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November 25, 2002

BY HAND

The Honorable Denise L. Cote
United States District Court
Southern District of New York
500 Pearl Street, Room 1040
New York, New York 10007

Re: *In Re WorldCom Inc. Securities Litigation*, Master File No. 02 Civ. 3228 (DLC)

Dear Judge Cote:

Having had the opportunity to read Salomon's motion to sever, as well as Mr. London's letter requesting that the schedule for Salomon's forthcoming motion to dismiss be modified, I ask the Court's indulgence in accepting this short supplement to my November 22 letter regarding these two motions. We believe it imperative to point out immediately that Salomon's motion seeks to transfer to the so-called "analyst litigation" pending before Judge Jones a claim that has <u>nothing to do with Salomon's analyst reports</u>, namely, Claim IX, which pertains to <u>two WorldCom bond offering registration statements</u>.

Salomon has in the past repeatedly told judges of this District (and the MDL panel) that there should be a separate litigation to deal with its analyst reports, but we have now learned that when Salomon said "analyst litigation" it really meant "analyst litigation plus the WorldCom registration statements." This revelation would be news to the judges who issued the orders on which Salomon so heavily relies. And it is, by itself, reason enough to take a fresh look at the supposed "efficiency" of requiring the Class to prove what this defendant knew about this particular company in two different courtrooms.

This is especially so because Salomon's newly-disclosed plan would introduce even more duplicative litigation than previously believed – it would require two separate litigations concerning the <u>very same statements</u>. That is because the truth or falsity of the WorldCom registration statements would still need to be litigated in this Court (<u>see</u> Claims I, II, III, and IV) even if the Court were to agree to send Claim IX to Judge Jones. Worse, because Salomon is a defendant for one of those claims (Claim IV, as a defendant with other underwriters), the Class

would also be forced to prove Salomon's liability for the exact same words both in this courtroom (for liability under §11 the Securities Act) and in Judge Jones' courtroom (for liability under §10(b) of the Securities Exchange Act). What Salomon asks the Court to do is unprecedented, and makes no sense. In addition, one can presume that Salomon will be moving against Claim IV on December 13, even as it asks Your Honor to defer until some future date another round of motion practice directed at the same registration statements.

For all the ink Salomon spills about judicial economy, it fails to mention, let alone explain, how the foregoing can be squared with the principles of efficiency it espouses.[1] Rather, Salomon pretends that Claim IV against it and the other underwriters simply does not exist, misleadingly describing the matter before Your Honor as "the director, officer, and auditor litigation" (see, e.g., Defs. Br. at 8), or a case about whether the "directors, officers and auditors" violated the securities laws (see, e.g., id. at 15). That is as inaccurate as assuring the Court that the three claims it seeks to sever are all "analyst claims." London Letter at 2; Def. Br. *seriatim*.

The NYSCRF will elaborate on the points made here and in my November 22 letter in our formal opposition papers. But for now we respectfully submit that the Court should deny Salomon's request to defer part of its motion to dismiss to a later date.

Thank you for your consideration of this matter.

Respectfully submitted,

John P. Coffey

cc:
Martin London, Esq. (Co-counsel for defendants Salomon Smith Barney and Jack Grubman)
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Jay Kasner, Esq. (Counsel for the underwriter defendants)
Gary Cutler, Esq. (Counsel for defendant Arthur Andersen LLP)

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[1] We do agree with Salomon about one point: that the factual interdependence of Claims IX-XI makes it imperative to litigate these claims together. Def. Br. at 14-16. That, of course, has long been our point. But given that the statements at issue in one of those claims – those in WorldCom's bond offering registration statements – are identical to those in four other claims that will remain before Your Honor, the balance of efficiencies tips heavily on the side of keeping Claim IX, and what Salomon acknowledges are its companion claims, Claims X and XI, here in the WorldCom Securities Litigation.

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