account of the Debtor for the amount of the loan. ESI at that time sent $13.5 million to cover what was created as a negative balance in that account. And as we contend in the adversary proceeding, it would have been earmarked to cover that amount.

ESI has now taken the position with Capital One, and I'm quite surprised that none of this was mentioned in answer to your question, but ESI has now taken the position with Capital One that it's liable for the $13.5 million that it sent to cover that negative balance. On September 21 the account was debited. Within 24 hours it was reversed. On September 23, without any prior notification to Capital One, the 11 was filed. The $13.5 million according to Entergy Corporation and ESI was sent solely to cover that negative

balance. They're now claiming that those funds shouldn't have been sent. They're now claiming Capital One is liable for the $13.5 million, and of course we're going to oppose that setoff. They're trying to get you, Your Honor, to say the Debtor owns the money now when on their very own position it was earmarked to pay Hibernia and then there was no reason for the money to be in the account. It should have gone back to ESI.

We're asking all this be determined in the adversary proceeding, have ESI in, have us -- we need discovery. We need documents on what went on. We need to know what this whole situation is. And to say that there's no dispute as to the ownership of -- believe me, banks love to be paid, Your Honor. I'm in here all the time trying to get paid. We'd love to be paid $15.5 million and be finished with the entire deal. But that's not what's going on, Your Honor. That's why we filed the adversary proceeding against all the parties. That's why Rule 7001 says if there's a dispute on the ownership or any other interest in property it needs to be an adversary proceeding, because we need discovery; we need the full protections of an adversary proceeding.

You do not have all the evidence before you. The $13.5 million is in dispute. Their related entities have put it in dispute. They've carefully not come forward and say anything and have other people take positions. It's a very important issue, Your Honor. It is really not to be decided

outside the context of an adversary proceeding.

THE COURT: Who are the other two affiliates, ESI --

MR. JOHNSON: And Entergy Corporation, both are defendants in our adversary.

THE COURT: Entergy, the parent, okay.

All right, suppose ESI and Entergy Corporation give Hibernia -- or Capital One, suppose they give the bank a complete, a full and complete release --

MR. JOHNSON: No problem.

THE COURT: -- concerning --

MR. JOHNSON: If they and their related entities give us a complete release, Your Honor --

THE COURT: Well, suppose --

MR. JOHNSON: -- let them pay us off.

THE COURT: Well, suppose they renounce all ownership to the $13 million, okay, that’s a little bit different.

MR. JOHNSON: No, that’s what they want to do, Your Honor. They want to renounce -- they want to get us one way or the other. They want us --

I don’t know why everybody is laughing. My complaint says all this. It’s no surprise to anyone, so does my opposition. But it’s easy, obviously it’s in all the --

THE COURT: Well, I have to admit I haven’t read -- I haven’t read your complaint yet, so.

MR. JOHNSON: Okay. It’s obviously in all their

interests to get a free $13.5 million; there's no doubt about that. If it went -- Entergy is saying it was sent to cover the negative balance, that's why it was sent. So, it was earmarked, they retain ownership. If they're saying they somehow decided to give it to the Debtor, then let them release us, but don't let them just say the Debtor now owns it. That's what they want you to say.

THE COURT: What --

MR. JOHNSON: Outside of the context of the full protection of the bank.

THE COURT: But I don't see what the exposure of the bank is if they both execute instruments of whatever nature that renounce any and all ownership to the $13.5 million in favor of the Debtor.

MR. JOHNSON: Do they release any claims against Capital One in connection with the $13.5 million? That's it, very limited.

THE COURT: Well, let me hear what the claims are. What --

MR. JOHNSON: And we're not sure it's only Entergy Corporation and ESI. As the Committee we have a lot to determine as to whose money it is, we just know it's not the Debtor's money and it came in.

THE COURT: But it went in -- you do not contest the fact that it went into the Debtor's account. It was always in

an account in the name of the Debtor --

MR. JOHNSON: It went in --

THE COURT: -- and nobody else's name was on the account and nobody else had any security securing the debt from the Debtor to the bank.

MR. JOHNSON: No, we're saying that the funds went in on September 22 from ESI.

THE COURT: Yeah, but there's nothing unusual --

MR. JOHNSON: No, but that was, Your Honor, the only reason was to cover the negative balance in the RPC account to pay off Hibernia. Then they filed 11 and they left the funds in the account. And we reversed that debit, they could have taken them out. And now they're trying to say we are liable for that. And we've been put on notice of that in no uncertain terms, enough to file a declaratory judgment action.

THE COURT: All right.

MS. FUTRELL: Your Honor, I know other people want to say things about this as well, but as far as I'm concerned, and I believe we could get paperwork to this effect as well, there has -- no one has ever asserted an ownership interest in this money besides ENOI. Entergy Corporation did not file an opposition to this motion. They didn't come in and say, "You know what, this is my money; I want my money back."

THE COURT: What are Entergy Corporation and ESI planning as to the bank in the future?

MS. FUTRELL: Your Honor, I don't represent them --

THE COURT: I know.

MS. FUTRELL: -- and, you know --

THE COURT: Well, let's hear from them.

Why aren't they willing to execute a release in favor of the bank?

MS. FUTRELL: Your Honor, can I just say one more thing though before we get off the topic of the renouncing ownership, and then Entergy Corp. and their lawyers can say something else, but basically what you have here, Your Honor, is Hibernia taking the position that the money, even though it's in an ENOI bank account, has been earmarked for payment to Hibernia and, therefore, it is not an asset of ENOI. That's basically what they say.

There's a couple of problems --

THE COURT: Well, if you read the language of the notes any money that any depositor has got on hand in a bank secures any debt that that depositor owes to the bank arising in the future or whatever up to -- I don't they may have changed it, it used to be $15 million --

MS. FUTRELL: Your Honor --

THE COURT: -- it's probably $100 million now --

MS. FUTRELL: Your Honor, that's exactly the first problem with the argument. If it was in my -- in our account we should be able to offset it. The second part of that, and

this is pretty fundamental to me, if it was earmarked for Hibernia and it wasn't an asset of ENOI's estate because it was earmarked to pay Hibernia, then by God let's pay it to Hibernia. That's my only point. Let's pay it to Hibernia. I mean I don't understand, if Entergy Corp. and ESI are not here today, after having received notice of this motion, taking the position "I own this money. You can't take my money and pay someone else with it," then they don't have any rights to take that position in the future. They did not come here and they did not object to this motion.

THE COURT: Yeah, but from what I -- the undercurrent I get they may be lurking in the background going to sue the bank in the future.

MR. JOHNSON: That's exactly correct.

THE COURT: I don't know, that's what Mr. Johnson's supposedly concerned about.

MR. RUBIN: The bank has already sued -- David Rubin for Entergy Corporation and ESI.

The bank has already sued Entergy Corporation and ESI. What happened --

THE COURT: Only in a declaratory judgment action.

MR. RUBIN: Right. But what happened, Your Honor, is that by -- through a computer system this money was not earmarked in any sense that you and I understand the word "earmark." This money flowed because Hibernia knew when they

took that money out of that account that it would force a computer transfer of money into Hibernia. The result of that being that Entergy affiliates ended up with an additional $13.5 million unsecured claim against the Debtor, whereas Hibernia before all these transactions occurred was fully secured anyway. Has that caused damage to Entergy and its affiliates? Yes, it has. Will that be brought up in the adversary? Certainly it probably will.

But with respect to the money that's now in this account, that's ENOI's money. And it's beyond me that a bank won't take the money. It won't affect the adversary whatsoever.

THE COURT: All right, let me ask you this: Is Entergy Corporation and ESI willing to execute an instrument prepared by the bank that says the $12.5 million at the time of deposit was funds of the Debtor and has always remained funds of the Debtor?

MR. RUBIN: I'm not prepared to say I'm going to execute -- Entergy is going to execute a document prepared by the bank. I will tell you that --

THE COURT: No, execute a document --

MR. RUBIN: -- Entergy's position is that the money today is certainly ENOI's to dispose of.

MR. JOHNSON: May I respond?

MS. FUTRELL: The petition date.

MR. RUBIN: Yeah, as of September 23rd.

THE COURT: All right. As of September 23rd and as of today.

MR. RUBIN: Right.

THE COURT: All right.

MR. JONES: Your Honor, Kirk Jones on behalf of the Creditors' Committee.

The fight between the bank and Entergy Corp. is fine and they can argue over that. What we want is what we've been telling Ms. Futrell and the Debtor from as early as when we found out about the funds, pay the bank, because --

THE COURT: Well, what are the paying, the interest rate, what's the prime rate now?

MR. JONES: The prime rate is now 7.75, and this is in a non-interest bearing account. So, it's coming out of the Debtor's hide.

THE COURT: Even if it were an interest bearing account there would be a four and a half to five --

MR. JONES: There would be a spread. And I mean and ultimately --

THE COURT: Maybe more than that now, I don't know.

MR. JONES: Ultimately we may take -- push the Debtor -- it may already take -- there ought to be no interest because the rights of setoff were affected on the 23rd of September and no interest should accrue either way because the cash was

sitting in the account on that day.

But our point is simply it's their money, it belongs to the Debtor. Entergy Corp. or ESI who put it there don't claim that it's their money, and they know all -- they're here. So, please let us and the Debtor pay Hibernia and then they can go fight all they want to in the adversary complaint. But the money is clearly that of the Debtor and the Debtor wants to pay a debt.

And we have been goading the Debtor to do it. And we're glad it was brought, but it's something that we feel needs to be done and we don't think we ought to get caught up. This is the estate speaking -- the creditors, in a fight between Entergy Corp. and Hibernia. They can go do that wherever they want to, but let us have the Debtor pay its debt. The money is there.

THE COURT: Am I correct --

MR. JOHNSON: We can solve that problem, Your Honor.

THE COURT: -- in assuming that Entergy has a new banker now?

MR. JOHNSON: I don't know, Your Honor, but we can solve that problem right there. The bank will solve that problem.

THE COURT: All right.

MR. JOHNSON: The $13.5 million will accrue interest equal to the secured debt. It was not adversely affect the

estate at all. The bank will stipulate to that. You will have no additional accrual of interest.

MS. FUTRELL: You mean you're going to stop interest accruing?

MR. JOHNSON: The $13.5 million will be put in an interest bearing account that will earn interest equal to the amount accruing on the debt.

This is a setup, Your Honor. Please don't let it happen. We will protect the estate. It will be equal to the amount of the accrual on the debt. There's no complaint at that point.

MS. FUTRELL: As of the petition date?

MR. JOHNSON: What's as of the petition date mean? They have let this money sit in a non-interest bearing -- Entergy comes here before this Court like it's --

THE COURT: Well, if you're adequately secured --

MR. JOHNSON: -- an old lady or something, I mean what are we talking about here.

MS. FUTRELL: I take offense by that.

MR. JOHNSON: I mean this is a big company, it's bigger than Hibernia. They know what the situation has been since the date of filing. If the Court wants to address that, we're willing to address it. Just, Your Honor, please don't let this setup occur, because it's a setup to make us liable. We will protect the estate against any additional accrual of

interest from the day of today.

Look, if she got to do the setoff today, if Entergy New Orleans did it today it wouldn't affect the previous situation. They have to fight over that. We will protect the estate, Your Honor.

THE COURT: See, my problem is I don't see where the exposure to --

MR. JOHNSON: Well, Entergy is explaining it to us.

THE COURT: Hibernia is the one that brought the declaratory judgment action. Has either Entergy Corporation or ESI filed a -- I started to say a counterclaim, not a reconventional demand -- a counterclaim?

MR. JOHNSON: They have not. The deadline to answer is the end of this month, but they have put us on clear notice that we are liable for the $13.5 million in no uncertain terms. That's why we filed the declaratory judgment action.

So, again, Your Honor, escrow the $13.5 million. We'll put it in an account that accrues interest equal to the accrual on the debt going forward. There will be no adverse effect on the estate. Let them pay the rest of the money, which is not in dispute to us in any other funds. If they want to pay the rest of it off they can do anything they want, just not with the $13.5 million and set up Capital One. Let us protect ourselves with the due process rights we're entitled under the Bankruptcy Rules in the adversary proceeding.

I'm sure they'll have some argument and I will again try to protect the estate, but please don't let them do this.

THE COURT: All right, I still fail to see the exposure. What are they threatening to sue you for?

MR. JOHNSON: They're claiming that we manipulated the accounts to result in the $13.5 million of ESI going to the Entergy New Orleans account and that they never wanted it to, and they didn't have a chance to take it out before the filing and it's all our fault. That's how it's been explained to me. So, pay us 13.5 million bucks and we'll give you our unsecured claim. That's what we've been told. This is serious and we're willing to protect the estate because we have $13.5 million at stake and all we want is our procedural protections under the adversary proceeding rules.

THE COURT: Okay, let me go back to Counsel for the Debtor.

Why isn't it adequate that Mr. Johnson -- the bank does what Mr. Johnson suggested, i.e., but it in an interest bearing account that's equal to the interest being charged on the loan? And that would be from --

MR. JOHNSON: Today forward.

THE COURT: Well, there's no doubt --

MR. JONES: Well, we've got problems with that because that cuts loose collateral that we want gone for Plan purposes. We then have to deal with Hibernia as a secured

creditor on a going forward basis. It creates problems for us in the Plan formulation process to have Hibernia out there still as a creditor. We want them out of this --

THE COURT: No, no, Hibernia is going to surrender all the collateral.

MR. JONES: No, they want to hold it. They want to hold it.

MS. FUTRELL: In an escrow account.

MR. JONES: They want to hold it in an escrow account and just --

MS. FUTRELL: Plus --

MR. JONES: -- just pay interest from today going forward.

MS. FUTRELL: Plus still have a security interest in all the gas receivables and the electric receivables, which they have both pre and post-petition.

THE COURT: Wait a minute, I misunderstood him. I thought he said that they were going to agree that the -- whatever it is, the $12.5 million was adequate security for the loan in the same amount and the interest would be a setoff -- I mean would be wash.

MR. JONES: He would remain as a creditor, keep his collateral, and he would be a person that we would have to deal with in this case.

We want them out. The money is there to pay him. We

want them out. Then he's no longer a creditor. It's not a matter of the Plan having to deal with him. Hibernia is gone. It frees up his collateral. It frees up everything and then we can argue over when interest should have accrued and deal with that one small claim. But we want him gone, Your Honor.

MR. DRAPER: From the Bank of New York's perspective, we have a security interest in the accounts receivable as does Entergy, and if they're paid it frees up the accounts receivable.

THE COURT: You go from second position to --

MR. DRAPER: Yes, right.

THE COURT: -- what you claim is first.

MR. DRAPER: Right. So, this is more than the mere interest accrual during the period. This frees up a substantial asset in this estate for the benefit of the creditor body.

What happened here is in essence -- and it's not only $13 million, but the account is holding 15-plus. So, there's also a $2.5 million spread. So, you have an asset that would be freed up for creditors plus a cash spread. That makes a big difference to the estate and all the creditors.

The Bank of New York and FGIC specifically negotiated with the Debtor to pay off this account. It was a demand that we made also because it had a significant impact on this estate.

MR. SOUTH: Your Honor, may I just speak for one minute?

THE COURT: Sure.

MR. SOUTH: I'm probably the only one that hasn't spoken and I just wanted to throw my two cents in.

THE COURT: Identify yourself for the record.

MR. SOUTH: I'm sorry. George South, King & Spalding on behalf of Financial Guaranty Insurance Corporation.

Your Honor, I'll make it brief, because I think most of what I wanted to say has already been said. But the one point I just wanted to get across is that Hibernia seems to be trying to hold up the process of what we're trying to do in terms of pay down debt, secured debt of this estate and use, I believe everybody will agree now, is property that's owned by this estate to pay off a secured debt that's only accruing interest to the detriment of the estate and the creditors. And Hibernia now is trying to hold up this payment solely so that they can have a judgment, a declaratory judgment as to their potential liability to non-debtor parties. And that issue is really irrelevant to this estate. I don't even know that the Court necessarily has jurisdiction to hear it, but I mean that's for another day. But, all I would say is that I think we're letting this go down a path where we're looking at this issue as an issue that's relevant to the Debtor, which it is not, the liability as between Hibernia and Entergy or ESI.

Thank you, Your Honor.

MR. JOHNSON: Your Honor, you couldn't have an issue more relevant to the Debtor as to whether it's property of the estate or not; that's one issue.

I think the argument you just heard, Your Honor, was, look, please destroy Hibernia's due process rights in dealing with this thing, because it's more expedient for the estate and it's more beneficial to everybody else. They can pay us the rest of the money in the account. They can pay us with any other money they want. The $13.5 million will be sitting there.

If the Bank of York -- if it's decided that's property of the estate, and you can do it on an expedited basis, they can have it. There's no plan on file. There's no rush. We can do it quickly. But this is a total setup of Capital One and it's been so stated to us. And you heard that last argument over jurisdiction? That's what they're hoping for, Your Honor, they're hoping there's no jurisdiction. The Debtor is integrally involved in this.

THE COURT: All right.

MR. JOHNSON: The money came from an affiliate.

THE COURT: All right, I've heard enough. I'm going to rule that the Debtor is entitled to an order directing setoff of the frozen funds provided that both ESI and Entergy Corporation deliver to the bank prior to the setoff a notarized

statement that they had no interest in the $12.5 million as of the date it was deposited and have no interest today in those particular funds.

MR. JONES: I think the relevant date would be September 23, the filing date.

THE COURT: I'm sorry, I didn't hear you.

MS. FUTRELL: As of the petition date.

MR. JONES: The relevant date should be the filing date, September 23rd.

THE COURT: The filing date, all right.

MR. JOHNSON: What about the claims against Capital One, Your Honor?

MR. JONES: That's for another day.

THE COURT: I don't know of any claims against Capital One.

MR. JOHNSON: Well, they're set forth in the -- I can put testimony on about the claims that are asserted.

THE COURT: No, but there's no claim made yet. People threaten to sue you, you have people threaten to sue everyday.

MR. JOHNSON: Well, it was a significant enough threat that we filed an adversary proceeding.

THE COURT: No, but there's been no -- they haven't filed anything.

MR. JOHNSON: No, we did.

THE COURT: I know you did, but -- if they file a counterclaim we'll deal with it then. If they don't, well, I guess you're entitled to your declaratory judgment that there's no liability. But I think that's all I can do and I think that's all I need to do to prevent the running of interest in a substantial amount, 7.75 --

MR. JOHNSON: Well, what happens to the rest of the claim, Your Honor? There are only planning to pay off principal. What about the accrual of interest from the petition date and attorney's fees? All that needs to be determined.

THE COURT: Well, I think they've got to pay the accrued interest as of the petition date. Why shouldn't they?

MS. FUTRELL: Your Honor, I offered and I guess it wasn't heard, I offered to resolve the issues on the application at a later date when we have objection to the Hibernia proof of claim and we can --

THE COURT: No, you pay off a claim you pay off the accrued interest, at least as of --

MS. FUTRELL: I beg your pardon?

THE COURT: -- at least as of the petition date and after that we can decide at a later date whether they're secured, over-secured, or whether they're entitled to any interest or what.

MS. FUTRELL: Okay.

THE COURT: But I think you've got to pay whatever the principal is, $12.5 million, and the accumulated interest as of the petition date and the fees of $5,216.40.

MR. JOHNSON: Your Honor, will you make part of your ruling that this has no effect on the issue of ownership in the adversary proceeding, your ruling today, so we're free to have our dispute decided in the adversary proceeding?

THE COURT: Well, no, I'm not going to make that a part of the ruling, but I just got through saying that it was conditioned upon their executing an affidavit saying that they had no ownership. Now, why isn't that sufficient? That's another instance of somebody asking me to bless an ex parte stipulation or affidavit. I think I've done enough of that.

MR. JOHNSON: Can the stipulation be that they transferred the funds and decided on their own to funds --

MS. FUTRELL: No, Your Honor, that's --

THE COURT: I'm not going to get into any of those facts. All I'm requiring them to do is both of them who are the only other two contestants to say that they did not have any ownership in this deposit as of the --

MS. FUTRELL: Petition date.

THE COURT: -- petition date and as of today's date.

MS. FUTRELL: And as of today.

THE COURT: That's it. All right.

MR. JONES: Thank you, Your Honor.

MS. FUTRELL: Thank you.

THE COURT: That’s everything in Entergy?

MS. FUTRELL: Yes, sir.

THE COURT: All right, the Court will take a short break.

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(Hearing is Concluded)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

\S\Dorothy M. Bourgeois **7/14/06**
DOROTHY M. BOURGEOIS **Date**