UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	CHAPTER 11
	:	(Jointly Administered)
TOUCH AMERICA HOLDINGS, INC.,	:	
et al.[1]	:	Case No. 03-11915 (KJC)
Debtors	:	

MEMORANDUM[2]

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE

BACKGROUND

On June 19, 2003, Touch America Holdings, Inc. *et al.* (the "Debtors") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtor's Amended Liquidating Chapter 11 Plan (docket no. 1853)(the "Plan"), filed on August 17, 2004, was confirmed by Order of the Court dated October 6, 2004 (docket no. 2172). Brent C. Williams (the "Plan Trustee") was appointed as the plan trustee for the plan trust that was established under the Plan, the Plan Trust Agreement attached as Exhibit A to the Plan, and the Confirmation Order.

The Plan Trustee objects to the following proofs of claim filed by PPL Montana, LLC ("PPL") on December 15, 2003 against the Debtors:

[1]The following chapter 11 cases are being jointly administered pursuant to an Order dated June 23, 2003 (docket no. 27) : Touch America Holdings, Inc., Touch America, Inc., Entech, LLC, Touch America Purchasing Company, LLC, Touch America Intangible Holding Company, LLC, Sierra Touch America LLC, and American Fiber Touch, LLC.

[2]This Memorandum constitutes the findings of fact and conclusions of law, as required by Fed.R.Bankr.P. 7052. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and §157(a). Venue is proper pursuant to 28 U.S.C. § 1409. This adversary proceeding involves a core matter pursuant to 28 U.S.C. § 157(b)(2)(B).

- claim no. 02621 filed against Sierra Touch America, LLC,
- claim no. 02622 filed against American Fiber Touch,LLC,
- claim no. 02623 filed against Touch America, Inc.,
- claim no. 02624 filed against Touch America Purchasing Company, LLC,
- claim no. 02625 filed against Entech, LLC,
- claim no. 02626 filed against Touch America Holdings, Inc.,
- claim no. 02627 filed against Touch America Intangible Holding Co., LLC,
- claim no. 02640 filed against Touch America Holdings, Inc.,
- claim no. 02641 filed against Entech, LLC,
- claim no. 02642 filed against Touch America Intangible Holding Co., LLC,
- claim no. 02643 filed against Touch America, Inc.,
- claim no. 02644 filed against Touch America Purchasing Company, LLC,
- claim no. 02645 filed against Sierra Touch America, LLC, and
- claim no. 02646 filed against American Fiber Touch, LLC.

(collectively, the "TA Claims"). The claims are divided into two categories: claim numbers 02621 through 02627 are secured claims (the "Secured TA Claims") and claim numbers 02640 through 02646 are unsecured claims (the "Unsecured TA Claims").[3] The amount of the TA Claims are listed as "unliquidated."

The Plan Trustee objects to the TA Claims under sections 502(b) and 1107 of the Bankruptcy Code (11 U.S.C. §502(b) and §1107), Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure, and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware. The Plan Trustee argues that the TA Claims are identical to claims filed by PPL against NorthWestern Corporation ("NorthWestern") in its separate chapter 11 bankruptcy case, and that PPL filed the identical claims in both bankruptcy cases because it was unclear which entity was responsible for those claims. The Plan Trustee asserts that NorthWestern is solely responsible for those claims and that PPL already has received

[3]Copies of the Secured TA Claims are attached as Exhibits C, D, E, F, G, H, and I to the Declaration of David J. Richardson in Support of Plan Trustee's Objection to Claims of PPL Montana, LLC (the "Richardson Declaration"), filed in support of the Plan Trustee's Objection (docket no. 3116)). Copies of the Unsecured TA Claim are attached as Exhibits J, K, L, M, N, O, and P to the Richardson Declaration.

satisfaction of the claims from NorthWestern through a court-approved settlement agreement. PPL argues, in response, that the Debtors and NorthWestern are liable for the claims and that the settlement with NorthWestern specifically stated that it did not affect its right to pursue claims against the Debtors to receive complete recovery.[4]

For the reasons set forth below, the Plan Trustee's objection to the TA Claims will be sustained.

FACTS

This case has its origins in a Montana corporation known as The Montana Power Company ("Montana Power"). As of December 1997, Montana Power directly owned assets and operations related to two types of businesses: (i) an energy generation business; and (ii) an energy utility (transmission and distribution) business. In addition, Montana Power was a holding company whose subsidiaries included (i) Touch America, Inc. ("TAI"), a telecommunications business, and (ii) Entech, Inc. ("Entech"), a subsidiary holding company which, in turn, owned a variety of oil and gas assets and subsidiaries, a variety of coal mining assets and subsidiaries, and an independent power business.

The Generation Assets Sale

In 1997, the Board of Directors for Montana Power (the "MP Board") decided to refocus the company's business holdings from energy to telecommunications. In a sale that closed on December 17, 1999, PP&L Global, Inc. ("PPL Global") purchased from Montana Power all of Montana Power's assets related to energy generation (the "Generation Asset Sale"), pursuant to

[4]The Response of PPL Montana, LLC to the Plan Trustee's Objection to Claims was filed on June 14, 2006 at docket no. 3157 ("PPL's Response").

the terms of an Asset Purchase Agreement (the "APA") dated October 31, 1998 between PPL Global and Montana Power.[5] As part of the Generation Asset Sale, PPL Global agreed to sell specified quantities of electricity to Montana Power under the terms of two Wholesale Transition Service Agreements (the "WTSAs").

On December 17, 1999, PPL Global assigned to PPL all rights, interests and obligations under the APA that are relevant to PPL's proofs of claim.

The McGreevey Litigation

In August 2001, a group of Montana Power shareholders filed an action in Montana state court against several defendants, including Montana Power and PPL, asserting claims arising from the Generation Asset Sale and later asset sales by Montana Power. The case, entitled *McGreevey v. The Montana Power Co.*, case no. 01-141 (the "McGreevey Litigation") was removed to the United States District Court for the District of Montana, where it remains pending. In their Fourth Amended Complaint, the shareholders seek a declaratory judgment that Montana Power failed to obtain the shareholder approval required for the asset sales and seek imposition of a resulting and/or constructive trust on the assets, together with the net profits realized by the defendant-purchasers, including PPL.[6]

The Restructuring and Utility Asset Sale

On February 13, 2002, a restructuring of Montana Power occurred, which included the following events:

(i) Montana Power became a subsidiary of Touch America Holdings, Inc. ("Touch America"),

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[5]*See* Richardson Declaration, Exhibit A.

[6]*See* PPL's Response, Exhibit B.

(ii) all former shareholders of Montana Power were issued replacement stock in Touch America, and

(iii) Montana Power was merged into a subsidiary of Touch America known as Montana Power LLC ("MPLLC"), with the latter as the surviving entity.

On February 15, 2002, NorthWestern acquired Touch America's single member unit interest in MPLLC pursuant to the terms of the Utility Purchase Agreement (the "UPA"), dated September 29, 2000, and entered into by and among NorthWestern, Touch America and Montana Power (the "Utility Sale").[7] Following the closing of the Utility Sale, MPLLC changed its name to NorthWestern Energy, LLC. Subsequently, NorthWestern acquired substantially all of the assets and liability of NorthWestern Energy, LLC, including all of the assets and liabilities relevant to the claims, counterclaims and set-offs encompassed in the litigation between NorthWestern and PPL (as described below), and NorthWestern Energy, LLC was renamed Clark Fork and Blackfoot, LLC.[8]

The Chapter 11 filings and PPL's claims

On June 17, 2003, Touch America and its affiliates filed petitions for relief under chapter 11 of the Bankruptcy Code, initiating this bankruptcy case. On December 15, 2003, PPL filed the TA Claims in this case. The TA Claims all contain the following similar language:[9]

> This Proof of Claim arises from an Asset Purchase Agreement dated October 31, 1998, amended as of June 23, 1999 and as of October 29, 1999 (the "Asset Purchase Agreement") between The Montana Power Company ("MPC"), as "Seller" and PP&L Global, Inc. ("PPL Global"), as Purchaser. PPLM [PPL] is the assignee of PPL Global

[7] *See* Richardson Declaration, Exhibit B.

[8] Richardson Declaration, Exhibit T, ¶ I.

[9] This language is found in paragraphs 3, 8 and 9 of the Secured TA Claims. (*See* Richardson Declaration, Exhibits C, D, E, F, G, H, and I). Similar language is set forth in paragraphs 3, 9 and 10 of the Unsecured TA Claims. (*See* Richardson Declaration, Exhibits J, K, L, M, N, O, and P).

under the Asset Purchase Agreement.

....

As a result of the transactions described in the preceding four paragraphs, PPLM [PPL] believes that NorthWestern Corporation and its predecessor-in-interest NorthWestern Energy, LLC, formerly known as Montana Power, LLC and now known as Clark Fork and Blackfoot, LLC, acquired all of the obligations and liabilities of MPC as Seller under the Asset Purchase Agreement, including MPC's indemnity obligations under the Asset Purchase Agreement.

Notwithstanding the foregoing, a dispute exists between Touch America and NorthWestern as to whether Touch America or NorthWestern is the successor to certain of the liabilities of MPC. PPLM therefore is filing this Proof of Claim to preserve its rights against Touch America in the event that, and to the extent that, Touch America is found to be the successor to MPC, or Touch America is otherwise liable for the claims set forth herein.

On September 14, 2003, NorthWestern filed a petition for relief under chapter 11 of the Bankruptcy Code, initiating bankruptcy case no. 03-12872 in the United States Bankruptcy Court for the District of Delaware.[10] On January 13, 2004, PPL filed a proof of claim against NorthWestern in the NorthWestern bankruptcy case, which was amended on August 3, 2004. The proof of claim filed against NorthWestern contains similar language to that found in the TA Claims, as follows:

4. This Amended Proof of Claim arises from an Asset Purchase Agreement dated October 31, 1998, amended as of June 23, 1999 and as of October 29, 1999 ("Asset Purchase Agreement"), between The Montana Power company ("MPC"), as "Seller," and PP&L Global, Inc. ("PPL Global"), as "Purchaser."

....

6. On or about February 13, 2002, MPC, the Seller under the Asset Purchase Agreement, merged into Montana Power, LLC, which was then a wholly-owned subsidiary of Touch America Holdings, Inc. ("Touch America"). As a result of this merger, Montana Power , LLC succeeded to all the rights, interests, and obligations of MPC, including the rights, interests, and obligations of MPC under the Asset Purchase Agreement and the WTSAs.

....

[10]The undersigned succeeded to the administration of the NorthWestern chapter 11 case on March 16, 2006 (docket no. 3462).

10. As a result of the transactions described in the preceding four paragraphs, PPLM believes that NorthWestern Corporation and its predecessor-in-interest NorthWestern Energy, LLC, formerly known as Montana Power, LLC and now known as Clark Fork and Blackfoot, LLC, acquired all of the obligations an liabilities of MPC as Seller under the Asset Purchase Agreement, including MPC's obligations liabilities under WTSAs and indemnity obligations under the Asset Purchase Agreement.[11]

The Litigation between NorthWestern and PPL

Prior to the bankruptcy filing, in September 2002, NorthWestern commenced an action entitled *NorthWestern Corp. v. PPL Montana, LLC v. Clark Fork and Blackfoot, LLC*, case no. CV-02-94-BU-SEH, in the United States District Court for the District of Montana (the "NorthWestern/PPL Litigation").[12] In its Third Amended Complaint, NorthWestern alleged that the APA required PPL to purchase certain assets defined in the APA as the "Colstrip 1, 2 and 3 Transmission Assets" (the "Colstrip Transmission Assets") for in excess of $97 million upon the occurrence of certain conditions precedent, which NorthWestern alleged had been satisfied.

In PPL's Third Amended Answer, Counterclaims and Set-offs to the Third Amended Complaint, PPL asserted various counterclaims against NorthWestern, including, *inter alia*, (i) breach of contract claims concerning the WTSAs (alleging that Montana Power overscheduled energy - - i.e., it took more power than it was entitled to take under the WTSAs at times when the contract price was lower than the market price, resulting in damages to PPL), (ii) breaches of the indemnification provisions of the APA (including claims for failure to indemnify

[11] *See* Richardson Declaration, Exhibit Q.

[12] This lawsuit was originally filed by plaintiff NorthWestern Energy, LLC ("NWE") in Montana state court, Second Judicial District, Silverbow County and was served on PPL on September 4, 2002. On September 13, 2002, PPL removed the state court action to the District Court. On November 15, 2002, NorthWestern acquired substantially all of the assets and liabilities of NWE relevant to the NorthWestern/PPL litigation. (*See* Richardson Declaration, Exhibit R).

environmental losses and expenses incurred in defending the McGreevey Litigation), and (iii) constructive fraud and unjust enrichment claims.[13]

NorthWestern and PPL signed a settlement agreement dated September 13, 2005 to resolve the NorthWestern/PPL Litigation (the "Settlement Agreement").[14] In the Settlement Agreement, NorthWestern and PPL agreed (among other things) that: (i) PPL would pay $9 million dollars to NorthWestern, (ii) NorthWestern would transfer to PPL title to the back-up transformer at the Colstrip Generating Station, (iii) NorthWestern and PPL would file a Stipulation of Dismissal with Prejudice regarding the NorthWestern/ PPL Litigation, (iv) PPL would withdraw its proof of claim against NorthWestern, and (v) NorthWestern and PPL would release all claims against each other.

On or about September 14, 2005, NorthWestern filed a motion in the NorthWestern bankruptcy case for bankruptcy court approval of the Settlement Agreement.[15] An "Order Authorizing and Approving Settlement Agreement of Debtor with PPL Montana, LLC and PPL Global, LLC" dated September 29, 2005 was entered in the NorthWestern bankruptcy case.[16]

The Plan Trustee's Objection to the TA Claims filed by PPL

On or about April 28, 2006, the Plan Trustee filed his Objection to the claims of PPL Montana, LLC (docket no. 3116). PPL filed a Response opposing the Plan Trustee's Objection to its TA Claims on June 14, 2005 (docket no. 3157). After obtaining an Order dated June 27,

[13]*See* Richardson Declaration, Exhibit S, ¶¶18 - 21.

[14]*See* Richardson Declaration, Exhibit T.

[15]*See* Richardson Declaration, Exhibit S.

[16]*See* Richardson Declaration, Exhibit U.

2006 granting permission, the Plan Trustee filed a Reply (docket no. 3160). Oral argument on the Objection was held on July 12, 2006. The material facts are undisputed.

DISCUSSION

When a claim objection is filed in a bankruptcy case, the burden of proof as to the validity of the claim shifts between parties. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992), *In re United Companies Fin. Corp.*, 267 B.R. 524, 527 (Bankr.D.Del. 2000). These shifting burdens of proof are described in *Allegheny Int'l* as follows:

> Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is "*prima facie*" valid.... In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. It is often said that the objector must produce evidence equal in force to the *prima facie* case....In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence....The burden of persuasion is always on the claimant.

Allegheny Int'l, 954 F.2d at 173-74 (citations omitted).

The Unsecured TA Claims purport to arise under the APA, while the Secured TA Claims assert claims under the APA and under a theory of constructive trust. PPL acknowledges that it filed the TA Claims because, as a result of the restructuring of Montana Power and subsequent sale of MPLLC, it is unclear whether Touch America or NorthWestern is Montana Power's successor with respect to the APA's rights and obligations. To the extent that PPL's proofs of claim were *prima facie* evidence of the TA Claims arising from the APA, the Plan Trustee's objection has provided sufficient evidence to rebut those claims. PPL, therefore, must prove the validity of its claims against Touch America by a preponderance of the evidence.

a. The Settlement Agreement does not prevent PPL from pursuing the TA Claims.

The Plan Trustee argues that the Settlement Agreement between NorthWestern and PPL shows that PPL has admitted that NorthWestern is Montana Power's successor with respect to the APA and that PPL has resolved its claims under the APA, thus PPL's pursuit of the TA Claims would result in an impermissible double recovery for PPL. In response, PPL argues that the Settlement Agreement does not affect its claims against Touch America because PPL reserved its right to pursue claims against other parties. Specifically, the Settlement Agreement provides:

> 17. Notwithstanding any other terms of this Settlement Agreement that may be offered to suggest a contrary conclusion, this Settlement Agreement does not impair the rights of PPLM and PPL Global to assert claims against one or more of the Certain Other Persons (including but not limited to claims for contribution or indemnification) that arise from claims brought against PPLM or PPL Global in the McGreevey Litigation or the Plan Trust Litigation.[17]

"Certain Other Persons" is defined in the settlement agreement as:

> 2. The term "Certain Other Persons" means MPC [Montana Power], Touch America Holdings, Inc., Plan Trust of Touch America Holdings, Inc., Goldman, Sachs & Company, The Goldman Sachs Group, Inc., Milbank, Tweed, Hadley & McCloy, LLP, any partner, associate, attorney, or other person employed by or formerly employed by Milbank, Tweed, Hadley & McCloy, LLP, or Michael Zimmerman, formerly Vice President and General Counsel of MPC.[18]

The Settlement Agreement's plain language supports PPL's position that it reserved its right to pursue claims against other parties. The Plan Trustee also argues, however, that the doctrine of judicial estoppel prevents PPL from pursing the TA Claims, because PPL's

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[17]Richardson Declaration, Exhibit T, ¶17. The term "Plan Trust Litigation" means the case entitled *Plan Trust of Touch America Holdings, Inc. v. Goldman Sachs & Co.*, CV-04-87-BU-SEH in the United States District Court for the District of Montana. *Id.*, ¶8.

[18]*Id.*, ¶2.

agreement to settle claims arising out of the APA with NorthWestern is inconsistent with pursuing those same claims against Touch America. *See Myers v. Martin (In re Martin)*, 1995 WL 434462, *2 (E.D.Pa. July 20, 1995)("The doctrine of judicial estoppel ... is a discretionary doctrine which precludes a party from asserting a legal or factual position that contradicts or is inconsistent with a prior position asserted by the same party.") The Settlement Agreement does not include any agreement by PPL that NorthWestern was the *sole* successor to Montana Power's rights, interests, and obligations under the APA and the WTSAs. Because both Touch America and NorthWestern have alleged in other litigation, to which PPL is also a party, that they have succeeded to different rights, interests, and obligations of Montana Power, I cannot conclude that the issue of APA successorship was resolved by the language of the Settlement Agreement.

Moreover, there is nothing in this record to support the Plan Trustee's contention that PPL would receive an impermissible double recovery by pursuing the TA Claims, because it cannot be discerned from the documents whether the Settlement Agreement provided PPL with a full recovery of its claims under to the APA. *Bollinger v. Rheem Mfg. Co.*, 381 F.2d 182, 185 (10th Cir. 1967) (The court agreed that a plaintiff cannot twice recover for the same damages, but held that the party asserting double recovery must prove that the settlement and anticipated judgment, together, would exceed the plaintiff's alleged total loss).

Although the Settlement Agreement does not preclude PPL from asserting the TA Claims, PPL still must prove that it has valid claims against Touch America, either under the APA or other theories.

b. <u>NorthWestern is Montana Power's successor to the rights and obligations under the APA.</u>

The APA, dated October 31, 1998, was entered into between PPL Global and Montana Power. The Generation Assets Sale described in the APA closed on December 17, 1999, at which time PPL Global assigned its rights, interests, and obligations under the APA to PPL.

PPL and the Plan Trustee do not dispute that a corporate reorganization of Montana Power took place on February 13, 2002, pursuant to which Montana Power became a wholly-owned subsidiary of Touch America. To the extent that various rights or obligations remained under the APA, those rights and obligations continued to be held by Montana Power. Touch America's status as the "holding company" owning all of the shares of Montana Power did not create a direct right to the Montana Power's assets.

> A holding company is a corporate body with a concentrated ownership of shares of stock in another company, by which it exercises control, supervision or influence over the policies and management of the company whose shares it holds. . . . [A] holding company is generally held not to be doing or transacting business through its subsidiary where the separate corporate entities are maintained. By the same token, the creation of a holding company does not affect the separate and continuing existence of the corporation whose shares it holds, nor is the situation altered simply because the shareholders, directors, and other officers of the two companies are identical.

6A Fletcher Cyclopedia of the Law of Corporations §2821 (2006).

Furthermore, on February 13, 2002, Montana Power was merged into MPLLC, with MPLLC as the surviving corporation. Pursuant to Montana law, all of Montana Power's pre-merger property rights and liabilities became the property and liabilities of MPLLC, as the surviving entity, after the merger. *See* Mt. St. 35-1-817(1)(b) and (c)(2007).[19] MPLLC, therefore, succeeded to all of Montana Power's rights and

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[19]Mt.St. 35-1-817 ("Effect of Merger") provides, in pertinent part:
(1) When a merger takes effect:
(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation

liabilities under the APA.

On February 15, 2002, Touch America sold its member unit interest in MPLLC to NorthWestern, so that MPLLC became a wholly-owned subsidiary of NorthWestern. There is no evidence indicating that, prior to the sale, MPLLC transferred any rights, claims, interests or obligations under the APA to Touch America. The sale to NorthWestern did not alter MPLLC's status as the successor to Montana Power of all rights and liabilities under the APA.

Accordingly, Touch America did not succeed to any rights, interests or obligations under the APA. Those rights, interests, and obligations were transferred from Montana Power to MPLLC pursuant to the merger, and continued to stay with MPLLC (as it was later renamed NorthWestern Energy, LLC) until those rights were transferred to NorthWestern. Based on the record before me, I conclude that NorthWestern is

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ceases;

(b) title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) the surviving corporation has all liabilities of each corporation party to the merger;

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former shareholders are entitled only to the rights provided in the articles of merger or to their rights under 35-1-826 through 35-1-839.

See also Mt. St. 35-8-1203(1)(b)and (c)(2007)(relating to merger of limited liability companies). Although MPLLC was a Delaware limited liability company, the result does not change under Delaware corporate law, which likewise provides that all rights, property and debts belonging to the corporations that are part of the merger will vest in the corporation surviving such merger. Del.Code. Ann. tit. 8, §259 (2007).

Montana Power's successor to all rights, interests and liabilities under the APA.

The Unsecured TA Claims (claim numbers 02640 through 02646) assert claims based upon PPL's indemnification rights under the APA. Because neither Touch America nor any of the Debtors in this bankruptcy case succeeded to any of Montana Power's obligations under the APA, neither Touch America nor any of the Debtors are liable for PPL's indemnification claims that arise under the APA. The Plan Trustee's objection to claim numbers 02640 through 02646 will be sustained.

Furthermore, and for the same reasons discussed above, to the extent that the Secured TA Claims (claim numbers 02621 through 02627) also assert claims under the APA, the Plan Trustee's objections to those claims will be sustained.

c. PPL's contingent secured claims based upon the Generation Asset Sale purchase price cannot be asserted against Touch America.

PPL also argues that the TA Claims are not based solely on the APA. In paragraph 12 of the attachment to the Secured TA Claims, PPL writes:

> 12. To the extent that the Plaintiffs in the McGreevey Action are able to obtain a judgment against [PPL] and Touch America thereby obtains possession of the generation assets, [PPL] hereby asserts that it has a secured claim, in the amount of the consideration paid to MPC for the generation assets plus interest, and secured by the generation assets. Alternatively, PPLM asserts an equitable lien against the generation assets in the amount of the consideration paid to MPC for the generation assets plus interest.

PPL is asserting a contingent secured claim in the amount of the sale proceeds paid by PPL Global to Montana Power in connection with the Generation Asset Sale. That claim is misdirected against Touch America. For the reasons stated above, those sale proceeds were part of Montana Power's property that was transferred to MPLLC as the surviving

entity of the merger between Montana Power and MPLLC. *See* Mt. St. 35-1-817(1)(b) and (c)(2007). Touch America's interest in MPLLC was sold to NorthWestern. Touch America, as holding company of MPLLC, had no direct interest in the property of MPLLC. Accordingly, the Secured TA Claims will be disallowed.

For the reasons set forth above, the Plan Trustee's objection to the proofs of claim filed by PPL will be sustained. An appropriate order will be entered.

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: December 17, 2007

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	CHAPTER 11
	:	(Jointly Administered)
TOUCH AMERICA HOLDINGS, INC,	:	
et al.[20]	:	Case No. 03-11915 (KJC)
Debtors	:	

ORDER SUSTAINING PLAN TRUSTEE'S OBJECTION
TO CLAIMS OF PPL MONTANA, LLC

AND NOW, this 17th day of December, 2007, upon consideration of the Plan Trustee's Objection to Claims of PPL Montana, LLC (docket no. 3116)(the "Claim Objection"), and the Response of PPL Montana, LLC thereto (docket no. 3157), and after oral argument, and for the reasons set forth in the foregoing Memorandum, it is hereby **ORDERED** and **DECREED** that the Claim Objection is **SUSTAINED** the following claims filed by PPL Montana, LLC against the Debtors on December 15, 2003 are disallowed:

- claim no. 02621 filed against Sierra Touch America, LLC,
- claim no. 02622 filed against American Fiber Touch,LLC,
- claim no. 02623 filed against Touch America, Inc.,
- claim no. 02624 filed against Touch America Purchasing Company, LLC,
- claim no. 02625 filed against Entech, LLC,
- claim no. 02626 filed against Touch America Holdings, Inc.,
- claim no. 02627 filed against Touch America Intangible Holding Co., LLC,
- claim no. 02640 filed against Touch America Holdings, Inc.,
- claim no. 02641 filed against Entech, LLC,
- claim no. 02642 filed against Touch America Intangible Holding Co., LLC,

[20]The following chapter 11 cases are being jointly administered pursuant to an Order dated June 23, 2003 (docket no. 27) : Touch America Holdings, Inc., Touch America, Inc., Entech, LLC, Touch America Purchasing Company, LLC, Touch America Intangible Holding Company, LLC, Sierra Touch America LLC, and American Fiber Touch, LLC.

- claim no. 02643 filed against Touch America, Inc.,
- claim no. 02644 filed against Touch America Purchasing Company, LLC,
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BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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