

# KING & SPALDING

King & Spalding LLP  
1700 Pennsylvania Ave, NW, Suite 200  
Washington, D.C. 20006-4707  
Tel: (202) 737-0500  
Fax: (202) 626-3737  
www.kslaw.com

Ashley C. Parrish  
Direct Dial: 202-626-2627  
aparrish@kslaw.com

February 15, 2010

**BY ELECTRONIC MAIL  
BY FEDERAL EXPRESS**

Elias A. Felluss  
71 Centershore Road  
Centerport, New York 11721

**Re: *In re Calpine*, Bankruptcy Case No. 05-60200 (BRL)**

Dear Mr. Felluss:

On behalf of Calpine Corporation, I write in response to your February 7, 2010, letter to Mr. Jack Fusco setting forth a “demand for restitution” in connection with Calpine’s earlier chapter 11 bankruptcy proceedings and its confirmed plan of reorganization.

The issues raised in your letter were litigated two years ago before the Bankruptcy Court, and raised in briefs you filed on appeal both before the District Court for the Southern District of New York and before the U.S. Court of Appeals for the Second Circuit. Judge Lifland carefully considered your arguments and rejected them at a hearing in which you participated on January 15, 2008. On appeal, both the District Court and the Second Circuit held that the issues you have raised are moot because the plan of reorganization was substantially consummated in early 2008. It is far too late to revisit the manner in which the warrants were calculated under the terms of the confirmed plan.

Because you have already had an opportunity to litigate your claims, any attempt to re-litigate your claims is barred under well-established doctrines of res judicata and collateral estoppel. The claims are also meritless, as Judge Lifland recognized at the January 15, 2008 hearing. Moreover, because the claims fall within the Bankruptcy Court’s exclusive jurisdiction, you have no right to pursue them in the guise of filing a derivative action in New York state court. *See generally Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995).

Elias Felluss  
February 15, 2010  
Page 2

For these and other reasons, any attempt on your behalf to re-litigate your claims would be frivolous and an abuse of the litigation process. I therefore urge you to avoid wasting any further time and expense, and to respect the decision rendered by the Bankruptcy Court and affirmed on appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley C. Parrish". The signature is written in a cursive style with a horizontal line under the last name.

Ashley C. Parrish

cc: W. Thaddeus Miller