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December 1, 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)
(Issue: *Motion To Defer Consideration filed by Milberg Weiss*)

Dear Judge Cote:

On behalf of Lead Plaintiff New York State Common Retirement Fund and Co-Lead Counsel Barrack, Rodos & Bacine, we respectfully submit this letter in opposition to The Public And Private Pension Funds' (the "PPP Funds") Motion To Defer Consideration Of Motions Directly Impacting Their Cases Or Sending Class Notice Pending Resolution Of The Remand Issue By The Second Circuit ("Motion").¹

The Motion, filed on November 10, 2003, asks the Court to forbear from deciding three matters: (1) Lead Plaintiffs' October 29 motion regarding misleading solicitations sent to Class members; (2) Defendants' Phase I and Phase II motions to dismiss claims asserted in certain of the Individual Actions; and (3) the issuance of a Class Notice. As discussed below, the PPP Funds' request to delay certain matters affecting the Class Action while they seek further appellate review of the Court's May 5, 2003 and May 20, 2003 remand orders should be denied.

The Motion is moot as to the first matter. At the hearing on November 13, three days after the Motion was served (and before it was received in the mail by Lead Counsel), the Court announced its ruling regarding Lead Counsel's October 29 request. That ruling, further memorialized in the November 17 Order, directed the issuance of the Curative Notice to all investors who filed an Individual Action. Though this decision rendered this part of the

¹ All capitalized terms not otherwise defined here have the meaning given to them in the Motion. This letter is submitted pursuant to the Court's November 19, 2003 Order directing any party opposing the Motion to so inform the Court by December 1, 2003.



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PPP Funds' request moot, in our discussion below explaining why the Class Notice should be sent without delay we discuss the substantive reasons why the Curative Notice should be promptly distributed as well.

The Motion is moot as to Phase I motions and appears to be moot as to Phase II motions. The Court ruled on the Phase I motions on November 21 (in connection with the Alaska complaint) and November 25 (in connection with the Ohio complaint). In the Alaska decision, the Court stated that it "declines to delay a decision on the motion to dismiss to await the completion of briefing on the November 10 Milberg Weiss motion." In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 03 Civ. 6592 (DLC), 2003 WL 22738546, at n.2 (S.D.N.Y. Nov. 21, 2003). We presume that the same logic applies to the Phase II motions, which had been filed weeks before the Motion was filed and are due to be fully submitted this week.

Accordingly, the only remaining issue is whether the Court should delay the issuance of the Curative Notice to the Individual Action plaintiffs or the Class Notice to all Class members. Lead Plaintiff opposes delaying distribution of the Curative or Class Notices.

Courts are reluctant to grant the type of indeterminate stay that is sought by the PPP Funds. See In re Crescenzi, No. 91 Civ. 8045 (PKL), 1992 WL 30615 (S.D.N.Y. Feb. 5, 1992) (affirming bankruptcy court's denial of stay pending appeal of interlocutory order); see also Travelers Cas. & Sur. Co. v. Vanderbilt Group, LLC., No. 01 Civ. 7927 (DLC), 2002 WL 844345 (S.D.N.Y. May 2, 2002) (denying post-indictment stay of discovery and noting that plaintiff had "substantial" interest in expeditious prosecution of its civil action). This aversion to delay is especially applicable in this case because the PPP Funds do not offer any persuasive reason for the Court to postpone disseminating the Curative or Class Notices.

The PPP Funds argue that dissemination of any notice may cause unnecessary cost, waste and confusion if the Second Circuit eventually decides the remand issue in their favor and a second notice has to be distributed. See Motion at 6. However, this argument assumes that (i) the Second Circuit is going to hear the remand issue at this stage of the litigation, and (ii) the Second Circuit is going to rule in favor of the PPP Funds. While Lead Plaintiff takes no position on the remand issue, it notes that the Second Circuit has already denied the PPP Funds' petition for a writ of mandamus of the Court's remand order, and while the PPP Funds have now renewed their 1292(b) motion, Defendants have vigorously opposed that motion. Thus, as a preliminary matter, there is a question as to whether the Second Circuit is even going to entertain the remand issue again, and if so when.

Moreover, even if the PPP Funds were able to obtain appellate review of the remand order in the near future through their 1292(b) motion or otherwise, there is no reason to delay sending the Curative or Class Notices. As to the Curative Notice, any determination by the Second Circuit on the remand issue would not affect the Court's "broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel

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and parties.” Gulf Oil Co. v. Bernard, 452 U.S. 89, 100 (1981). The Court therefore would retain jurisdiction to send the Curative Notice even if the Second Circuit ultimately reversed on the remand issue. Significantly, the need for the Curative Notice would exist regardless of whether the Court had jurisdiction over any Individual Actions, because the individual plaintiffs -- all presently members of the Class certified in this Class Action -- would still face the same issues and same impediments to certain of their claims that they faced in this Court. The Individual Action plaintiffs should be informed of these serious legal matters without further delay.

Further, while the PPP Funds may contend that a Curative Notice would be confusing, the Court has already determined that counsel to the PPP Funds engaged in an active campaign to solicit funds to file individual actions by inducing confusion and misunderstanding regarding the benefits of an individual action and by derogating the class action option. In re WorldCom, Inc. Sec. Litig., 22738546, at *16, n.28; see also In re WorldCom, Inc. Sec. Litig No. 02 Civ. 3288 (DLC), 2003 WL 22701241, at *7 (S.D.N.Y. Nov. 17, 2003). The purpose of the Curative Notice is to cure any misunderstanding and confusion resulting from these communications, and to fully and adequately inform investors about the advantages and disadvantages of participating in the Class Action, and filing (or continuing to pursue) an individual action. Thus, rather than creating confusion, the Curative Notice will help ameliorate any confusion among Class members that may exist, and we respectfully submit that the Curative Notice should be sent as soon as possible for precisely this reason.²

The PPP Funds’ arguments regarding the Class Notice fare no better. With respect to the “expense” of sending a second notice, Lead Plaintiff respectfully submits that the as-yet undetermined risk that a second notice may be necessary is far outweighed by the advantages to Class members of moving the process forward “full steam ahead” by disseminating a Class Notice as soon as possible. See Citibank, N.A. v. Hakim, No. 92 Civ. 6233 (MBM), 1993 WL 481335, at *3 (S.D.N.Y. Nov. 18, 1993) (public has “significant” interest in recovery of misappropriated funds). Moreover, the PPP Funds overreach when they say that a second Class notice would “create massive confusion among class members who will have to parse through two similar appearing but different notices about the same cases.” Motion at 6. The proposed Class Notice drafted by Lead Plaintiff contains only a brief reference to the Individual Actions, and if the need arose it would be a simple matter to send a short corrective notice revising that small portion of the Class Notice. Any remaining concern

² The PPP Funds’ arguments regarding the “expense” and “confusion” caused by a potential second notice are particularly inapplicable to the Curative Notice because (1) that notice is being sent only to approximately 150 institutional investors, so the expense is limited; and (2) the recipients of the notice are “a relatively sophisticated audience” who “can be expected to have access to independent legal advice should they seek it.” In re WorldCom, Inc. Sec. Litig., 2003 WL 22701241, at *6. Thus, there is little chance that they would be “confused” by a second notice describing subsequent changes in the legal landscape.

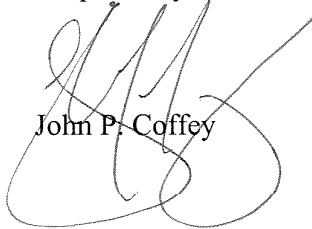
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over potential “confusion” can be disposed of by adding a straightforward disclaimer in the second notice explaining the reasons for its dissemination. All of this would be accomplished under the supervision and at the direction of the Court, greatly reducing any purported risk of “massive confusion.”³

Balanced against the PPP Funds’ unpersuasive arguments to stay dissemination of the Class and Curative Notices until the Court of Appeals rules on the remand decision, even assuming that this issue gets before the Court of Appeals, are the advantages to Class members of moving the Class Action forward. The Court has consistently made it known that it will not allow this Class Action to be slowed by procedural hurdles. Indeed, the Class Action is in the midst of heavy fact discovery that is scheduled to end by June 18, 2004. This schedule makes it imperative that Class members are given the opportunity as soon as possible to determine for themselves whether they wish to remain a part of the Class or “opt out” and initiate (or continue) their own Individual Actions. A speedy resolution of this case greatly benefits the alleged victims of the fraud by ensuring that they receive the quickest possible recovery for their losses. Ascertaining who is in and who is out of the Class is also germane for purposes of settlement discussions. In order to make these determinations, the Class members need the information contained in the Curative and Class Notices as soon as practicable.

In sum, because much of their Motion is moot, and because the PPP Funds have not identified any persuasive reason to delay the Class Action pending the as-yet-undetermined possibility that there may be further appellate review of the Court’s remand order, the Motion should be denied in its entirety.

Respectfully submitted,



John P. Coffey

cc (by fax):

William S. Lerach, Esq.
All Defendants’ Counsel
Jeffrey Golan (Co-Lead Counsel for the NYSCRF and the Class)
Michael Pucillo (Counsel for Fresno and FCERA)
Samuel Sporn (Counsel for HGK Asset Management)
Neil Selinger (Liaison Counsel for Individual Actions)
Lynn Sarko (Lead Counsel for the ERISA litigation)
Jill Abrams (Counsel for GOALS plaintiffs)

³ Of course, if the Court is concerned about this issue, it can simply remove any reference to the Individual Actions from the Class Notice, and this would eliminate even the remote possibility that a second Class Notice may have to be sent to all Class members.