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October 29, 2003

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. 3288 (DLC)

Dear Judge Cote:

On behalf of Lead Plaintiff New York State Common Retirement Fund ("NYSCRF") and Co-Lead Counsel Barrack, Rodos & Bacine, we respectfully submit this letter to respond to the Government's October 23 letter request seeking a stay of certain discovery until after the Sullivan trial ends. We also address some points raised in the correspondence submitted to the Court by other parties on October 24. Finally, we alert the Court to an open issue concerning discovery that may need to be addressed if it is not resolved within the next week.

A. The Request for a Stay

As previewed in our October 24 letter, Lead Plaintiff respectfully submits that the Government's interests can reasonably be accommodated without resort to a stay that would undoubtedly derail the momentum of this important litigation.

As a threshold issue, we interpret the Government's request as one that seeks to stay additional written discovery requests, not depositions, and thus we disagree with those Defendants who suggest that the Government's request is so broad as to prohibit depositions until after the Sullivan trial ends next spring. The Government's letter addresses document requests only and says nothing about barring depositions. That is no surprise given the Court's October 8 order, which memorialized the Government's proposal as to when certain

depositions can be taken. Nothing in its October 23 letter suggests that the Government retreats from its prior position on that score.

With regard to the request to stay additional written discovery, Lead Plaintiff believes that the Court can fashion an order that accommodates the Government's concerns, mitigates the disruption that any stay would impose on this important civil litigation, and avoids rewarding the very parties whose refusal to cooperate with the Government's requests has triggered the present application. In making the proposal below, we are mindful of several salient points:

First, the Government acknowledges that there are "many categories of documents that, if produced, would not interfere" with its efforts (October 23 Letter at 2 (emphasis in original)).

Second, between its October 23 letter to the Court and its October 27 filing with the Bankruptcy Court (attached as Exhibit A) responding to a motion made in that court by the Salomon Defendants, the Government has identified four specific types of document requests of concern (together, the "Pertinent Requests"). These are requests that ask for documents concerning: (a) subpoenas served by and correspondence with the Government and other investigative entities; (b) testimony or interviews given to the Government and other investigative entities by present or former WorldCom officers, directors, or employees; (c) all presentations, reports, and responses to the Government's investigation; and (d) any investigation relating to the accounting irregularities or errors in WorldCom's financial statements. Ex. B at 5; see also October 23 Letter at 1. In addition, the Government has stated that there are other categories of documents for which it wants to defer production, and it is willing to explain to the Court in camera why that is necessary. October 23 Letter at 2 & n.1.

Third, the October 8 Order provides a precedent for the proposition that the Court can issue an order that deftly balances the needs of the Government, the victimized investors, and the civil defendants.

Fourth, consistent with the brisk schedule the Court has maintained throughout this litigation – which Lead Plaintiff endorses – the Court has previously indicated a preference to complete discovery by June 2004 and entertain Lead Plaintiff's proposal to try the case in the next Fall.

Fifth, Court-ordered settlement negotiations continue under the auspices of Judge Sweet and Magistrate Judge Dolinger, and are no doubt influenced in large part by the facts in the previous bullet.

In light of these and related factors, Lead Plaintiff respectfully submits that the Court consider entering an order that provides as follows:

1. Conducting an in camera session with the Government to determine what additional categories of documents should be included in the list of Pertinent Requests.

2. Prohibiting the parties from serving any Pertinent Request on any non-party until the end of the Sullivan trial or the Court otherwise directs. [1]

3. Permitting deposition discovery consistent with the October 8 order to commence on November 10.

4. Once Pertinent Requests may be served, if a party receives responsive documents that in its good faith view merits re-opening of a deposition, it may apply to the Court for such relief.

B. Various October 24 Proposals

Lead Plaintiff is prepared to address the various scheduling and deposition-related matters at tomorrow's conference, but submits the following in advance of the conference:

Defendants' Motion To Stay Discovery. In their October 24 submissions, the Underwriter and Salomon Defendants assert that deposition discovery must be stayed now, and they advise the Court that they will soon move to stay discovery generally. Lead Plaintiff will respond accordingly, but we wish to point out now (as we did in our September 3 letter) that the investment banks' argument that a stay is required because of supposed prejudice to their "due diligence" defense should be swiftly rejected, as it was by the Supreme Court of Alabama when many of these same defendants pressed that point in an individual WorldCom case earlier this year.

In Ex Parte Bernard J. Ebbers, 2003 WL 21570770 (S. Ct. Ala. July 11, 2003), various of the Underwriter Defendants sought a stay of discovery on the ground that lack of access to certain witnesses purportedly prejudiced their due diligence defense. Id. at*17-22. The Alabama Supreme Court rejected that rationale:

> As they describe the "due diligence defense," it does not relate to what Sullivan or others might have known but concealed; rather, it relates to the reasonableness of the inquiries and investigations by the Bank defendants and the reasonableness of their belief that the information provided to them was true and complete. They will be able to explain in full detail all of the investigations and inquiries they undertook, the contents of all documents, reports, and other

[1] We understand that the Government's objection is to production of documents reflecting dealings with the U.S. Attorney's Office, not the SEC, Examiner, or other investigative entities, and thus the prohibition would not extend to documents concerning those other entities.

> information provided to them, and the information otherwise coming to their attention.

Id. at *20. The Underwriter Defendants' fundamental mischaracterization of the due diligence defense -- that it somehow rests on what others thought or did as opposed to what the Underwriter Defendants did or did not do -- should not result in the broad stay they request. Indeed, the Alabama Supreme Court observed that, because Sullivan and other witnesses "are not in a position to contradict anything that the Bank defendants might assert concerning what information was transmitted to them or withheld from them ... the Bank defendants are as well off, or even better off," with those witnesses "self-muzzled" than they would be if those witnesses could testify in opposition to the due diligence evidence offered by the banks. Id. at *20.

A Second Round Of Class Representative Depositions. Virtually all Defendants state that they will seek to depose Lead and Named Plaintiffs again, even though they had already deposed each class representative and at least one of its outside investment advisors earlier in this litigation. In testing those representatives regarding the typicality of their claims and their familiarity with the matters alleged in the complaint, among other matters, Defendants had ample opportunity to depose the class representatives about the merits of the case. They exploited that opportunity vigorously.[2] Defendants' document requests were not

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[2] By way of brief example, the Salomon Defendants say that, in light of the Court's October 24 opinion certifying the Class, they will need to depose plaintiffs about whether they relied on Grubman's reports in deciding whether to invest in WorldCom. London Letter at 3. Leaving aside whether such testimony is relevant given the Court's reasoning (Lead Plaintiff submits it is not), the fact is that Salomon has already had the opportunity to develop that testimony in its prior depositions. For example, one of the deponents questioned by the Salomon Defendants was Francis LeCates, Jr., a representative of one of Lead Plaintiff's "value" oriented investment managers, Oppenheimer Capital. LeCates explained Oppenheimer's various bases for its decisions concerning the making of its investments in WorldCom securities on behalf of the NYSCRF. *See generally* LeCates Tr. at 90:3-96:24. As LeCates described, Oppenheimer analysts made WorldCom one of its selected stocks after a thorough investigation of all publicly-available information about WorldCom, including analyses of reports issued by Grubman and Salomon concerning WorldCom. On cross-examination, Co- Lead Counsel also questioned LeCates regarding Oppenheimer analysts' reliance on reports issued by Grubman and Salomon concerning WorldCom:

> Q. Was Oppenheimer provided with analyst reports, either by Salomon Smith Barney or by Mr. Grubman?
>
> A. Yes.
>
> Q. Do you know whether they were provided with analyst reports concerning WorldCom?
>
> A. Yes.

limited to class certification issues, and at the plaintiffs' depositions there was no restriction placed on pursuit of merits-related testimony. Any attempt to depose these parties a second time should be denied. Further, there is no basis to invoke the "need" to take such depositions as a basis to increase the number of depositions generally or to extend the time for fact discovery.

Lead Plaintiff's Proposed Allotment for Depositions. Lead Counsel has been asked if the proposed allotment of 60 days per side for depositions includes depositions of the Individual Action plaintiffs. It does not. We concur with the suggestion that discovery of those plaintiffs be postponed until after general merits discovery for the consolidated actions.

Length of Depositions. The Underwriter Defendants propose that, absent agreement or Court order, depositions should be limited to seven hours total for all examiners, as per FRCP 30(d)(2). We note first that the Underwriter Defendants and other Defendants were permitted to take depositions of the class representatives and their advisors for up to eight hours; that precedent should apply. Second, requiring both sides to complete their examinations within one seven hour period is impractical in this case. It will be challenge enough for the parties on each side to allocate time among themselves; requiring the two sides to agree on how to split the time between them would likely lead to intractable squabbles. We respectfully submit that assigning each side an allotment along the lines we suggested on Friday would instill sufficient discipline on all concerned so as to promote very efficient deposition-taking.

C. Open Issue

For the Court's information, we note that Lead Plaintiff is still in discussions with the Salomon and Underwriter Defendants regarding the production of "e discovery." We are attempting to reach an agreement with the Salomon Defendants regarding certain supplemental e-mail searches they will need to run to complete their prior production of e-mails. The Underwriter Defendants refuse to begin producing any responsive e-mails until all open issues are resolved. Open issues include the scope of searches and the allocation of cost associated with e discovery. The parties have slowly made progress in this area over the past few weeks, and our hope is that it will not be necessary to seek the

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Q. How were those taken into account, if you know?

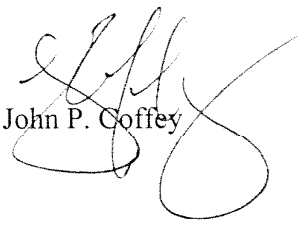
A. We take into account all the information we can get, be it published by the company or by the media or by sell side analysts or any other publications we can look at.

LeCates Tr. at 182:13-25. Salomon's counsel followed up with questions of his own regarding the reports issued by Grubman and Salomon, and thereby fully explored the issued of whether Oppenheimer relied on Grubman reports. *See id.* at 189:17-194:16.

Court's involvement in this matter. However, if we are not able to resolve the remaining disputes in the next week, then we will ask the Court to resolve those disputes.

Thank you for your consideration of the foregoing and our letter of October 24. We look forward to discussing these matters with the Court at tomorrow's conference.

Respectfully submitted,



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