

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE CHASE MANHATTAN BANK,	:
As Collateral Agent,	:
	:
Plaintiff,	:
v.	:
	:
IRIDIUM AFRICA CORPORATION; IRIDIUM	:
CANADA, INC.; IRIDIUM CHINA (HONG KONG)	:
LTD.; IRIDIUM INDIA TELECOM LTD.; IRIDIUM	:
MIDDLE EAST CORPORATION; IRIDIUM	:
SUDAMERICA CORPORATION; KHRUNICHEV	:
STATE RESEARCH AND PRODUCTION SPACE	:
CENTER; KOREA MOBILE TELECOMMUNICATIONS	: Civil Action No:
CORPORATION; LOCKHEED MARTIN CORPORATION;	: 00-564 JJF
MOTOROLA, INC.; NIPPON IRIDIUM (BERMUDA)	:
LTD.; PACIFIC ELECTRIC WIRE & CABLE CO.,	:
LTD.; RAYTHEON COMPANY; SPRINT IRIDIUM,	:
INC.; STET-SOCIETÀ FINANZIARIA TELEFONICA	:
PER AZIONI; THAI SATELLITE	:
TELECOMMUNICATIONS CO., LTD.; and VEBACOM	:
HOLDINGS, INC.,	:
	:
Defendants.	:

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Attorneys for Defendant Motorola, Inc.

MEMORANDUM OPINION

November 25, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is The Chase Manhattan Bank's ("Chase") Objections To The Magistrate Judge's Recommendation To Exclude Excerpts Of Deposition Testimony Of Richard Severns. (D.I. 745.) For the following reasons, the Court concludes that the Magistrate Judge did not commit clear error in granting Motorola, Inc.'s ("Motorola") motion in limine.

BACKGROUND

The dispute in this case arises from an \$800 million loan Chase extended to Iridium LLC in 1998 (the "Chase Loan"). As security for the Chase Loan, Iridium LLC purportedly pledged, and the Members allegedly ratified, the Members' Reserve Capital Call ("RCC") obligations to Chase. Iridium LLC defaulted on the Chase Loan and, after Chase's unsuccessful attempt to call the RCC obligations, Chase instituted the instant action.

In ruling on Motorola's motion in limine, the Magistrate Judge excluded the deposition testimony of Rick Severns, a senior Motorola officer and director of Iridium LLC. (D.I. 737.) In his testimony, Mr. Severns stated that Motorola, in the course of various meetings (the "2000 Meetings"), offered unconditionally to pay its RCC obligations to Chase. The parties dispute whether the 2000 Meetings were settlement meetings. Mr. Severns also testified that in his opinion, Motorola was obligated to pay Chase the RCC obligations. By its Motion, Chase objects to the Magistrate Judge's order granting Motorola's motion in limine excluding the statements Mr. Severns made

during the 2000 Meetings. Chase also objects to the Magistrate Judge's exclusion of Mr. Severns opinion testimony on whether Motorola was obligated to pay the RCC obligations to Chase.

STANDARD OF REVIEW

A district court may overrule a magistrate judge's decision on a non-dispositive matter only if it was "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). A finding is clearly erroneous if the determination "(1) is completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data" Haines v. Liggett Group Inc., 975 F.2d 81, 92 (3d Cir. 1992). Further, under Section 636(b)(1)(A), a reviewing district court may not consider evidence and materials not before the magistrate judge. Id.

DISCUSSION

I. Whether The Magistrate Judge Committed Clear Error In Excluding Mr. Severns's Testimony

In her order, the Magistrate Judge found that two letters, a letter between Chase and Mr. Severns (the "Chase Letter"), and a letter between the Gateway Investors and Chase (the "Gateway Investors' letter") establish that a "dispute" existed over whether Motorola was obligated to pay Chase its RCC obligations. Accordingly, the Magistrate Judge concluded that Mr. Severns's statements in the 2000 Meetings relating to the RCC obligations fell within the purview of Federal Rule of Evidence 408, and therefore, granted Motorola's motion in limine to exclude the testimony. Chase objects to the Magistrate Judge's finding and contends that the 2000

Meetings were not settlement meetings. Instead, Chase contends that the 2000 Meetings were "restructuring meetings," and thus, Mr. Severns's statements in the 2000 Meeting are not excludable under Rule 408. In response, Motorola denotes its agreement with the Magistrate Judge's finding.

In Affiliated Mfg., Inc. v. Aluminum Co. of Am., 56 F.3d 521, 526 (3d Cir. 1995), the Third Circuit held that a dispute exists when there is a "clear difference of opinion between the parties" Id. Further, "if application of Rule 408 exclusion is doubtful, [the] better practice is to exclude evidence of compromise negotiations." Id. (citing Bradbury v. Phillips Petroleum Co., 815 F.2d 1356, 1364 (10th Cir. 1987)). In applying these standards to the Magistrate Judge's finding of a dispute over whether Motorola was obligated to pay its RCC obligation to Chase, the Court concludes that the Magistrate Judge's determination was not clearly erroneous.

Beginning with the Gateway Investors' letter, Chase contends that the Magistrate Judge's reliance on this letter in finding a dispute between Motorola and Chase was erroneous because Motorola is not a Gateway Investor. (D.I. 745 at 4.) For support of its contention, Chase directs the Court to the testimony of Yoshiharu Yashuda, whereby Mr. Yashuda indicates that Motorola was not a Gateway Investor. (D.I. 745; Ex. 2 at 78:14-16.) However, Chase does not allege that Mr. Yashuda's deposition testimony was before the Magistrate Judge; and, because the Court cannot consider evidence that was not before the Magistrate Judge, see Haines, 975 F.2d at 92,

the Court will not include Mr. Yashuda's testimony in its deliberations.

However, even if Mr. Yashuda's testimony was before the Magistrate Judge, the Court concludes that the statements in the Chase Letter provide sufficient evidence of the existence of a dispute thereby precluding the Court from finding that the Magistrate Judge committed clear error in excluding Mr. Severns's testimony. Chase's Letter states that "[Chase] . . . reject[s] the position[] taken by Motorola." (D.I. 765; Ex. C.) Moreover, Mr. Severns's testimony provides that "[o]ne of the things [Motorola] offered [to Chase] was to pay the [RCC obligation]." (D.I. 765; Ex. C at 34:20-24; 35: 1-3) (emphasis added). These two statements suggest that a dispute existed over whether Motorola was obliged to pay Chase its RCC obligations. Further, although Mr. Severns's statements were made in the context of an attempted restructuring of Iridium LLC,¹ they provide the "minimum evidentiary support" for the Magistrate

¹ The context in which Motorola made the offer to pay the RCC obligations may actually support Chase's contention that there was no dispute between Motorola and itself. In the 2000 Meetings, Motorola and Chase were apparently attempting to prevent Iridium LLC from entering into bankruptcy. If, in return for its assistance in preventing Iridium LLC from entering bankruptcy Motorola was offering to pay less of its RCC obligation even though it knew that it owed the entirety to Chase, Rule 408 would not apply. See Advisory Committee Notes to the 1972 Proposed Rules ("the policy considerations which underlie the rule do not come into play when the effort is to induce a creditor to settle an admittedly due amount for a lesser sum."). However, as noted above, under the clearly erroneous standard, the Court concludes that the Magistrate Judge's finding of a dispute between Motorola and Chase was not "devoid of minimum evidentiary support," see Haines, 975 F.2d at 92, and will affirm her finding.

Judge's finding that there was a "dispute" between Chase and Motorola. Accordingly, in the practice of resolving doubts in favor of exclusion under Rule 408, see Affiliated, 56 F.3d at 526, the Court will affirm the Magistrate Judge's finding.

II. Whether The Magistrate Judge Committed Clear Error In Finding That Mr. Severns Did Not Have Sufficient Personal Knowledge To Qualify As a Lay Witness

In her order, the Magistrate Judge found that Chase did not present sufficient evidence to demonstrate that Mr. Severns had the requisite personal knowledge to qualify as a lay witness under Federal Rule of Evidence 701. Specifically, the Magistrate Judge relied upon two facts that Chase did not rebut: 1) that Mr. Severns did not become involved with Iridium until mid-1999 and 2) that Mr. Severns had no involvement with the 1997 and 1998 Amendments to the Iridium LLC Agreement that purportedly gave Chase the right to call the Members' RCC obligations. In its objections, Chase contends that the Magistrate Judge's finding was clearly erroneous because Mr. Severns was a senior Motorola official and a director of Iridium. Therefore, Chase contends that Mr. Severns must have the requisite personal knowledge of Motorola's obligation to pay Chase the RCC obligations.

The threshold issue is whether Mr. Severns's testimony is excluded by Rule 408. Rule 408 provides that statements are not excludable under this Rule if they are "otherwise discoverable." Fed. R. Evid. 408. In his deposition, Mr. Severns testified that in his opinion Motorola was obligated to pay its RCC obligations to

Chase. (D.I. 745; Ex. 1 at 53: 3-11.) This opinion was not part of the settlement or compromise negotiations, and therefore, is not excludable under Rule 408. Accordingly, the dispositive issue on the admissibility of Mr. Severns's opinion testimony is whether Mr. Severns qualifies as a lay witness under Rule 701.

Rule 701 provides that a lay witness may testify as to his or her "opinions or inferences which are . . . rationally based on the perception of the witness [and] helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. . . ." Fed. R. Evid. 701. The Third Circuit has interpreted "rationally based on the perception of the witness" to require "firsthand knowledge of the factual predicates that form the basis for the opinion." Government of Virgin Islands v. Knight, 898 F.2d 619, 629 (3d Cir. 1993). Applying these principles to Mr. Severns's testimony, the Court concludes that the Magistrate Judge's finding was not clearly erroneous.

Chase has not provided the Court with sufficient evidence to demonstrate that Mr. Severns's opinion is based upon his personal knowledge. As the Magistrate Judge noted, Mr. Severns was not involved with Iridium until after the Chase Loan was complete and the 1997 and 1998 Amendments to the Iridium LLC Agreement were purportedly effectuated. Moreover, in his testimony Mr. Severns states that "any knowledge [he possessed about Motorola's RCC obligations with respect to the Chase Loan] was either gained from Steve Earhart or from counsel." (D.I. 765; Ex. A 50:17-19.)

Therefore, the Court concludes that Mr. Severns's opinion was not based upon his personal knowledge.

Based upon Mr. Severns's testimony, his non-involvement in Iridium LLC until mid-1999, and the lack of evidence demonstrating that Mr. Severns had the requisite personal knowledge to qualify as a lay witness under Rule 701, the Court concludes that the Magistrate Judge's finding was not in clear error.

CONCLUSION

For the reasons discussed, the Court concludes that the Magistrate Judge did not commit clear error in finding that Federal Rule of Evidence 408 precludes the admissibility of Mr. Severns's deposition testimony. Further, the Court concludes that the Magistrate Judge did not commit clear error in finding that Mr. Severns lacked the requisite personal knowledge to qualify as a lay witness under Federal Rule of Evidence 701.

An appropriate Order will be entered.

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Defendants.	:

ORDER

WHEREAS Plaintiff The Chase Manhattan Bank ("Chase") filed Objections To The Magistrate Judge's Recommendations To Exclude Excerpts Of Deposition Testimony Of Richard Severns (D.I. 745);

NOW THEREFORE, IT IS HEREBY ORDERED this 25th day of November, 2003, that Chase's Objections (D.I. 745) are **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE