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Monday, November 25, 2002

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In re

PACIFIC GAS AND ELECTRIC COMPANY,

No. 01-30923

[Debtor](#) (s).

**Memorandum on Motion for Reconsideration and Clarification (Claim No. 13299, Fireman's Fund Insurance Company)**

A trial court may grant summary judgment on behalf of a nonmoving party where it appears that there is no issue of material fact and the nonmoving party is entitled to judgment as a matter of law. 27A Fed.Proc.L.Ed., Pleadings and Motions, § 62.736. The court thought its intent was apparent, but expressly states it here in response to PG&E's request for clarification.

The court does not agree with PG&E's argument that EDD's claim, even though based on express statutory language, is barred by § 502(e)(1)(B). Even if it is, however, somebody has a claim which is subject to estimation pursuant to § 502(c)(1). Fireman's Fund is ultimately liable on that claim and therefore has the right under FRBP 3005 to file a claim on that person's behalf. If it so desires, the court will grant leave to Fireman's Fund to amend its claim to reflect that it is on behalf of the individual disabled employees as well as the EDD once discovery has been completed and the employees have been identified.

The court is least swayed by PG&E's argument that "manifest injustice" will be done if its objection to Fireman's Fund's claim is not sustained. PG&E has admitted that its estate is

solvent. The only injustice possible here is that PG&E successfully uses the complexities of the [Bankruptcy Code](#) to escape liability on a debt it would certainly have to pay absent its bankruptcy. Such an unjust result is not mandated by the Code. Just as § 502(e)(1)(B) is designed to keep a debtor from having to pay twice on the same debt, Rule 3005 is designed to keep a debtor from escaping liability on a just debt. That is what PG&E is trying to do.

For the foregoing reasons, the motion of PG&E for reconsideration and clarification will be denied. No hearing will be held. Counsel for Fireman's Fund shall submit an appropriate form of order.

Dated: November 25, 2002

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Alan Jaroslovsky

U. S. [Bankruptcy Judge](#)

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