UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Not For Publication

In re

WORLDCOM, INC., *et al.*,

Reorganized Debtors.

Chapter 11 Case No.
02-13533 (AJG)

(Jointly Administered)
(Confirmed)

OPINION GRANTING REORGANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOFS OF CLAIM NO. 15402 AND 16990

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ARTHUR J. GONZALEZ
United States Bankruptcy Judge

M.A.S. Hallaba ("Hallaba" or "the Claimant") filed proofs of claim with the Court. Reorganized Debtors MCI, Inc., ("the Debtors" or "MCI" or "WorldCom") are seeking partial summary judgment on Hallaba's claim that MCI agreed to a prepetition nationwide class action settlement of litigation commenced by Hallaba. Debtors' motion is granted.

JURISDICTION

The Court has subject matter jurisdiction over this proceeding pursuant to sections 1334 and 157(b) of title 28 of the United States Code, under the July 10, 1984 "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), and under paragraph 32 of this Court's Order Confirming Debtors' Modified Second Amended Joint Plan of Reorganization under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") (Oct. 31, 2003). The Court has jurisdiction over "core proceedings" including "allowance and disallowance of claims against the estate." 28 U.S.C. § 157(b)(2)(B) (2000); *see, e.g., S.G. Phillips Constructors, Inc. v. City of Burlington (In re S.G. Phillips Constructors, Inc.)*, 45 F.3d 702, 705 (2nd Cir. 1994). Venue is properly before this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code.

FACTS

Background Information About the Debtors

On July 21, 2002 and November 8, 2002, WorldCom, Inc., and certain of its direct and indirect subsidiaries commenced cases under the Bankruptcy Code. By orders

dated July 22, 2002 and November 12, 2002, the Debtors' chapter 11 cases were consolidated for procedural purposes. During the chapter 11 cases, the Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

By order dated October 29, 2002, this Court established January 23, 2003 as the deadline for the filing of a proof of claim against the Debtors. By order dated October 31, 2003, the Court confirmed the Debtors' Modified Second Amended Joint Plan of Reorganization, which became effective on April 20, 2004. Upon this effective date, the Debtors became MCI, Inc.

Litigation and Settlement Negotiations Between Hallaba and Debtors

On November 24, 1998, M.A.S. Hallaba, a medical doctor in Oklahoma, filed an action against the predecessors of MCI in the United States District Court for the Northern District of Oklahoma, challenging MCI's installation of fiber optic cables along railroad rights of way. Hallaba sued for trespass, unjust enrichment and fraud.[1] Hallaba also sought to represent a nationwide class of allegedly similarly situated landowners.

On April 23, 1999, the District Court issued a Settlement Conference Order requiring Hallaba and MCI to attend a settlement conference on August 5, 1999. After several postponements, on November 18, 1999, the settlement conference was held, presided over by Magistrate Judge Sam Joyner. Two other settlement conferences were held on January 25, 2000 and February 2, 2000. No settlement agreement resulted from those meetings. On March 31, 2000, the District Court denied Hallaba's motion to

[1] Similar cases were filed with this Court. *See, e.g., In re WorldCom, Inc.*, 320 B.R. 772 (Bankr. S.D.N.Y. 2005).

certify a nationwide class. *Hallaba v. WorldCom Network Servs.*, 196 F.R.D. 630 (N.D. Okla. 2000).

In the summer of 2000, the parties began voluntary settlement talks, without judicial involvement. On August 11, 2000, Hallaba's counsel informed Judge Joyner of these talks and invited him to assist the parties' negotiations.

On December 7, 2000, Hallaba's counsel sent a letter to Judge Joyner stating that "[a]s a result of the settlement conference on . . . December 4th, there are no major settlement issues remaining in dispute." The letter also set forth "[t]he proposed terms of settlement." On the same day, MCI's outside counsel, David A. Handzo, responded with a letter to Judge Joyner, asserting that "the implication in plaintiffs' letter that we are on the verge of settlement, or that we have reached any kind of binding agreement in principle, is incorrect." The letter listed a number of unresolved issues material to MCI, including the settlement administrative costs and the role of a special master. Furthermore, the letter emphasized that "it has always been WorldCom's position that there can be no final agreement on any term of a settlement until *all* terms have been agreed upon, reduced to writing, approved and signed by the appropriate company officials." Finally, the letter stated that "[e]ven if all of the outstanding issues were resolved to the parties' mutual satisfaction . . . , WorldCom is participating with other telecommunications companies in negotiations with a different group of plaintiffs' counsel." At the time, the letter said, WorldCom aimed to agree to a broad settlement "that would include both Dr. Hallaba's counsel and other plaintiffs' counsel, as well as the major telecommunications company defendants." The letter concluded that WorldCom had not made the decision yet to settle with Hallaba's counsel alone.

The parties continued their settlement discussions, meeting telephonically with Judge Joyner on January 9, 2001, January 25, 2001, February 5, 2001 and February 21, 2001. MCI claims that, during the February 21, 2001 meeting, Kevin Gallagher, MCI's in-house counsel, stated that management approval for any settlement was required. Hallaba claims that an enforceable agreement was reached during the same meeting. He contends that at the conclusion of the meeting Judge Joyner instructed MCI's counsel to prepare a letter to him and to Claimant's counsel reiterating the terms of the agreement and that MCI's counsel agreed to prepare such a letter.

On March 8, 2001, MCI's counsel sent a letter to Hallaba's counsel explaining that recent court decisions in cases similar to Hallaba's case had prompted MCI to put settlement discussions with Hallaba "on hold for the next 30 to 60 days" until MCI decided whether to settle on a nationwide or state-by-state basis or conduct further litigation. On March 9, 2001, Hallaba's counsel replied with a letter to MCI's counsel stating the following:

> This letter memorializes plaintiff's position on settlement, expressed verbally during our March 8, 2001 conference call with Judge Joyner.
>
> We have reviewed Mr. Handzo's letter of March 8, 2001. That letter does not express any new concepts or considerations regarding the appropriateness of a national class settlement. It simply reiterates considerations regarding settlement that had been examined in microscopic detail over the course of the past year and had been incorporated into the values agreed to by the lawyers for both sides in our February 21, 2001 conference call with the Court.
>
> However, if you are correct that considerations in Mr. Handzo's letter newly weigh so heavily against a national settlement, then all counsel should immediately cease their efforts to conclude such a settlement. Accordingly, plaintiff's counsel is no longer prepared to invest further costs, time and effort to persuade you to complete the proposed February 21st deal. We will stand by our good faith assent to the February 21 terms,

> but halt all further work on the matter, until our next conference call with the Court, scheduled for March 22, 2001.
>
> Unless on that date there is a clear statement by an authorized corporate representative of an intention by MCI WorldCom to work in good faith to complete the February 21, 2001 deal, we shall consider the discussions regarding national settlement to be concluded.
>
> After March 22, 2001, we will only entertain discussions commencing where they left off on August 25, 2000. That is, MCI WorldCom will agree only to discrete settlement values for discrete property interests on a state-by-state basis, and we understand that defendants will exclude from the discussions that class of persons that arguably have little or no claim against MCI WorldCom. Those persons will receive nothing from the settlement and MCI WorldCom will receive no releases covering those persons. Since all "bad" claims — in MCI's parlance — would be excluded from the settlement, of course the national settlement values no longer have any application, and any offers to settle at those national average figures will be withdrawn effective March 22, 2001.

March 9, 2001 Letter from Hallaba's Counsel to MCI's Counsel.

During a March 22, 2001 telephone conference with Judge Joyner, MCI's counsel stated that MCI was not ready to resume negotiations. Judge Joyner, however, acceded to Hallaba's counsel request to schedule an in-person meeting. He scheduled it for May 29, 2001, instructing Hallaba's counsel to draft a letter presenting conditions for resumption of negotiations and requiring MCI's counsel to answer with a letter indicating whether MCI accepted such conditions. On March 26, 2001, in compliance with Judge Joyner's instructions, Hallaba's counsel wrote a letter to him. The letter requested that a settlement conference be held in Tulsa on May 29, 2001. Hallaba's counsel also demanded that MCI send a representative "specifically authorized by a corporate officer or officers [of MCI] . . . to accept or reject a settlement subject to Board of Directors' and Court approval" and also "authorized to state whether the defendants accept the terms of settlement expressed by the counsel for all the parties on February 21, 2001."

On April 12, 2001, Hallaba's counsel sent a letter to MCI's counsel admitting that "MCI now has discarded consideration of a nationwide class resolution in this matter." Accordingly, the letter informed that Hallaba's counsel had "decided to commence other actions in other venues." Hallaba had just filed the day before a class action in Kansas state court, asserting the same claims as in the United States District Court for the Northern District of Oklahoma, but on a state-by-state instead of a nationwide basis. *See, Browning v. MCI WorldCom Network Servs., Inc.*, No. 0104 CV 144, Class Action Petition (Leavenworth County, KS Gen. Dist. Ct. dated April 6, 2001).

On May 14, 2001, Nicole Bynum, MCI's in-house counsel and Kevin Gallagher's successor, sent a letter to Judge Joyner indicating that MCI had "determined that it is not interested in pursuing further settlement discussions in the *Hallaba* case at this time." On May 16, 2001, Hallaba's counsel wrote to Judge Joyner that "an agreement on the essential terms of a nationwide settlement already has been reached" and that "[t]he essential terms of the settlement were expressed by authorized representatives of the parties during the February 21, 2001 settlement conference." On May 17, 2001, Judge Joyner cancelled the meeting scheduled for May 29, 2001. On May 18, 2001, MCI's counsel sent Judge Joyner a letter explaining again that the parties had not reached a binding settlement agreement.

Hallaba filed, on May 29, 2001, a motion to enforce the alleged settlement and, on July 10, 2001, a motion for a report by Judge Joyner on the settlement discussions. On August 27, 2001, the District Court issued an order directing Judge Joyner to answer a single question: "Were the parties ever relieved from compliance with terms and conditions regarding settlement discussions set forth in David A. Handzo's December 7,

2000 letter?" *Hallaba v. WorldCom Network Servs.*, No. 98-CV-895-H (N.D. Okla. August 27, 2001). Judge Joyner issued a report on August 30, 2001, in which he found "that the parties were never relieved from compliance with the terms and conditions regarding settlement discussions set forth in Mr. Handzo's December 7, 2000 letter. None of the parties retracted, released or were relieved in any way from compliance with this statement in subsequent discussions." *Hallaba v. WorldCom Network Servs.*, No. 98-CV-895-H (N.D. Okla. August 30, 2001). On September 5, 2001, United States District Judge Holmes denied Hallaba's motion to enforce the alleged settlement. The District Court based the denial on Judge Joyner's report and the absence of any written instrument approved by MCI officials that could evidence a binding settlement agreement between MCI and Hallaba. *Hallaba v. WorldCom Network Servs.*, No. 98-CV-895-H (N.D. Okla. September 5, 2001). Hallaba filed objections to Judge Joyner's report on September 12, 2001. The United States Court of Appeals for the Tenth Circuit dismissed Hallaba's appeal for lack of appellate jurisdiction on April 14, 2005.

On January 17, 2003, Hallaba filed proofs of claim Nos. 15402, 15405, 15406 and 16990. Two of those proofs of claim have been expunged because of their duplicative nature. Proofs of claim Nos. 15402 and 16990 remain. The proofs of claims offer two theories to support a decision to allow them, the first one based on Hallaba's individual tort action and the second one on an alleged enforceable settlement agreement between MCI and Hallaba. *See* Claimant M.A.S. Hallaba's (A) Reply to Reorganized Debtors' Objection to Proof of Claim of M.A.S. Hallaba, et al., Claim No. 15402 and (B) Memorandum of Law in Support of Motion of Claimant to Stay at 2-4 (filed July 1, 2004). On August 12, 2005, Debtors moved for partial summary judgment regarding the

second theory, Hallaba's claim that MCI agreed to a prepetition nationwide class action settlement of litigation started by Hallaba. Debtors filed memoranda in support and Hallaba in opposition. A hearing was held regarding the matter on October 5, 2005.

DISCUSSION

Parties' Contentions

The Debtors request the Court grant them summary judgment on Hallaba's claim that MCI agreed to a prepetition nationwide class action settlement of litigation commenced by Hallaba. They note that the United States District Court for the Northern District of Oklahoma already held that Hallaba's evidence fell "woefully short of establishing that any agreement existed." *Hallaba v. WorldCom Network Servs.*, No. 98-CV-895-H (N.D. Okla. September 5, 2001). MCI argues that this Court should grant partial summary judgment for the same reasons the District Court denied Hallaba's request to enforce an alleged settlement in its September 5, 2001 order. The Debtors explain that the District Court noted that on December 7, 2000, before the date of the alleged oral agreement on February 21, 2001, MCI sent a letter to Hallaba's counsel stating that MCI would not be bound by any agreement until it was reduced to writing, approved by the appropriate MCI officials, and signed by an authorized MCI representative. MCI emphasizes that the District Court also noted that Magistrate Judge Sam Joyner, who assisted the parties in their settlement negotiations, issued a report stating that MCI never waived the conditions set forth in its December 7, 2000 letter. According to MCI, the absence of any written agreement signed and approved by MCI led the District Court to deny the existence of any settlement agreement.

MCI argues that the reasons on which the District Court based its decision are undisputed facts. Given these facts and applicable Oklahoma law, MCI contends that a written instrument was a condition precedent to any binding settlement agreement. MCI explains that because the parties never executed such a written instrument no binding settlement agreement ever existed. MCI therefore requests the Court to grant summary judgment on this issue.

Furthermore, MCI argues that the letters exchanged between the parties during the litigation in the District Court do not amount to a written instrument sufficient to create a binding settlement. They add that the parties never agreed on all material terms of a settlement and that MCI made it clear to Hallaba that MCI considered the settlement discussions not binding because MCI was also negotiating with other plaintiffs' counsel. Finally, MCI argues that even if the parties entered into a binding settlement agreement, they mutually rescinded it on March 22, 2001, pursuant to Hallaba's March 9, 2001 letter.

In response, claimant Hallaba contends that the parties did reach a settlement agreement on February 21, 2001. Hallaba claims that MCI later refused to implement the agreement because MCI became dissatisfied with its terms. The Claimant argues that, under Oklahoma law, the parties entered into a valid settlement agreement "despite the alleged reservation by Reorganized Debtor that the agreement be reduced to writing." Claimant's Memorandum in Opposition to Reorganized Debtor's Motion for Summary Judgment on Claim Numbers 15402 and 16990 at 12 (filed September 9, 2005) ("Claimant's Mem."). Moreover, the Claimant asserts that MCI's December 7, 2000 letter "is a nullity" because the letter did not abide by the District Court's local rules and April 23, 1999 Settlement Conference Order, which both required MCI to send a

representative to the settlement conferences with full authority to settle the litigation. Hallaba further claims that the District Court's September 5, 2001 order violated procedural due process by denying the Claimant access to evidence. Finally, the Claimant contends that no party had the power to rescind the settlement agreement.

Summary Judgment Standard

The basic principles governing consideration of a motion for summary judgment are well settled. Summary judgment aims primarily at "disposing of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment shall be granted if the Court determines that there is no genuine issue of material fact and that the undisputed facts warrant judgment for the moving party as a matter of law. Fed. R. Bankr. P. 7056, Fed. R. Civ. P. 56(c). A "genuine issue" exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it "might affect the outcome of the suit under governing law." *Id.* at 248. The burden is upon the moving party to establish clearly the absence of a genuine issue as to any material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). The Court, however, must resolve all ambiguities and draw all reasonable inferences in the light most favorable to the non-moving party. *United States v. Rem*, 38 F.3d 634, 643 (2d. Cir. 1994). The movant can meet its burden for summary judgment by showing that little or no evidence may be found to support the non-movant's case. *Celotex*, 477 U.S. at 317. The movant can also meet its burden by showing that the evidence "is so one-sided that one party must prevail as a matter of law." *Liberty Lobby, Inc.*, 477 U.S. at 252.

Once a movant has demonstrated that no material facts are genuinely in dispute, the non-movant must set forth specific facts indicating a genuine issue for trial exists in order to avoid granting of summary judgment. *Cifarelli v. Village of Babylon*, 93 F.3d 47 (2d Cir. 1996) (citing *Western World Ins. Co. v. Stack Oil, Inc.*, 922 F.2d 118, 121 (2d Cir. 1990)). The non-movant cannot escape summary judgment with mere conclusory allegations, speculation or conjecture. *Id.* The non-movant, in fact, must do more than simply show that there is some "metaphysical doubt" about the facts. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Indeed, Federal Rule of Civil Procedure 56(c) and (e) provide that a non-movant may not rest on the pleadings but must further set forth specific facts in the affidavits, depositions, answers to interrogatories, or admissions showing a genuine issue exists for trial. *Celotex* , 477 U.S. at 324. Therefore, if there is any evidence in the record from which a reasonable inference could be drawn in favor of the non-moving party on a material issue of fact, summary judgment is improper. *Chambers v. TRM Copy Centers Corp.*, 43 F.3d 29, 37 (2d Cir.1994). "Only when reasonable minds could not differ as to the import of evidence is summary judgment proper." *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991).

Existence of a Settlement Agreement Between MCI and Hallaba

The central issue is whether the undisputed facts support summary judgment that MCI and Hallaba did not reach a binding settlement agreement on February 21, 2001. This Court holds that the undisputed facts establish that the parties did not reach such an agreement under the applicable state contract law.

Applicable Law

"[T]he formation, construction, and enforceability of a settlement agreement is governed by local contract law." *Carr v. Runyan*, 89 F.3d 327, 331 (7th Cir. 1996); *see also In re New York Trap Rock Corp.*, 137 B.R. 568, 574 (Bankr. S.D.N.Y. 1992). If the parties' pleadings assume that the law of a particular state governs the dispute, "such implied consent . . . is sufficient to establish choice of law." *IBM v. Liberty Mut. Fire Ins. Co.*, 303 F.3d 419, 423 (2d Cir. 2002). In the instant case, both parties agree to the application of Oklahoma law. Reorganized Debtors' Memorandum in Support of Motion for Partial Summary Judgment on Claim Numbers 15402 and 16990 at 11 (filed August 12, 2005); Claimant's Mem. at 12. Therefore, this Court applies Oklahoma law to the present matter.

Existence of a Settlement Agreement under Oklahoma Law

The Court has examined relevant Oklahoma law about the necessity of a written instrument as a condition precedent to enforceability of an agreement. *See, e.g., United Steelworkers of America v. CCI Corp.*, 395 F.2d 529, 532 n.1 (10th Cir. 1968); *E. Cent. Okla. Elec. Coop. v. Okla. Gas & Elec. Co.*, 1973 OK 3; 505 P.2d 1324, 1328-1329 (Okla. 1973); *Fry v. Foster*, 179 Okla. 398, 399, 401 (Okla. 1937); *Griffin Grocery Co. v. Kingfisher Mill & Elevator Co.*, 168 Okla. 157, 159-160 (Okla. 1934); *W. Roofing Tile Co. v. Jones*, 26 Okla. 209, 215-216 (Okla. 1910). The Restatement of Contracts, which matches applicable Oklahoma law, offers the following rule:

> Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.

Restatement (Second) of Contracts § 27 (1981).

The comments following this rule further explain its meaning:

> a. Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.
>
> b. On the other hand, if either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has been reduced to another written form, the preliminary negotiations and agreements do not constitute a contract.
>
> c. Among the circumstances which may be helpful in determining whether a contract has been concluded are the following: the extent to which express agreement has been reached on all the terms to be included, whether the contract is of a type usually put in writing, whether it needs a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or unusual contract, whether a standard form of contract is widely used in similar transactions, and whether either party takes any action in preparation for performance during the negotiations. Such circumstances may be shown by oral testimony or by correspondence or other preliminary or partially complete writings.

Restatement (Second) of Contracts § 27 cmts. a, b, c (1981).

The party alleging that a written instrument was required to create a binding agreement bears the burden of proving this requirement. *Fry*, 179 Okla. at 401 (Okla. 1937) ("[T]o avoid the conclusion that a contract has been formed, it must be found as a fact that the parties impliedly agreed that until the writing was executed they should not

be bound. The burden of establishing this implication of fact is on the one who denies the existence of a contract.") (quoting 1 Williston on Contracts 37-39 (1920)).

MCI has alleged sufficient undisputed facts to show that, in the instant case, a binding settlement agreement required a written instrument and that the parties never executed such a written instrument.

Hallaba admits that he received the December 7, 2000 letter from MCI counsel, David A. Handzo, which provides that "it has always been WorldCom's position that there can be no final agreement on any term of a settlement until *all* terms have been agreed upon, reduced to writing, approved and signed by the appropriate company officials." The date of this letter precedes February 21, 2001, the date of the alleged binding settlement agreement. There is no evidence of any final written settlement agreement between MCI and Hallaba. Moreover, David A. Handzo's December 7, 2000 letter made clear that WorldCom was negotiating with other plaintiffs' counsel to conclude as broad a settlement as possible and therefore had made no decision yet to settle only with Hallaba's counsel.

These undisputed facts correspond to the following situation described by the Restatement:

> [I]f either party knows or has reason to know that the other party regards the agreement as incomplete and intends that no obligation shall exist until other terms are assented to or until the whole has been reduced to another written form, the preliminary negotiations and agreements do not constitute a contract.

Restatement (Second) of Contracts § 27 cmt. b (1981). *See also Spencer Trask Software & Info. Servs. v. Rpost Int'l Ltd.*, 383 F. Supp. 2d 428, 440 (S.D.N.Y. 2003) ("If, however, either party communicates an intent not to be bound until he achieves a fully

executed document, 'no amount of negotiation or oral agreement to specific terms will result in the formation of a binding contract.' ") (citing *Winston v. Mediafare Entm't Corp.*, 777 F.2d 78, 80 (2d Cir.1985)) (applying New York rule, substantially similar to Restatement rule).

Deciding whether a lease had to be reduced to writing to be enforceable, the United States Court of Appeals for the Eleventh Circuit concluded to the absence of a binding agreement because of the defendant's "clear and unambiguous expression of its intention not to be bound." *Doll v. Grand Union Co.*, 925 F.2d 1363, 1369 (11th Cir. 1991). During the negotiations, a letter from the defendant to the plaintiff conditioned the existence of a binding agreement to "the resolution of a mutually agreeable lease document and its execution by both [parties]."

The facts of the instant case are similar to a state court case in which the Court of Appeals of Florida, Third District, held that there was no enforceable lease agreement between the parties because one of them, a hotel, sent a memorandum to the other, a tour operator, quoting room prices "subject to entering into a more formal Agreement containing mutually satisfactory terms and conditions." *Club Eden Roc, Inc. v. Tripmasters, Inc.*, 471 So. 2d 1322, 1323 (Fla. Dist. Ct. App. 1985) (quoting the memorandum). The court further held that the "memorandum was clear that no rights or obligations would arise between the parties until the execution of an agreement containing all the terms and conditions. Where the parties intend that there will be no binding contract until the negotiations are reduced to a formal writing, there is no contract until that time." *Club Eden Roc*, 471 So. 2d at 1323-1324.

Furthermore, a nationwide settlement agreement of the type MCI and Hallaba were negotiating involved numerous, complex issues and potentially considerable amounts of compensation.[2] These circumstances confirm the necessity of a written contract to create an enforceable settlement agreement between MCI and Hallaba. *See* Restatement (Second) of Contracts § 27 cmt. c (1981).

Hallaba claims that the December 7, 2000 letter from MCI counsel "is a nullity" because it did not comply with court rules and orders requiring that a person with full settlement authority attend a settlement conference. Assuming the truth of this allegation, the December 7, 2000 letter still stated MCI's clear intention not to be bound by anything but a comprehensive written instrument and made this intention known to Hallaba. Therefore, whether MCI complied with the court rules and orders does not bear upon the intention of the parties and the requirement of a written agreement.

Hallaba cannot claim that the letters exchanged by the parties amount to a written settlement agreement. Unspecified material terms prevent the existence of an enforceable agreement. *Griffin*, 168 Okla. at 160 (Okla. 1934) ("Where the parties have left an essential part of the agreement for future determination, it is no doubt correct to say that the contract is not completed.") (internal quotation marks omitted); *Owens v. Wilson*, 135 Okla. 38, 40 (Okla. 1929) ("To be enforceable, a contract to enter into a future contract must specify all of its material and essential terms, and leave none to be agreed upon as the result of future negotiations.") (internal quotation marks omitted). David A. Hanzo's December 7, 2000 letter mentioned the settlement administrative costs and the role of a special master as two material terms that had not been agreed upon. No document

[2] Similar litigation against AT&T and Thoroughbred Technology and Telecommunications, Inc., involved thousands of miles of cables and millions of dollars in compensation. *See, e.g.*, Elizabeth Amon, *A Profitable Right-of-Way Settlement*, Nat'l L.J., Mar. 19, 2001, at A13.

exchanged by the parties and presented to the Court contains a final agreement as to these material terms.

Hallaba cannot argue either that a written instrument would have only memorialized the parties' complete agreement as to all material terms. Hallaba's counsel's own words show that there never was any complete settlement agreement. Remarkably, Hallaba's counsel's March 9, 2001 letter, sent after receiving MCI's counsel's, March 8, 2001 letter suspending settlement negotiations, was not attempting to recapitulate the terms of an alleged complete settlement agreement, but only "memorialize[d] plaintiff's position on settlement" Hallaba's counsel's letter also explained that if new legal developments "weigh so heavily against a national settlement, then all counsel should immediately cease their efforts to conclude such a settlement."

The March 9, 2001 letter contains more language inconsistent with the alleged existence of a binding settlement agreement. For instance, the letter mentioned a "proposed February 21st deal." It also referred to "discussions" and not to a binding agreement: if MCI refused "to work in good faith to complete the February 21, 2001 deal, . . . [Hallaba] shall consider the discussions regarding national settlement to be concluded. After March 22, 2001, . . . [Hallaba] will only entertain discussions commencing where they left off on August 25, 2000." At the end of the letter, Hallaba's counsel concludes that if MCI decides to settle on a state-by-state as opposed to a nationwide basis, "any offers to settle at those national average figures will be withdrawn effective March 22, 2001." The use of the word "offer" conflicts with the idea of a binding national settlement agreement.

Hallaba's counsel's April 12, 2001 letter to MCI's counsel, which admits that "MCI now has discarded consideration of a nationwide class resolution in this matter" and lets MCI's counsel know that Hallaba's counsel "decided to commence actions in other venues" does not allege any binding settlement agreement. On the contrary, the letter tends to show Hallaba gave up the prospect of a nationwide settlement and accordingly started other legal proceedings. Additionally, the Court notes that, over the course of the negotiations, Hallaba did not allege an enforceable settlement agreement until his May 16, 2001 letter to Judge Joyner, about three months after February 21, 2001, date of the alleged settlement.

Hallaba also argues that the United States District Court for the Northern District of Oklahoma violated procedural due process "by denying claimant access to evidence." Claimant's Mem. at 18. It is unclear as to why this issue was presented to the Court because it appears that this Court does not have any jurisdiction over that issue. Furthermore, Hallaba has not articulated any basis upon which this Court would have jurisdiction over such issue. However, to the extent that Hallaba's assertion is a Rule 56(f) argument, though Hallaba has not articulated it as such, the Court rejects it. To succeed under Rule 56(f), Hallaba must "explain the nature of the uncompleted discovery, i.e., what facts were sought and how they were to be obtained, how those facts were reasonably expected to create a genuine issue of material fact, what efforts it had made to obtain those facts, and why those efforts were unsuccessful." *Bayerische Hypo-Und Vereinsbank AG v. Banca Nazionale Del Lavoro, S.p.A. (In re Enron Corp.)*, 292 B.R. 752, 795 (Bankr. S.D.N.Y. 2003) (quoting *Doe v. New York Blood Ctr.*, 39 F. App'x 686, 688 (2d Cir. 2002)).

Hallaba asserts that the parties reached an enforceable settlement agreement, that MCI's counsel was instructed by Magistrate Judge Joyner to memorialize its terms in writing after the February 21, 2001 settlement conference, and that MCI's counsel agreed to Judge Joyner's instructions. The Claimant, however, does not specify the evidence he expects to find through additional discovery to prove his assertions. Hallaba only argues that more evidence of the course of negotiations with MCI would prove the existence of a binding settlement agreement and that the District Court's question to Magistrate Judge Joyner was insufficient to bring out enough of this evidence. Thus, Hallaba falls short of the standard applicable under Rule 56(f).

MCI argues in the alternative that, should the Court decide that an enforceable settlement agreement does exist, the parties mutually rescinded it on March 22, 2001, pursuant to Hallaba's counsel's March 9, 2001 letter. *See* March 9, 2001 Letter from Hallaba's Counsel to MCI's Counsel, last para. The Court does not need to decide whether on March 22, 2001 the parties rescinded an alleged agreement because the Court concludes that there never was a binding settlement agreement between MCI and Hallaba.

CONCLUSION

MCI's motion for partial summary judgment on claim numbers 15402 and 16990 is granted.

Counsel for the Debtors is to settle an order consistent with the Court's Opinion.

Dated: New York, New York
January 30, 2006

s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE