

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

ATTORNEYS AT LAW

CALIFORNIA • NEW YORK • NEW JERSEY

CHAD JOHNSON
chad@blbglaw.com
212-554-1396

November 26, 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:

We are writing on behalf of Lead Plaintiff New York State Common Retirement Fund and Co-Lead Counsel Barrack, Rodos & Bacine in response to the Underwriter Defendants' letter of November 21 regarding their proposed schedule for the completion of e-discovery. As discussed below, the Underwriter Defendants' proposed schedule for the production of e-mails is unacceptable, particularly since merits depositions of defendants are to begin no later than January 15, 2004. We respectfully request that the Underwriter Defendants be required to produce their responsive, non-privileged "accessible" e-mails by December 15, and that J.P. Morgan and BNP Paribas (who have apparently already restored their relevant "inaccessible" e-mails) also produce those e-mails by no later than December 15. As for the other Underwriter Defendants' "inaccessible" e-mails, we respectfully submit that those e-mails should be produced by no later than December 31, 2003.

As an initial matter, we note that the Underwriter Defendants propose a schedule for the production of e-mails based on little more than sweeping assertions and unexplained assumptions. For instance, the Underwriter Defendants do not explain why J.P. Morgan and BNP Paribas were able to begin (and apparently largely complete) the restoration of their backup e-mail tapes months ago – even before Lead Plaintiff served its document requests – whereas other Underwriters apparently have not even started that process. Also, since J.P. Morgan and BNP Paribas apparently restored their relevant e-mails some time ago, the Underwriter Defendants should explain why they did not produce any e-mails (other than random printed copies of e-mails which happened to be in the hard copies produced) in response to Lead Plaintiff's document requests by the October 10 deadline.¹

¹ This stands in stark contrast with the conduct of the Salomon defendants in this regard, who produced numerous e-mails by the October 10 deadline and who also agreed to search for and produce additional e-mails, committing to December 5 as the targeted completion date for that supplemental production.



The Honorable Denise L. Cote

November 26, 2003

Page 2

Furthermore, the Underwriter Defendants fail to explain why it would take them an additional five months or more from now to produce relevant e-mails from an average of only eight individuals per Underwriter. For instance, the Underwriter Defendants assert that it will take a third party vendor approximately ten weeks to process the e-mails; but the Underwriter Defendants do not identify who that third party vendor is and its capabilities (since there are many such vendors and their capabilities vary greatly), nor do the Underwriter Defendants explain why a third party vendor could not process backup tapes simultaneously (which we understand is the standard process), rather than sequentially. In short, the Underwriter Defendants have not provided the requisite facts or the level of detail needed to support the elongated timeline they propose. (This is consistent with the Underwriter Defendants' assertion that they are waiting for "plaintiffs [to] confirm that they are willing to share half the associated cost," despite that the Underwriter Defendants still have not produced a detailed estimate of the costs that will be incurred in restoring the e-mails at issue.)

Moreover, in light of the fact (revealed only last week in the course of a 30(b)(6) deposition and confirmed in a conference with the Court) that J.P. Morgan and BNP Paribas have already substantially completed their restoration of relevant backup tapes, there is no excuse for at least those two Underwriter Defendants to produce responsive e-mails immediately – and certainly by no later than December 15. Also, with respect to the "accessible" e-mails of all Underwriter Defendants, those e-mails do not require the restoration of backup tapes or the other steps identified in the Underwriter Defendants' letter of November 21. Accordingly, the "accessible" e-mails of the Underwriter Defendants should be produced by no later than December 15.

With respect to so-called "inaccessible" e-mails of the Underwriter Defendants other than J.P. Morgan and BNP Paribas, we respectfully submit that those e-mails should be produced by the end of December. Those e-mails are important not only for purpose of conducting the depositions which are to begin no later than January 15, 2004, but they are also critical for determining who will be deposed beginning in January. As demonstrated by the conduct of two of their own (J.P. Morgan and BNP Paribas), the Underwriter Defendants could have substantially completed by now their restoration of backup tapes for individuals who worked on the relevant Offerings. In any event, the Underwriter Defendants should be required to take whatever steps are necessary in order to produce responsive e-mails by December 31, 2003. (In light of the Court's Order of November 21, we have proposed to the Underwriter Defendants a means of limiting the e-mails to be searched such that the e-mails of 32 individuals will not need to be searched at all and e-mails from 1997 will not need to be searched. This should make it all the more feasible for the Underwriter Defendants to complete their production by the end of December.)

In the meantime, as instructed by the Court last week, the Underwriter Defendants should produce a detailed estimate for the costs associated with each of them producing so-called "inaccessible" e-mails, and the Underwriter Defendants should also make their

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

The Honorable Denise L. Cote

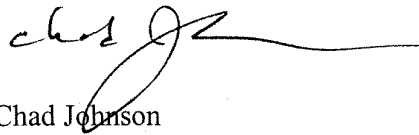
November 26, 2003

Page 3

technical personnel available to answer questions about, among other things, their proposed approach to this production and the estimated costs.

Thank you for your consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chad Johnson", with a long horizontal flourish extending to the right.

Chad Johnson

cc: All counsel (by fax)