UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLDCOM, INC. SECURITIES LITIGATION			MASTER FILE NO. 02 Civ. 3288 (DLC)
This Document Relates to:			
02 Civ. 3288	02 Civ. 4973	02 Civ. 8230	
02 Civ. 3416	02 Civ. 4990	02 Civ. 8234	
02 Civ. 3419	02 Civ. 5057	02 Civ. 9513	
02 Civ. 3508	02 Civ. 5071	02 Civ. 9514	
02 Civ. 3537	02 Civ. 5087	02 Civ. 9515	
02 Civ. 3647	02 Civ. 5108	02 Civ. 9516	
02 Civ. 3750	02 Civ. 5224	02 Civ. 9519	
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02 Civ. 4958	02 Civ. 8229	03 Civ. 7298	
		03 Civ. 7299	

MEMORANDUM OF LAW OF LEAD PLAINTIFF ALAN G. HEVESI, COMPTROLLER OF THE STATE OF NEW YORK, AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND LOCAL RETIREMENT SYSTEMS AND AS TRUSTEE OF THE NEW YORK STATE COMMON RETIREMENT FUND, IN OPPOSITION TO THE MOTION TO STAY MERITS-BASED DEPOSITION DISCOVERY IN THIS ACTION BROUGHT BY DEFENDANTS SALOMON SMITH BARNEY, CITIGROUP, INC. AND JACK GRUBMAN

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Lead Plaintiff, the New York State Common Retirement Fund, by Alan G. Hevesi, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Trustee of the New York State Common Retirement Fund (the "NYSCRF" or "Lead Plaintiff"), by the undersigned attorneys, respectfully submits this memorandum of law in opposition to the Motion to Stay Merits-Based Deposition Discovery in this Action brought by Defendants Salomon Smith Barney, Citigroup, Inc., and Jack Grubman.

I. PRELIMINARY STATEMENT

A court has wide discretion in determining the timing and sequence of discovery in a civil action. *Cruden v. Bank of New York*, 957 F.2d 961, 972 (2d Cir. 1992) ("A trial court enjoys wide discretion in its handling of pre-trial discovery"). In this Action, this Court has consistently made known its intention to move the discovery process forward once motions to dismiss the complaint were decided. This Court has further made known, on a consistent basis, its intention to begin substantive deposition discovery shortly after defendants substantially completed their productions of documents responsive to Lead Plaintiff's document requests and complete all fact discovery by mid-2004. *See, e.g.,* Transcript of Hearing of May 16, 2003, at 83-84; Transcript of Hearing of May 21, 2003, at 33; Transcript of Hearing of July 30, 2003, at 15; Transcript of Hearing of Sept. 12, 2003, at 14-15, 30-31.

Indeed, even before more generalized discovery was permitted by the Court's Order of May 19, 2003 (lifting the general stay of discovery imposed pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(b)(3)), this Court granted the Lead Plaintiff's motion – which motion was opposed by defendants in this Action – to obtain copies of documents that WorldCom had produced in connection with investigations of WorldCom to: (a) any committee of the legislative branch of the United States government; (b) any entity of the

executive branch, including the Department of Justice and the Securities and Exchange Commission; and (c) the law firm of Wilmer, Cutler & Pickering ("Wilmer") in connection with Wilmer's representation of the Special Investigative Committee of the WorldCom Audit Committee, once Wilmer issued its final report to WorldCom's Board. *See In re WorldCom, Inc., Securities Litigation*, Master File No. 02 Civ. 3288 (DLC), Opinion and Order (S.D.N.Y., Nov. 21, 2002).

To date, there have been more than four million pages of documents produced pursuant to document requests and subpoenas issued in this Action, including over one million pages of documents that were produced by WorldCom to the many investigators of the WorldCom debacle. Among the documents that have now been produced are interview notes and memoranda of Wilmer for 93 former and present WorldCom officers, directors and employees, and 120 people overall.[1] By virtue of the fact that the universe of already produced documents includes documents produced by WorldCom pursuant to requests by congressional committees, the SEC, the Department of Justice and Wilmer, there is every reason to believe that the overwhelming bulk of the most relevant WorldCom documents have already been produced in this litigation. It is further noteworthy that the Examiner in the bankruptcy proceedings has issued two very substantial reports, and that Wilmer has further issued its report, both of which cite numerous WorldCom documents and lay out in great detail the actions and inactions, in

[1] Pursuant to the Court's Order of October 8, 2003, interview notes and memoranda concerning 29 additional witnesses (except, possibly, up to 10 people designated by the Government) will be produced when the Government produces its 3500 Materials, but no later than January 15, 2004. Moreover, based on the Rulings issued by the Court on November 13, 2003, the only other documents excluded from the reach of the parties are documents reflecting communications of witnesses, post-June 25, 2002, with the Department of Justice and the SEC. *See* Transcript of Proceedings of November 13, 2003 (transcript not yet available).

some cases, of WorldCom executives, directors, and auditors involved in the issuance, oversight and review of WorldCom's financial statements.

It is against this backdrop that the Moving Defendants seek a stay of merits-based deposition discovery. [2] However, they offer no persuasive reason for the Court to stay, or even delay, such merits-based deposition discovery. Instead, they offer two basic arguments: (1) they claim that they will be prejudiced if depositions go forward because (a) the stays with respect to certain defendants (Sullivan and other former WorldCom officers who pled guilty to certain charges), (b) the lack of formal restated financial statements, and (c) limitations in obtaining certain undescribed documents from WorldCom, prohibit them from effectively defending themselves against the claims of Lead Plaintiff and preparing for potential allocation of damages issues that may arise at trial; and (2) interests of judicial efficiency and resource conservation mandate a stay of merits-based deposition discovery.

Neither argument holds up to even rudimentary scrutiny. As to the supposed "prejudice" that defendants claim, Moving Defendants argue principally that they need further documents to support their defense that, in essence, argues that they did not know, or have reason to know, of the fraud at WorldCom. However, the key documents for such a defense are those that defendants already have within their own files. The evidence to support this defense is in the

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[2] The "Moving Defendants" refers to Moving Defendants Salomon Smith Barney, Citigroup, Inc. and Jack Grubman (the "Citigroup Defendants") and the Underwriter-Related Defendants who joined in the Citigroup Defendants' Motion to Stay Merits-Based Deposition Discovery in This Action. While defendants fashion the motion as seeking a stay of four months, in fact, they are seeking a stay until the production of all WorldCom documents, plus documents from Sullivan and others, plus the formal restatement, plus all remaining documents being withheld pending the Government's request is complete. The motion thus seeks a complete stay of merits-based depositions for many months and perhaps years. Indeed, if Moving Defendants thought that a four-month delay were enough, they would not even have filed a motion at this time, since except for limited Rule 30(b)(6) depositions and certain non-party witness depositions that may be taken within the next few months, the present schedule prohibits depositions of the defendants until January 15, 2004.

possession of the defendants, not WorldCom. Defendants are the ones who have documents regarding any due diligence they conducted in connection with the Offerings, and defendants are the ones who will testify about their communications and discussions with WorldCom. Moreover, defendants do not need more discovery to "uncover" the details of the fraud at WorldCom. For instance, it is inconceivable to think that Salomon Smith Barney would have allowed Jack Grubman to testify about his involvement with WorldCom before Congress on July 8, 2002 – over one year ago – without having reviewed with him numerous documents pertaining to his actions with respect to WorldCom and the allocation of hot IPO shares to WorldCom executives. While claiming that they need discovery from Sullivan and the WorldCom officers who pled guilty to certain charges, the fact is that the reports issued by the Examiner and Wilmer provide significant details concerning the fraud that took place at WorldCom, and the documents cited in such reports are among the documents already produced. As a result, defendants will not suffer any prejudice by this Court allowing merits-based deposition discovery to go forward at this time. In fact, in related litigation in Alabama, the underwriter defendants unsuccessfully made a similar argument, which was summarily rejected by the court overseeing that litigation.

The defendants next argue that because the securities laws provide for allocation of damages according to proportionate liability, they will be prejudiced if depositions go forward unless they have received every conceivable document from WorldCom and the former WorldCom executives against whom this action has been stayed. This argument, too, is without merit. First, the Wilmer and Examiner reports cite chapter and verse about the misconduct of WorldCom insiders, and the methods by which the accounting fraud at WorldCom was carried out. Second, whatever allocations of fault issues exist in this case have existed since the outset of the litigation. Yet, defendants waited more than five months before seeking any additional

documents from WorldCom, notwithstanding that defendants have known for months the intent and desire of Lead Plaintiff and this Court to commence merits depositions shortly after the substantial completion of defendants' document productions. Third, if and when such documents become available, defendants will be able to utilize them in preparation for the trial of this case in January 2005.

Defendants further contend that they need WorldCom's restated financial statements to mount their defenses. However, as counsel for Arthur Andersen admitted, defendants certainly will not feel "bound" by such restatements (*see* Transcript of Proceedings of October 30, 2003, at 48-49), and there is ample evidence already of record concerning the types and amounts of accounting improprieties and auditing failures that are part of this massive fraud. In any event, the Bankruptcy Court has indicated that the restated financial statements will be issued by December 31, 2003, which is before any substantive defendant deposition may be taken.

The defendants' unsupported assertion that the interests of justice mandate a postponement of merits-based deposition discovery is similarly without merit. While defendants will not be prejudiced by denying the stay motion, granting a stay would cause substantial prejudice to the Lead Plaintiff and the Class. A stay would likely delay the final resolution of these proceedings, including the ultimate recovery to the Class; it would further extend the proceedings and thereby increase the drain on insurance policies that otherwise would be available for recovery by the Class. *See* Transcript of Hearing of May 21, 2003, at 8 (citing wasting nature of policies and importance of preserving defendants' assets). Both of these considerations further support denying the stay motion. As the court stated in *Arden Way Assocs. v. Boesky*, 660 F.Supp. 1494, 1497 (S.D.N.Y. 1987):

> Stalling the case for a defendant who has ample means to protect himself otherwise ... would be counter-productive and prejudicial to plaintiffs, especially

> where there are so many claimants to the potentially limited funds for satisfaction of the potential damages in this related litigation in which [the defendant] is involved.

Accordingly, there is no legal justification for granting the Moving Defendants' motion.

II. ARGUMENT

THE MOVING DEFENDANTS HAVE NOT DEMONSTRATED THAT A STAY OF ANY DURATION OF MERITS-BASED DEPOSITION DISCOVERY IS WARRANTED

This Court has previously set forth the proper standard for acting upon a motion for a stay of proceedings:

> In deciding whether to enter a stay, courts in this district consider numerous factors, including: (1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendants have been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to the plaintiffs caused by the delay; (4) the private interests and burden on the defendants; (5) the interests of the courts; and (6) the public interest.

See In re WorldCom Sec. Litig., Nos. 02 Civ. 3288 (DLC), 02 Civ. 4816(DLC), 2002 WL 31729501, *3-*4 (Dec. 5, 2002). Indeed, in *In re Par Pharmaceutical, Inc. Sec. Litig.*, 133 F.R.D. 12 (S.D.N.Y. 1990), the court held that "[a] total stay of civil discovery pending the outcome of related criminal proceedings ... is an *extraordinary remedy*." *Id.* at 13 (emphasis added); *see also Weil v. Markowitz*, 828 F.2d 166, 174 n.17 (D.C. Cir. 1987). Thus, in deciding this motion, the Court must balance the Moving Defendants' interests against other competing interests, including those of the Class, *see Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936), and determine whether, based on the circumstances of these proceedings, the "extraordinary remedy" of a stay is necessary.

Applying these criteria, the Moving Defendants have not made the requisite showing to warrant this extraordinary remedy of a stay of merits-based deposition discovery. The Moving

Defendants can claim "no constitutional right to a severance and stay of these civil suits," *Arden Way Assocs. v. Boesky*, 660 F. Supp. at 1496, and a proper balancing of these interests demonstrates that a stay of merits-based deposition discovery is not warranted.

A. Allowing Merits-Based Deposition Discovery to Proceed Will Not Prejudice Defendants

The Moving Defendants take great pains to try to conjure up claims of prejudice if merits-based deposition discovery goes forward pending the conclusion of the Sullivan trial. In essence, the Moving Defendants argue that they are prejudiced because their ability to lodge a defense to the claims asserted against them is hindered because the stay of the civil proceedings as to Sullivan, Myers, Yates, Vinson and Normand and the Court's October 8, 2003 Order limits their ability to depose and request documents from certain Sullivan trial witnesses. However, upon closer examination, neither the stay of certain discovery proceedings as to these five individuals, nor the Court's Order limiting certain discovery relating to the Sullivan trial, nor any other "limitation" on the parties' ability to obtain production of additional documents, warrants a stay of merits-based depositions.

1. The materials not produced to date are not necessary for defendants to seek to establish their defenses to Lead Plaintiff's claims.

The Moving Defendants claim that the partial limited stays of discovery pertaining to the pending criminal charges in the Sullivan trial deny them access to those documents and testimony that are "most pivotal for the purpose of establishing their factual and legal defenses to this litigation," and that "[t]here can be no legitimate dispute that the withheld materials include evidence critical to the Citigroup Defendants' defenses in this action." *See* Citigroup Defts. Mem. at 2, 8. Further, they argue that they "will suffer substantial prejudice if they are denied access to the evidence showing the measures taken by WorldCom insiders to hide the fraud from

the underwriters of the May 2000 and May 2001 debt offerings," and "[w]ithout information from the very individuals engaged in perpetrating and concealing the fraud, however, the underwriters will be substantially prejudiced in making their due diligence defense." *Id.* at 14. A review of the facts, however, demonstrates that Moving Defendants have not met their burden for granting a stay.

The Moving Defendants focus much of their attention not on their "defenses" to the claims asserted against them, but on the indictments against Sullivan. *See id.* at 8-9. In doing so, they never explain what their defenses are or how their ability to mount those defenses would be prejudiced if merits-based deposition discovery is not stayed. Indeed, contrary to their position, Moving Defendants admit that "lead plaintiff's fraud claims against the Citigroup Defendants revolve around what these defendants knew or should have known about WorldCom's true financial condition at the time that Salomon underwrote the May 2000 and May 2001 debt offerings and at the time that Salomon issued allegedly fraudulent analyst research reports on WorldCom." *See id.* at 12 (emphasis added). Thus, as they acknowledge, the focus is not on what Sullivan, Myers, Yates, Normand, Vinson or other Sullivan trial witnesses knew, but rather on what the Moving Defendants themselves knew or should have known regarding WorldCom's true financial condition. This is particularly true here, where the actions of the individuals are all well-known and set forth in various pleadings filed in the criminal actions, and in the Examiner and Wilmer reports.

The Moving Defendants' fundamental mischaracterization of the due diligence defense – that it somehow rests on what <u>others</u> thought or did as opposed to what the <u>Moving Defendants</u> did or did not do – should not result in the broad stay that they request. The Alabama Supreme Court swiftly and decisively rejected a similar argument that defendants needed a stay based

upon their anticipated due diligence defense:

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

Ex parte Ebbers, Nos. 1020931, 1021008, 2003 WL 21570770, *20 (Ala., July 11, 2003). Accordingly, allowing merits-based deposition discovery to go forward will not constitute legal prejudice to the Moving Defendants.[3]

Defendants simply do not need every single document that WorldCom or the indicted defendants may have, in addition to the millions of pages produced by WorldCom in response to investigation demands of the Department of Justice, SEC, congressional committees and Wilmer, in order to take depositions of others, or to prepare their own witnesses for depositions. Just as defendants sought, and were granted leave, to take depositions of the plaintiffs and certain of their investment advisors before defendants had produced any significant portion of their documents, so, too, should merits-based deposition discovery go forward notwithstanding defendants' argument that they should get absolutely complete document discovery from WorldCom. In fact, defendants never even sought documents until Salomon's "emergency" motion to the Bankruptcy Court was filed in October 2003 – five months after this Court lifted the PSLRA discovery stay. As the court stated in *Teletel, Inc. v. Tel-Tel U.S. Corp.*, 2000 WL

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[3] The Court should also reject the Moving Defendants' related argument that the failure to stay all merits-based depositions will interfere with their ability to mount a defense based upon their contention that Sullivan and other WorldCom insiders "duped" them. *See* Citigroup Mem. at 3, 13. The relevant inquiry is not whether anyone hid things from the Moving Defendants, but whether the due diligence performed by the Moving Defendants was reasonable, and what they knew or should have known about WorldCom's actual financial and operating condition based upon that due diligence. Whether they were duped by Sullivan or others has no bearing on that defense.

1335872, at *2 (S.D.N.Y. Sept. 15, 2000), "... there was no need for plaintiff's witnesses to review defendants' documents before their depositions in order to testify to the facts as they themselves knew them." Similarly in this case, there is no need for witnesses for underwriter defendants to review each and every piece of paper that may have existed within WorldCom in order to testify about what the underwriters did – or did not do – in connection with their "due diligence" for the various bond offerings at issue in this case. *Accord Hogan v. DC Comics,* No. 96-CV-1749, 1997 WL 570871, at *6 (N.D.N.Y. Sept. 9, 1997) (allowing deposition of plaintiff to proceed before defendant completed document production, noting that sequencing of discovery "is at the discretion of the trial judge").[4]

2. The PSLRA's scheme of liability based on proportionate fault does not establish that the Moving Defendants will suffer prejudice if a stay is not granted.

The Moving Defendants further seek to rationalize a stay of deposition discovery by arguing that "the discovery relating to the Sullivan Trial Witnesses' participation in and knowledge of the internal fraud is also highly probative of damages under the Private Securities Litigation Reform Act of 1995," because "the PSLRA establishes a scheme of liability based on proportionate fault" and "the degree to which Sullivan, Myers, and other WorldCom insiders are responsible for investors' losses is a critical issue to other defendants." Citigroup Mem. at 13. In making this argument, defendants improperly conflate the question of the timing of discovery now and the proof of damages at trial.

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[4] As the Court made clear in *Arden Way,* just because a stay of proceedings may be warranted for certain defendants in a civil action (particularly those who have been indicted), that does not mean that a more generalized stay of proceedings is appropriate. *See also Citibank, N.A. v. Hakim*, No. 02 Civ. 6233 (MBM), 1993 WL 481335, *1 (S.D.N.Y. Nov. 18, 1993) ("In this Circuit ... district courts generally grant the extraordinary remedy of a stay only after *the defendant seeking* a stay has been indicted.") (emphasis added) (*citing In re Par Pharmaceutical*, 133 F.R.D. at 13). Here, the Moving Defendants have not been indicted, and their claims of prejudice stemming from the stay of proceedings with respect to the indicted defendants do not warrant an extension of the stay to all parties.

Regardless of how the issue of proportionate fault is ultimately determined at trial, it does not justify staying merits-based discovery until after completion of the criminal trial and all the other productions of documents that defendants claim they need to adequately prepare for merits depositions. Here, each of the parties to this litigation is well aware of the evidence cited in the Examiner and Wilmer reports, much of which is devoted to the manner in which the group headed by Sullivan carried out the accounting fraud at WorldCom. Indeed, the methods by which the fraud was perpetrated were relatively simple ones. While plaintiffs contend that each of the other defendants, if they had complied with their legal obligations as directors, auditors or underwriters, could and should have uncovered the fraud, the defendants certainly know enough – and have enough documents already – to build their cases and seek to shift liability for the false and misleading statements concerning WorldCom to the WorldCom insiders. Whatever the impact down the road of allocation of damages issues, discovery of every conceivable WorldCom or Sullivan document, and those of others involved in the criminal case, is not necessary for defendants to adequately prepare to take, and defend their witnesses at depositions at this point in the case.[5] In any event, defendants will have an ample opportunity to explore any

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[5] Notably, the allocation of damages argument is somewhat of a red herring, since there is joint and several liability for Section 11 claims, and defendants who act knowingly are jointly and severally liable for Section 10(b) claims.

As to the defendants' argument that they need all documents and notes of witness interviews to determine if any witness ever made a prior inconsistent statement, while such documents may not be available for each and every deposition, denying the stay defendants seek would not serve to forever foreclose defendants from utilizing at trial any prior statements that may thereafter become available. Moreover, pursuant to Rulings made at the Hearing of November 13, 2003: (1) Wilmer's witness interview notes and memoranda are available for use at depositions; (2) there will be no limits on questioning of witnesses at depositions relating to their involvement with any Government investigations; and (3) the only prior statements of witnesses that will not be available to the parties at this time are statements made to the Department of Justice or the SEC. *See* Transcript of Hearing of November 13, 2003 (transcript not yet available). These Rulings are entirely consistent with the wide discretion a district court

relevant issue relating to damages after the conclusion of the Sullivan trial.

For these reasons, the Moving Defendants have been unable to explain how allowing merits-based deposition discovery to go forward now will ultimately prejudice the ability of the trier of fact to apportion liability among the various defendants. Accordingly, the Moving Defendants have not demonstrated any prejudice and their motion should be denied.

B. Lead Plaintiff and the Class Will Be Unduly Prejudiced by a Stay of Merits-Based Deposition Discovery

In contrast to the Moving Defendants' unsupported claims of prejudice, Lead Plaintiff and the Class will suffer real and irreparable harm should merits-based deposition discovery be stayed at this point in the litigation. Staying or even postponing merits-based deposition discovery beyond the dates now ordered by the Court will delay the resolution of these proceedings. While defendants say, at various points, that they are seeking only a stay of merits-based depositions for a period of four months, in fact, they are seeking a stay upon conditions that may well bring about a much longer delay of depositions. But even postponing all merits-based deposition discovery until the conclusion of criminal cases, in which the Moving Defendants are not directly involved, would unduly prejudice the Class members, who have collectively lost billions of dollars as a result of the defendants' wrongdoing.

The circumstances of this case are similar to the facts in *Travelers Cas. & Sur. Co. v. Vanderbilt Group, LLC*, No. 01 CIV. 7927 (DLC), 2002 WL 844345 (S.D.N.Y. May 2, 2002), in which the court denied a post-indictment motion for a stay of civil litigation. There, the court emphasized that the plaintiff had a "substantial" interest in the expeditious prosecution of its civil

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must have to control pretrial discovery, and are further in accord with Rule 26 of the Federal Rules of Civil Procedure, which places within a court's discretion the sequencing of discovery. Under that Rule, absent a contrary court ruling, "methods of discovery may be used in any sequence." *See* F.R.Civ.P. 26(d). Thus, there is nothing that grants defendants any right to "complete" document discovery before a court may allow depositions to take place.

action. *See id.* at *3. As in that case, the interests of the Class here, the victims of the largest accounting fraud in history, lie in being able to pursue without delay their claims against the Moving Defendants.[6]

To the extent that defendants now contend that proceedings should be stayed or postponed because they need further documents from WorldCom to adequately prepare their defenses, that is something defendants in large part brought upon themselves. This Court lifted the general stay of discovery under the PSLRA on May 19, 2003. Six months earlier, the Court granted Lead Plaintiff's motion – over the objections of defendants – to obtain all WorldCom documents that had previously been provided to the SEC, Department of Justice, congressional committees and Wilmer. The Moving Defendants never sought any extension of that production. Instead they waited nearly one full year, until October 2003, to file their own "emergency" motion with the Bankruptcy Court for additional WorldCom documents. If the additional documents were truly that important to defendants, they could and would have sought them earlier. Moreover, whatever prejudice defendants now assert based on lack of documents is something that defendants brought upon themselves. As such, it is not a proper ground for the granting of their present motion seeking equitable relief from this Court. *See, e.g., R.C., by the Alabama Disabilities Advocacy Program v. Nachman,* 969 F. Supp. 682, 688 (M.D. Ala. 1997) ("if defendant's wrongdoing has helped create the situation from which defendants seeks relief, the doors to a court of equity will not open").[7]

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[6] The Moving Defendants rely upon *Volmar Distributors, Inc. v. New York Post Co., Inc.*, 152 F.R.D. 36 (S.D.N.Y. 1993). However, in *Volmar* the court concluded that plaintiffs had contributed to the delay in the proceedings by amending their complaint three times. *Id.* at 40, n.5. In the present case, no one can fairly claim that the Lead Plaintiff has needlessly delayed the prosecution of this Action.

[7] Moving Defendants cite the Lead Plaintiff's joinder in the motions to the Bankruptcy Court as support for their assertion that the documents sought from WorldCom are necessary for

The longer this case is delayed, the greater the risk that witnesses will become dispersed and/or lose recollection of key events. Important evidence will be lost. *See Clark v. Lutcher*, 77 F.R.D. 415, 418 (M.D. Pa.1977) ("As time progresses, evidence becomes stale, memories dim, and the search for truth, always a difficult task, becomes more and more burdensome"). Further, the longer the case drags on, the less proceeds of insurance policies and other assets of defendants may become recoverable by the Class. Thus, there are significant interests of the Class in obtaining a swift resolution of these proceedings, including merits-based deposition discovery, that would be impacted by the granting of a stay at this time.

C. The Expeditious Prosecution of this Class Action Is in the Public's Interest

Granting the Moving Defendants' motion for a stay would not only hinder the efforts of the Class to achieve a judicious result for the tens of thousands of Class Members it represents, it would also undermine the public's interest in resolving this case and restoring investor confidence in the securities markets and banks. When Congress enacted the PSLRA, it recognized the critical importance of the public's trust in the integrity of the U.S. capital markets. As the House Conference Report makes clear, "[p]rivate securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely upon government action. Such private lawsuits promote public and global confidence in our capital markets and help to deter wrongdoing and to guarantee that corporate officers, auditors, directors, lawyers and others properly perform their jobs." H.R. Conf. Rep. No. 104-369, at 31 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730. The importance of the public's confidence in

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the case. However, as Lead Counsel made clear in a letter to the Citigroup defendants' counsel of October 31, 2003 (attached hereto), Lead Plaintiff's joinder in the motion was done to ensure that if documents were allowed to be produced by the Bankruptcy Court, then Lead Plaintiff would be part of any discussions with WorldCom and other parties about the scope of the document production. Lead Plaintiff's joinder in the motion thus cannot be construed as support that any further document productions by WorldCom are "necessary" to the case.

the securities market was further evidence when, citing the WorldCom fraud, Congress passed the Sarbanes-Oxley Act of 2002, ushering in the most far-reaching changes to the securities regulation system since the enactment of the Securities Exchange Act of 1934.

Courts have also recognized the vital importance of private securities litigation in maintaining the public trust. In *Arden Way*, the court denied a post-indictment stay, stating that "the public interest in the integrity of securities markets militates in favor of the efficient and expeditious prosecution of these civil litigations." 660 F.Supp. at 1500; *see also Citibank, N.A. v. Hakim*, No. 92 Civ. 6233 (MBM), 1993 WL 481335, *3 (S.D.N.Y. Nov. 18, 1993) (the public has a "significant" interest in the recovery of misappropriated funds). Similarly here, the Court should deny the Moving Defendants' requested stay because the public interest in the integrity of securities market dictates the expeditious prosecution of this litigation.

D. Denying a Stay of Merits-Based Deposition Discovery Enhances Judicial Economy and the Court's Interest in Efficiently Managing its Docket

Judicial economy also weighs against granting the Moving Defendants' request for a stay in these proceedings. *See Arden Way*, 660 F. Supp. at 1497 ("a policy of issuing stays solely because a litigant is defending simultaneous lawsuits would threaten to become a constant source of delay and an interference with judicial administration") (citation and internal quotation marks omitted). In *In re Enron Sec., Deriv. & ERISA Litig.*, which until the present case was the largest securities fraud case in U.S. history, the court recognized that delay imperiled the efficient administration of justice:

> The Court is mindful that the eyes of the nation are on this Court and the civil justice system to see if we are up to the challenge of giving to all parties in these suits their day in court. It is the nation's impression that the justice system grinds slowly in a Dickensian fashion, and it is the hope of the Court that that impression can be changed by an efficient resolution of these cases . . . . The Court ... has fashioned what [it] believes to be a workable schedule, one that will require the expenditure of a great deal of time and energy by the lawyers and parties, but one

> that will bring this case to resolution in as short a time frame as humanly possible, while serving the interests of justice. The scheduled dates are considered by the Court to be FIRM DATES.

No. H-01-3624, Scheduling Order (S.D.Tex. Feb. 27, 2002) (attached as Exhibit "8").

This same logic is equally applicable here. As this Court stated on October 30, 2003:

> My view is that we should accomplish as much as possible as quickly as possible and that some of our discovery will have to occur towards the last half of the discovery period, but we are in a position now to begin depositions. And much can be done before the Sullivan trial begins and much can be done before the Sullivan trial ends. Document discovery was to be substantially complete earlier this month. .... There's been an enormous production of WorldCom documents already to the defendants and that began through the work of plaintiffs' counsel in the securities litigation who made an application for a partial lifting of the stay before me last year, and it's one of the earlier opinions and orders I issued in this case. So, while much remains to be done, much has been done. I do not believe there is any necessity for discovery of the investigation conducted by the U.S. Attorney's Office for the Southern District of New York in order for the parties in the litigations before me to either prosecute their claims or defend against the claims.

Transcript of Proceedings of October 30, 2003, at 7. Such considerations of judicial economy militate in favor of conducting merits-based depositions prior to the resolution of the Sullivan trial.

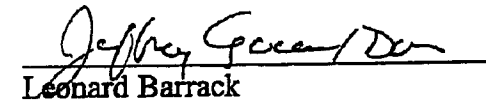
CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court deny the motion to stay merits-based deposition discovery.

Dated: November 14, 2003

Respectfully submitted,

BARRACK, RODOS & BACINE



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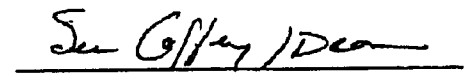

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October 31, 2003

Via Fax

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1285 Avenue of the Americas
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Re: *In re WorldCom, Inc. Securities Litigation*,
Master File No. 02 Civ. 3288 (DLC)

Dear Eric:

This will confirm that, in response to your request after the hearing yesterday morning, Lead Plaintiff will consent to your participation in our ongoing "meet & confer" sessions with counsel for WorldCom, Inc. (now d/b/a MCI, Inc.) regarding the balance of its production of documents responsive to the subpoena served by Lead Plaintiff on May 6, 2003. I enclose a copy of the pertinent correspondence so you can see the progress to date and current status of those negotiations. I understand that a conference call with WorldCom's counsel, Deborah Meshulam, has been scheduled for 2:00 p.m. today, and we anticipate that you or someone from your firm will participate. We would be happy to have you join us here on the 38th floor for the call, or we could provide you with a call-in number. (I have just received Steven Kolleeny's letter of last evening; we consent to his participation as well.)

On a related point, this will also confirm my advice to you after the hearing yesterday concerning Lead Plaintiff's October 24, 2003 filing in Bankruptcy Court. As I explained, we sought leave to serve the identical subpoena as the Salomon Defendants in order to preserve our ability to participate fully in any meet & confer sessions with WorldCom over requests in your subpoena. In light of various developments (including explanations from Ms. Meshulam at yesterday's hearing and elsewhere as to what documents have been produced and will be produced, pursuant to our subpoena), Lead

Plaintiff does not believe that the Bankruptcy Court's decision to put off consideration of such subpoenas until after January 31, 2004 prejudices any party in its prosecution or defense of this case.

Please feel free to call Jennifer Edlind if you have any questions about the meet & confer process with WorldCom.

Sincerely,

John P. Coffey

Enclosures

cc (w/ enclosures):
Steven J. Kolleeny (Counsel for Underwriter Defendants)

cc (w/o enclosures):
Deborah R. Meshulam (Counsel for WorldCom, Inc.)
Jeffrey Golan (Co-Lead Counsel for the NYSCRF and the Class)
Neil Selinger (Liaison Counsel for Individual Actions)
Lynn Sarko (Lead Counsel for the ERISA litigation)
Jill Abrams (Counsel for GOALS plaintiffs)