UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	**Chapter 11 Case No.**
	)	**02-13533 (AJG)**
MCI, INC., et al.,	)	
	)	**(Jointly Administered)**
Debtors.	)	

ORDER REGARDING
MOTION OF REORGANIZED DEBTOR MCI, INC. FOR AN ORDER ENFORCING THE PLAN AND THE CONFIRMATION ORDER TO BAR PROSECUTION OF ACTIONS TO COLLECT ON DISCHARGED CLAIMS INITIATED BY JAMES B. MULLIGAN

Upon consideration of the Motion of Reorganized Debtor, MCI, Inc. for an Order Enforcing the Plan and the Confirmation Order to Bar Prosecution of Actions to Collect on Discharged Claims Initiated by James B. Mulligan (the "Discharge Motion") and the parties' briefs and argument on the Discharge Motion, and for the reasons stated in the Court's January 17, 2006, opinion on the Discharge Motion, as read into the record on said date, a copy of which is attached hereto as Exhibit A, it is hereby

ORDERED that the Discharge Motion is granted except to the extent it seeks costs and attorney's fees; and it is further

ORDERED that the claims asserted against MCI, including its predecessors, subsidiaries, and affiliates (collectively, the "Debtors"), by Mulligan were discharged upon confirmation of the Debtors' plan of reorganization; and it is further

ORDERED that Mulligan is barred from taking further action to prosecute his lawsuit to recover on such claims and is directed to cease any further acts to attempt to enforce his claims

against the Debtors and to dismiss with prejudice all lawsuits against the Debtors to the extent they remain pending; and it is further

ORDERED that, pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure, this Order shall be stayed during the pendency of any appeal, provided that Mulligan may not litigate or attempt to litigate his claims against the Debtors in any other forum during the pendency of any such appeal.

s/Arthur J. Gonzalez 1/27/2006
United States Bankruptcy Judge

Exhibit A

Before the Court is a Motion by the Reorganized Debtor MCI, Inc. (AMCI@), for an Order Enforcing the Plan and the Confirmation Order. MCI seeks to bar the action brought by James B. Mulligan, as a class action plaintiff, for damages on theories of trespass and unjust enrichment in the U.S. District Court for the District of Kansas. MCI argues that these claims arose prepetition and were thus subsequently discharged upon confirmation of MCI=s Reorganization Plan. Mulligan responds first, that these claims did not arise prepetition, and second, that this Court should abstain from deciding the trespass issues implicated here in order to allow the Kansas Supreme Court to resolve them. MCI also seeks recovery of the legal costs it incurred in responding to the Mulligan action in this Court and in the district court for the period after MCI notified Mulligan of this Court=s recent decision in *In re WorldCom, Inc.*, 320 B.R. 772 (Bankr. S.D.N.Y. 2005) (A*Pinkston-Browning* Decision@).

The factual pattern and legal issues presented in this Motion have to a great extent been previously addressed by this Court in earlier published decisions. Both *Pinkston-Browning* and *In re WorldCom, Inc.*, 328 B.R. 35 (Bankr. S.D.N.Y. 2005) (A*West* Decision@) dealt with similar factual and legal issues concerning the installation and use of fibre optic cables in railroad rights-of-way. Moreover, both Mulligan and the plaintiff Browning in *Pinkston-Browning* asserted their claims for trespass under Kansas tort law. MCI argues that the holdings in *Pinkston-Browning* and *West* therefore clearly dictate that Mulligan=s claims have been discharged and that the Motion be granted.

Mulligan offers three arguments in support of his opposition to the Motion. First, Mulligan argues that the unjust enrichment claims in the action are limited in scope to that enrichment that arose from activity occurring after the confirmation date of MCI=s reorganization plan. Therefore, Mulligan

argues, those claims are postpetition claims that were not discharged by confirmation of the reorganization plan pursuant to 11 U.S.C. ' 1141(d)(1). Without conceding that his trespass claims are discharged prepetition claims, Mulligan further argues that under Kansas law, an unjust enrichment claim is not required to rest upon another tort, but rather may stand alone, thus obviating the need to prove trespass as a prior element to unjust enrichment. This Court assumes, without deciding, for the purposes of this decision that Kansas law does not require proof of an underlying tort to sustain a claim for unjust enrichment and will proceed on that assumption.

The Second Circuit in *LTV Steel Co., Inc. v. Shalala* (*In re Chateaugay Corp*.) set forth fairly exhaustively the standards for determining whether a claim constitutes a prepetition debt under the terms of the Bankruptcy Code. 53 F.3d 478 (2nd Cir. 1995). As an initial matter, the Court noted that ACongress intend[ed] to invest the term >claim= with the >broadest possible= scope so that >all legal obligations of the debtor [would] be able to be dealt with in a bankruptcy case.=@ *Id.*, at 496 (citing *Pennsylvania Dep=t of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990)). With this in mind, the court held that a prepetition claim is one where Athe relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation - >a right to payment= - under the relevant non-bankruptcy law@ before the petition was filed. *Id.*, at 497 (citation omitted). Thus, Awhether a claim exists is determined by bankruptcy law, while the time a claim arises is determined under relevant non-bankruptcy law.@ *In re Manville*, 209 F.3d 125, 128 (2nd Cir. 2000).

Mulligan incorrectly applies this case law to his claim for unjust enrichment. Mulligan seeks to arbitrarily divide his unjust enrichment claim between that portion of the claim relating to benefits MCI received prepetition and that portion related to benefits received postpetition. Once this division has

been made, Mulligan then argues that an element of unjust enrichment, the acceptance and retention of benefits, necessarily was unmet as to the postpetition claims in the prepetition period. *See Haz-Mat Response, Inc. v. Certified Waste Servs. Ltd.*, 910 P.2d 839, 847 (Kan. 1996) (setting forth the elements of a claim for unjust enrichment under Kansas law). This is clearly tautological. The pattern of activity upon which the claim of unjust enrichment is founded evidences no such division. Rather, the essential fact pattern, the Arelationship between the parties,@ was set in the prepetition period. Any activity in the postpetition period that would give rise to additional claims of unjust enrichment was simply an extension of this relationship. The Aelements@ of unjust enrichment and the Aright to payment@ were established in the prepetition period. Mulligan cannot escape the discharge of his claims by simply claiming that he seeks compensation only for MCI=s activities in the postpetition period. Mulligan may so limit his claim as to damages, but this limitation has no effect on the prepetition status of the claim for the purposes of the Bankruptcy Code.

Mulligan argues that the postpetition activity cannot be considered part of the prepetition claim because he would have been unable to recover damages before that postpetition activity was completed, i.e. in the prepetition period. This argument is circular and unpersuasive. First, if Mulligan is seeking to argue that the postpetition activity is not part of the prepetition relationship because any suit in the prepetition period would have been unable to recover damages for postpetition activity that had yet to occur, this latter proposition is an obvious truism and meaningless in this context. Second, if Mulligan is seeking to argue that because the evidence for any activity in the postpetition period would not be available until the postpetition period, and that therefore, the claim cannot be considered prepetition in nature, it is enough to note that Aclaim@ broadly includes unmatured claims. 11 U.S.C. ' 101(5)(A). AA

creditor need not have a cause of action that is ripe for suit outside of bankruptcy in order for it to have a prepetition claim for purposes of the Bankruptcy Code.@ *In re R.H. Macy & Co., Inc.*, 283 B.R. 140, 146 (S.D.N.Y. 2002). Certainly, then, the statutory definition of a prepetition Aclaim@ includes a situation where the legal elements have been met and only the extent of damages has yet to be settled.

Second, Mulligan argues that the trespass claims raised in the action are similarly not prepetition claims and thus were not discharged. This issue was raised and resolved in *Pinkston-Browning*, where this Court found that trespass claims based upon a similar fact pattern either were discharged prepetition claims or failed to satisfy the elements of a valid trespass claim under Kansas law. Mulligan suggests that the issue was incorrectly decided in *Pinkston-Browning*, but Mulligan has raised no arguments that would cause this Court to reconsider that decision

Third, Mulligan argues that this Court should remove the stay on the district court action so that the trespass issues decided in *Pinkston-Browning* and involved here may be certified to the Kansas Supreme Court for resolution. This Court does not believe, however, that *Pinkston-Browning* presents an unsettled issue of state law that would warrant discretionary abstention under 11 U.S.C. ' 1334(c)(1). Mulligan=s reading of *Gross v. Capital Elec. Line Builders* as suggesting that Kansas recognizes an intangible trespass as actionable without proof of damages is manifestly unsupportable. 861 P.2d 1326 (Kan. 1993). No state court has ever so construed trespass law, nor does this Court believe one ever would. On Mulligan=s reading of Kansas trespass law, mobile-phone, radio, and television operators would be liable for the trespass of their signals across plaintiff=s property, as would any neighbor unlucky enough to have the radiation from his microwave oven stray across the plaintiff=s property line. Whatever disagreements may be evident among Kansas courts concerning the

boundaries of trespass law, this Court will safely assume that the mere passage of electromagnetic radiation across Mulligan=s property is insufficient to constitute trespass without evidence of damage.

MCI argues that, if this Court concludes that the Mulligan action is barred, it should be awarded legal costs incurred responding to Mulligan=s claims in this Court and the Kansas District Court after it informed Mulligan of this Court=s decision in *Pinkston-Browning*. As Mulligan has raised the issue of unjust enrichment before this Court, an issue which was not addressed in *Pinkston-Browning*, this Court does not believe that imposition of sanctions pursuant to Fed.R.Bankr.P. 9011 is proper.

Therefore, the Court concludes that Mulligan=s claims of trespass and unjust enrichment are discharged prepetition claims and that the exercise of discretionary abstention as urged by Mulligan is unwarranted here. The Court also declines to impose sanctions on Mulligan for the legal fees incurred by MCI in responding to Mulligan=s district court action.

In light of the foregoing, this Court grants the Debtor=s Motion for an Order Enforcing the Plan, except insofar as this Court denies the Debtor=s request for legal costs.

The Debtor is directed to settle an order consistent with the Court=s opinion.