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February 26, 2004

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: Timely Production of Underwriter E-Mails]

Dear Judge Cote:

On behalf of Lead Plaintiff New York State Common Retirement Fund and Co-Lead Counsel Barrack, Rodos & Bacine, and with the concurrence of Liaison Counsel for the Individual Actions and counsel for plaintiffs in the *RSA* and *IMRF* state cases, we write to request the Court's assistance in assuring the timely production of certain e-mails by the Underwriter Defendants. This request is prompted by recent developments that cannot be squared with the assurances of cooperation that Defendants' counsel made to the Court as recently as last week.

Plaintiffs were scheduled to take a Rule 30(b)(6) deposition of Deutsche Bank Alex. Brown Inc. today. The deposition, which was to focus on that Defendant's purported due diligence in connection with the May 2000 and May 2001 Offerings, had been noticed by Lead Plaintiff on January 13. Two days after serving the notice, we asked counsel for Deutsche Bank to prioritize the production of responsive e-mails for that deposition. See Ex. A.

Despite making this request six weeks in advance of the scheduled deposition, it was not until last Thursday evening, after business hours, that we were informed that approximately 2,700 pages of e-mails responsive to our document requests were being made available to us (meaning we could obtain a copy the following morning, which we did). While the timing of this production – four business days before the deposition – posed a substantial challenge to our efforts to coordinate deposition preparation among plaintiffs' counsel, it was our collective judgment that we should proceed with the deposition as scheduled. We were informed on Monday, however, that the production we had obtained on Friday was far from complete. Between late Monday afternoon and 2:45 a.m. the following



The Honorable Denise L. Cote
February 26, 2004
Page 2

morning, we received over 6,900 pages of additional responsive and, upon initial review, highly probative documents germane to the Deutsche Bank deposition.

Lead Counsel and Liaison Counsel conferred first thing Tuesday morning and agreed that we had no choice but to adjourn the deposition. Among other things, there were only two business days left to review this substantial production; the 6,900 newly disclosed pages were located in New York City but each of the plaintiffs' attorneys who had prepared to interrogate the witness (including Co-Lead Counsel Barrack, Rodos) were located in other cities; and each of those attorneys was scheduled to travel to New York on Wednesday. Further, this untimely production frustrated what has been a fundamental principle of the excellent coordination among plaintiffs' counsel to date, namely, that every plaintiff – whether tapped to ask questions or not – would have the opportunity to review responsive documents and offer suggestions to the examining attorneys as to lines of inquiry, potential exhibits, and the like. The deposition has been rescheduled for March 11-12.

This episode would be troubling enough if viewed in isolation, but we are especially concerned that this occurred within days of an assurance to the Court that we would receive cooperation in the timely production of pertinent e-mails for depositions that will take place between the prior deadline for production of all e-mails (February 20) and the new deadline (April 2). The untimely production here has forced the delay in one deposition; we now ask the Court's assistance in ensuring this does not happen again. For example, there is a Rule 30(b)(6) deposition of Defendant ABN/Ambro scheduled for March 8, a week from Monday; though noticed over five weeks ago, we have yet to receive the promised production.¹

Specifically, we respectfully request that the Underwriter Defendants be directed to provide all pertinent e-mails at least seven business days before each deposition. Given the unique circumstances of this massive litigation, we also respectfully submit that, in the case of 30(b)(6) depositions, the Underwriter Defendants should be required to identify at that time the name of the individual who will be produced to testify about the topics at issue, so that plaintiffs' counsel will have a reasonable opportunity to gather materials pertinent to that individual from the thousands of boxes produced. Finally, Defendants should be required to produce a privilege log with the e-mails. These are measures critical to meaningful consultation and coordination among the various plaintiff constituencies. The documents have to be obtained from Skadden's copy service, distributed through Liaison Counsel to the Individual Action attorneys and to counsel for the state cases, and of course reviewed by counsel in order for the coordination conferences that plaintiffs' counsel hold regarding upcoming depositions to be meaningful.


¹ We also note that, in connection with a deposition that is going forward today (Robert Nordlinger), Skadden delivered over 100 pages of responsive e-mails to my firm (and my firm only) shortly before the close of business yesterday afternoon. That deposition was noticed on January 6.

The Honorable Denise L. Cote
February 26, 2004
Page 3

Defendants have repeatedly stated that coordination among the numerous WorldCom-related cases is essential because, among other things, it ensures that witnesses are deposed just once. We have no issue with Defendants' effort to protect their witnesses, but with it comes the obligation to produce documents germane to that single deposition in a manner so as not to deprive any of those parties a meaningful opportunity to review the documents and provide input to the examining attorneys. We respectfully submit that the proposed directives are the minimum prophylactic measures necessary to achieve that end.

Thank you for your consideration of the foregoing.

Sincerely,



John P. Coffey

Attachment

cc (via fax, with attachments):

All Defendants' Counsel
Jeffrey Golan (Co-Lead Counsel for the NYSCRF and the Class)
Neil Selinger (Liaison Counsel for Individual Actions)
Randy Barron (Counsel for plaintiffs in the *IMRF* state case)
Michael Rediker (Counsel for plaintiffs in the *RSA* state case)
Edward Manchur (Putative counsel for "holder" action)
Jill Abrams (Counsel for GOALS plaintiffs)
Joel Bernstein (Counsel for TARGETS plaintiffs)
Lynn Sarko (Lead Counsel for the ERISA litigation)

EXHIBIT A

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January 15, 2004

VIA FACSIMILE

Steven J. Kolleeny, Esq.
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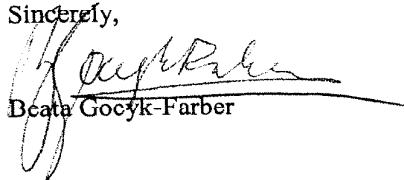
Re: In re WorldCom, Inc. Securities Litigation, 02 Civ. 3288 (DLC)

Dear Steve:

Lead Plaintiff noticed a Rule 30(b)(6) deposition of Deutsche Bank Securities, Inc. n.k.a. Deutsche Bank Alex Brown Inc. for February 26, 2004. Accordingly, we ask that you prioritize the production of all e-mails of agreed-upon Deutsche Bank custodians, and produce such e-mails by no later than February 9th. We also ask that you produce e-mails of Deutsche Bank designated deponent(s), if he/she is not one of the agreed-upon Deutsche Bank custodians.

On a related point, we expect that e-mails of all other relevant custodians will be produced in accordance with the schedule ordered by Judge Cote.

Sincerely,


Beata Goyck-Farber

cc: All counsel (by fax)

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