UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	**NO. 05-17697**
ENTERGY NEW ORLEANS, INC.	*	
	*	**CHAPTER 11**
DEBTOR		
	*	**SECTION "B"**

* * * * * * * *

MOTION FOR AN ORDER APPROVING THE COMPROMISE OF CERTAIN INSURANCE CLAIMS BY AND BETWEEN THE DEBTOR AND AMERICAN MOTORISTS INSURANCE COMPANY

NOW INTO COURT, through undersigned counsel, come Entergy New Orleans, Inc. ("ENOI" or "Debtor") files this Motion for an Order Approving the Compromise of Certain Insurance Claims by and between American Motorists Insurance Company (the "Motion"), pursuant to Federal Rule of Bankruptcy Procedure 9019. In support of its Motion, ENOI attaches (a) the Settlement Agreement attached to this Motion as Exhibit A (the "Settlement Agreement"), and (b) the supporting Declaration of George G. Hansen attached to this Motion as Exhibit B (the "Hansen Declaration"). In further support of the Motion, the Debtor shows as follows:

A. PROCEDURAL BACKGROUND

1. On September 23, 2005, ENOI filed its voluntary petition under Chapter 11 of the Bankruptcy Code, and continues to operate its business and manage property as a debtor-in-possession pursuant to 11 U.S.C. §1107 and 1108.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

B. RELIEF SOUGHT IN THIS MOTION AND THE LEGAL STANDARD

3. By this Motion, ENOI seeks authority to compromise its insurance coverage claims against American Motorists Insurance Company ("AMICO") for $800,000, payable in two installments, in exchange for (a) ENOI's release of rights to certain insurance policies, and (b) ENOI's limited agreement to defend and hold AMICO harmless, up to $800,000, for certain specified "Indemnified Claims," as more fully described in Paragraphs 20, 21 and 28 of this Motion, and Paragraphs 36 and 37 of the Hansen Declaration.

4. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Pursuant to Bankruptcy Rule 9019(a), approval of a compromise settlement is within the sound discretion of this Court. Connecticut Gen. Life Ins. Co. V. United Companies Fin. Corp. (In re Foster Mort. Corp.), 68 F. 3d 914, 917 (5th Cir. 1994); U.S. v. Alaska Nat'l Bank of North (In re Walsh Constr., Inc.), 669 F. 2d 1325, 1328 (9th Cir. 1982); In re Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986); In re Resorts Int'l, Inc., 145 B.R. 412,451 (Bankr. D.N.J. 1990). The standard for approval of a compromise is whether the proposed settlement is "fair and equitable" and "in the best interest of the estate." Protective Comm. For Indep. Stockholders of TNT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S. Ct. 1157, 1163 (1968); In re Energy Co-op., Inc., 886 F 2d 921, 927

(7th Cir. 1989); In re Telesphere Communications, Inc., 179 B. R. 544, 552 (Bankr. N. D. Ill. 1994).

5. In In re Apex Oil Co., et al., 92 B. R. 847 (Bankr. E. D. Mo. 1988), the court explained the meaning of the "fair and equitable" and "best interests of the estate" standards in connection with a proposed release of claims and causes of action:

> This Court need not conclusively determine claims subject to compromise, nor find that the settlement constitutes the best result obtainable. Instead, this Court need only canvass the issues to determine that the settlement does not fall "below the lowest point in the range of reasonableness." In re Apex Oil, 92 B. R. At 867 (citing Cossof v. Rodman (In re W. T. Grant Co.), 699 F. 2d 599, 608, 613 (2d Cir.), cert. denied , 104 S. Ct. 1983).

6. In considering the fairness, reasonableness, and adequacy of a settlement, courts have considered the following factors:

   (a) the probability of success in the litigation;

   (b) the difficulties to be encountered in collection;

   (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and

   (d) the paramount interest of the creditors.

Official Unsecured Creditors' Comm. Of Pennsylvania Truck Lines, Inc. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.), 150 B. R. 595, 598 (E. D. Pa. 1992), *aff'd*, 8 F. 3d 812 (3d Cir. 1993); In re Grant Broadcasting of Philadelphia, Inc., 71 B. R. 390, 395 (Bankr. Cir. 1984), *cert. denied*, 105 S. Ct. 1169 (1985). The settlement need not be the best that the debtor could have achieved, but must only fall "within the reasonable range of litigation possibilities." In re Penn Cent. Transp. Co., 596 F. 2d 1102, 1114 (3d Cir. 1979) (citation omitted).

7. In making its determination, a court should not substitute its own judgment for that of the debtor. Neshaminy Office, 62 B. R. at 803. Moreover, it is not necessary for the court to conduct a "mini trial" of the facts or the merits underlying the dispute. Grant Broadcasting, 71 B.R. at 396; see also In re Telesphere Communication, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994). Rather, the court need only consider those facts which are necessary to enable it to evaluate the settlement and to make an informed and independent judgment about the settlement. Penn Cent., 596 F. 2d at 1114; In re Energy Coop., Inc., 886 F. 2d 921, 924-25 (7th Cir. 1989).

C. FACTUAL BACKGROUND

(i) Retention of Claro

8. On July 13, 2006, the Court entered an Order (P-1018) granting ENOI's Application (the "Retention Application") to Retain the Claro Group, LLC ("Claro") (P-887). As explained more fully in the Retention Application, ENOI retained Claro to provide insurance consulting services related to claims asserted under one or more policies issued by AMICO (collectively, the "AMICO Policies"),[1] for potential asbestos and other alleged tort exposures that occurred during the construction of two powerhouses.

9. Claro is performing similar consulting services for Entergy Louisiana, LLC ("ELL"), Entergy Mississippi, Inc. ("EMI"), Entergy Arkansas, Inc. ("EAI"), and Entergy Gulf States Utilities, Inc. ("EGSI") (collectively, the "Other Entergy Affiliates"). (Retention Application, at Paragraphs 8, 9, 16, 21 and 25.)

---

[1] The AMICO Policies are defined in the Settlement Agreement (Exhibit A to this Motion), at Article I(F), page 3.

(ii) The AMICO Policies

10. Between 1948 and 1985 Ebasco Services, Inc. ("Ebasco") constructed a number of powerhouses for ENOI and the Other Entergy Affiliates. More specifically, Ebasco constructed two (2) units at the Michoud Steam Electric Station. Between December 1, 1954, and April 15, 1957, Ebasco constructed Michoud SES – Unit 1. Between March 9, 1965, and October 10, 1967, Ebasco constructed Michoud SES – Unit 3. These are the only units that Ebasco constructed for ENOI.

11. In connection with Ebasco's construction of ENOI (and other) Powerhouses, Ebasco purchased primary comprehensive general liability (CGL) and catastrophe liability policies that covered Ebasco other "named insureds" for various third party liabilities associated with construction operations, including property damage, personal injury and product liabilities. AMICO participated in the Ebasco insurance program from 5/1/1968 to 1/1/1977. (Hansen Declaration at Paragraph 8, and Hansen Declaration Exhibit 3.)

12. The AMICO Policies do not include aggregate limits for non-product related personal injury. The primary policies provide for reimbursement of defense costs until indemnity costs (i.e., actual settlements or judgments paid, not including defense costs) reach the per occurrence limit of a given policy. (Hansen Declaration at Paragraph 9.)

13. ENOI, as well as certain of the Other Entergy Affiliates, were included as "named insureds" on the AMICO Policies and therefore potentially have rights to the AMICO Policies. (Hansen Declaration at Paragraph 10.)

(c) AMICO's Financial Condition

14. AMICO and its affiliate Lumberman's Mutual Casualty Company ("LMC"), as part of the Kemper Insurance Companies, have been in run-off under the insurance laws of

Illinois since July 2003. Run-off insurance companies do not write new insurance; they are solely engaged in resolving outstanding and/or future claims against their open policies issued prior to run-off, and they are technically solvent so long as their surplus (assets minus liabilities) is greater than zero. (Hansen Declaration at Paragraphs 13-17.)

15. Depending upon an insurer's performance in run-off, which is gauged largely by whether insurers meet certain risk-based capital requirements, the Illinois Division of Insurance can seek to place an insurer, its subsidiaries and affiliates, in formal proceeding, such as receivership, rehabilitation, or other. Thus, as LMC's affiliate, AMICO could be placed in formal proceeding if either AMICO or LMC perform poorly in run-off. Based on LMC's performance to date, the accounting firm KPMG is of the opinion that there is doubt as to the ability of AMICO and LMC to continue as "going concerns." (Hansen Declaration at Paragraph 18.) Consequently, there is an obvious and significant risk of further regulatory supervision which, if invoked, will become a barrier to recovering past due, pending and future insurance claims on behalf of ENOI.

16. If the Illinois Division of Insurance places AMICO in formal proceeding such as receivership, rehabilitation, etc., insureds such as ENOI will likely face a long, drawn out regulator-directed insolvency process with an uncertain outcome with respect to tendered claims. Indeed, while existing claims (those tendered but not paid) would likely be significantly discounted in a regulatory proceeding, little or no value would be placed on future claims.

D. THE SETTLEMENT AGREEMENT

17. ENOI seeks authority to settle its insurance coverage claims against AMICO, and buyout ENOI's coverage in the AMICO Policies. The terms of the Settlement Agreement, and

the justifications for requesting the relief sought in this Motion, are more fully discussed below.

(i) The Terms of the Settlement Agreement

18. The Settlement Agreement would provide the Debtor with $800,000 in cash, with the first $400,000 being paid within ten (10) days of the effective date of the Settlement Agreement, and another $400,000 on or before December 31, 2006.[2]

19. In return, ENOI would release AMICO from all past and future insurance coverage claims under the AMICO Policies.[3]

20. AMICO insisted that ENOI also agree to defend and indemnify AMICO for any claims made against AMICO under or related to the AMICO Policies. After negotiations, AMICO agreed that ENOI's defense and indemnity obligation in the Settlement Agreement would only apply to claims asserted by ENOI, its predecessors, successors or companies under its control (defined as 51% or greater owned by ENOI). This limitation has been incorporated into the Settlement Agreement. (Settlement Agreement, Article I(D), at page 2; Hansen Declaration at Paragraph 36.)

21. After extensive negotiations, AMICO also agreed that ENOI's defense and indemnity obligation would be capped at the settlement amount that AMICO would pay to ENOI ($800,000).[4] This critical limitation is not contained in the settlement agreement

---

[2] Settlement Agreement (Exhibit A), Article II, at page 4.

[3] The full terms of the release are set forth in the Settlement Agreement at Article III, at pages 4 and 5. The release would include the dismissal of the lawsuit pending in the United States District Court for the Eastern District of Louisiana, case no. 05-0139 (the "AMICO Litigation). The AMICO Litigation is discussed in the Hansen Declaration at Paragraphs 20 through 24.

[4] More particularly, the Settlement Agreement provides that the defense and indemnity limitation is "[u]p to the Settlement Amount," and that "ENOI's obligations under this paragraph IV shall be terminated once it has spent a total of $800,000 in the aggregate for defense and indemnification of Indemnified Claims." Settlement Agreement, Article IV, at page 5.

between AMICO and the Other Entergy Affiliates. (Hansen Declaration, at Paragraph 37.)

(ii) Justification

22. By way of background, Claro was retained to assist (among other things) in negotiating a buyout of the AMICO Policies for ENOI and the Other Entergy Affiliates. As part of that process, Claro prepared and presented AMICO a comprehensive claim for all liabilities, including potential future liabilities, relating to the AMICO Policies, in order to "price" a buyout of the AMICO Polices for ENOI and the Other Entergy Affiliates (the "Comprehensive Claim"). This is consistent with industry practice. (Hansen Declaration at Paragraphs 24 and 25.)

23. In preparing the Comprehensive Claim, Claro used a modeling approach that resembles the future claim estimating practices employed in the context of asbestos bankruptcy cases. Specifically, a potentially-exposed population is identified and epidemiological precedents and industry averages are applied against that population to estimate a population of potential claimants. The average defense and settlement values are then applied to the population of potential claimants to arrive at an estimatd projection of future liabilities. (Hansen Declaration at Paragraph 32.)

24. In addition, Claro also analyzed how such liabilities might be allocated among various policies which might be implicated to arrive at an appropriate assumed allocation for the AMICO Policies. Generally, certain key factors impact how damages are allocated among policies implicated by an asbestos claim:

- Occurrence- What constitutes an occurrence within the definition of the policy?
- Trigger – Which policy year(s) are implicated by a claim, and
- The Allocation Formula – Given the occurrence definition and the trigger period, damages for a given occurrence are generally spread over the trigger period under various formulas.

See Hansen Declaration at Paragraph 30.

25. After Claro estimated future liabilities and allocated those liabilities under the AMICO Policies, it concluded that ENOI could expect to be paid anywhere from $569,307-$640,769 in a buyout of the AMICO Policies. (Hansen Declaration at Paragraphs 39 and 40.) Based on this evaluation, the $800,000 buyout contained in the Settlement Agreement is fair and equitable.

26. The Hansen Declaration discusses the settlement amounts that AMICO will pay the Other Entergy Affiliates at Paragraph 35. The Hansen Declaration further discusses the evaluation of the ENOI claim against AMICO relative to the Other Entergy Affiliates at Paragraphs 38 through 42.

27. The Debtor believes that the $800,000 settlement amount to be paid to ENOI represents fair value compared to what ENOI could reasonably expect to recover from AMICO given the various legal, financial and regulatory uncertainties that ENOI would face in pursuing claims against AMICO.

28. Obviously, the Debtor would have preferred a Settlement Agreement without any obligation of future defense or indemnification to AMICO. Although the Debtor was unsuccessful in negotiating the deletion of any defense or indemnity obligation, Claro was able to negotiate with AMICO an important limitation to the foregoing defense and indemnity obligation as it relates to and for ENOI: that is, ENOI's defense and indemnity

obligation is limited to the value of the ENOI buyout ($800,000). The settlement agreements between AMICO and the Other Entergy Affiliates do not include any limit on their indemnity obligation to AMICO. (Hansen Declaration at Paragraph 37.)

29. For all of these reasons, the Debtor believes the Settlement Agreement is fair and equitable and in the best interests of the estate.

NOTICE

30. Notice of this Application has been given to all parties in interest listed on the attached Special Service List, including (a) each of the Debtors secured creditors; (b) the Debtor's twenty (20) largest unsecured creditors; (c) thirty (30) additional unsecured creditors that were randomly selected from ENOI's mailing matrix; (d) all parties who have filed a notice of appearance and request for notice; (e) the entities that may assert regulatory authority over ENOI, (f) United States Trustee; (g) the other parties listed on the attached Special Service List; (h) counsel for Bank of New York, as indenture trustee, and (i) counsel for the Unsecured Creditors Committee. The Debtor submits that no further notice is necessary for this Court to enter an Order granting the relief requested by this Application.

WHEREFORE, Entergy New Orleans, Inc. respectfully requests that this Court grant it authority to enter into the Settlement Agreement that is attached to this Motion as Exhibit A, and for such further relief as is just.

Respectfully submitted,

/s/ Elizabeth J. Futrell

R. PATRICK VANCE, Bar No. 13008
ELIZABETH J. FUTRELL, Bar No. 5863
NAN ROBERTS EITEL, Bar No. 19910
TARA G. RICHARD, Bar No. 26356
JOSHUA J. LEWIS, Bar No. 29950
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.
201 St. Charles Avenue, 49th Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000

Attorneys for the Debtor and Debtor-in-Possession, Entergy New Orleans, Inc.