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June 7, 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: Underwriter Defendants' Newly-Disclosed Due Diligence Participants]

Dear Judge Cote:

On behalf of Lead Plaintiff New York State Common Retirement Fund and Co-Lead Counsel Barrack, Rodos & Bacine, we write to request the Court's assistance in solving a dispute with the Underwriter Defendants regarding their untimely identification of ninety-three individuals who they now claim, for the first time, participated in due diligence on the May 2000 and/or May 2001 Offerings (the "Offerings").[1]

As the Court is aware, the Underwriter Defendants have long asserted that they would assert a due diligence defense to the Securities Act claims asserted against them in this consolidated litigation. On June 20, 2003, shortly after discovery commenced, Lead Plaintiff began the process of probing that defense by serving its First Set of Interrogatories to Underwriter Defendants (the "Interrogatories"), asking the Underwriter Defendants to "[i]dentify, by Offering, each person who conducted any due diligence investigation or review on Your behalf in connection with any of the Offerings." On October 20, 2003, after refusing to provide any such identification for months and after numerous meet-and-confers, defendants finally provided the names of those they claimed performed due diligence on the Offerings ("First Supplemental Responses," a copy of which is attached hereto at Tab A). In those responses, the Underwriter Defendants identified fifty-six individuals as having conducted due diligence concerning the Offerings. See Tab A at 8-14.

[1] Given the significance of this issue, including the implications for trial, Lead Plaintiff respectfully requests leave to exceed the Court's two-page limits for letters.

Relying on those responses, Lead Plaintiff formulated plaintiffs' discovery plan for the Underwriter Defendants and other defendants. After careful consideration of the interrogatory responses and conferring with other plaintiffs' counsel, Lead Plaintiff concluded that a limit of sixty deposition days would be sufficient to test defendants' due diligence defense. We proposed the sixty day limit (and other scheduling proposals) to the Court last fall, in substantial part in reliance on the number of persons identified in these responses. See October 24, 2003 letter, attached hereto at Tab B, at 3-4. Our conclusion that the Underwriter Defendants had complied with their Rule 33 obligation to identify all persons who had conducted due diligence was buttressed when, on November 17, 2003, the Underwriter Defendants listed the identical names in their Second Supplemental Interrogatory Responses, a copy of which is attached hereto at Tab C. Lead Plaintiff also relied on these responses considerably in deciding whose e-mail to request and, ultimately, who to depose.

As of May 10, with only five weeks of fact discovery remaining, plaintiffs had noticed virtually all of the depositions they planned to take in this action. However, beginning on that date, and continuing through the recent discovery hiatus, the Underwriter Defendants began serving Supplemental Responses and Objections to the Interrogatories (the "Third Supplemental Responses," copies of which are attached hereto at Tab D) that have identified, for the first time, ninety-three additional individuals whom they now claim conducted due diligence on the Offerings. A summary chart of these individuals is attached hereto at Tab E.

If these additional ninety-three individuals truly conducted due diligence in connection with the Offerings, there was absolutely no justification for the Underwriter Defendants' failure to identify them as such long before May 10. While Rule 26(e)(2) of the Federal Rules of Civil Procedure requires a party to seasonably amend a prior response to an interrogatory "if the party learns that the response is in some material respect incomplete or incorrect," it strains credulity to believe that there is an innocent explanation for this sudden amendment. Significantly, this is not a case where the Underwriter Defendants merely failed to identify one, or even several, individuals who participated in the due diligence investigations, such that the failure to identify those persons could be considered to be inadvertent or the result of information learned during the discovery process. To the contrary, each Underwriter Defendant knew back in October 2003 who conducted due diligence on the Offerings, as that was information of which each Underwriter Defendant had direct personal knowledge.[2] Presumably, in responding to the Interrogatories the first two times, defense counsel asked its clients to identify those persons who conducted due diligence on the Offerings, and the

[2] Rule 33(a) specifically requires a party responding to an interrogatory to furnish all information "as is available to the party." Thus, the Underwriter Defendants were required, under the Federal Rules, to contact those people whom they knew worked on the Offerings, as well as Cravath Swaine & Moore, and ask them for the information needed to respond to the Interrogatories.

Underwriter Defendants provided counsel with that information. In light of these facts, the "failure" to identify ninety-three individuals who supposedly participated in due diligence on the Offerings until one month before the close of fact discovery not only demonstrates that these people did not do due diligence for the Offerings, but is precisely the sort of gamesmanship that the Federal Rules do not allow, and it should not be tolerated by the Court.

The Underwriter Defendants' failure to identify these individuals until the eleventh hour of discovery is manifestly prejudicial to Lead Plaintiff and the Class. The discovery schedule we proposed, the number of deposition days we advocated, the e-mails we sought, and the depositions we chose to notice were based in substantial part on the names provided in response to the Interrogatories. Now, at the eleventh hour – and after we had demonstrated in our depositions to date that the "due diligence" conducted by those previously identified by the Underwriter Defendants was essentially no due diligence – the Underwriter Defendants have revised their response to the question first put to them one year ago by identifying almost twice as many new people as having performed due diligence in connection with the Offerings. While we respectfully submit that this untimely and highly prejudicial tactic should merit stern sanctions from the Court later in these proceedings (including preclusion of testimony, additional depositions after the discovery cut-off, re-opening of prior depositions, and a pointed instruction to the jury), at this juncture we have sought to mitigate the prejudice by asking for immediate additional discovery of these ninety-three newly identified persons.

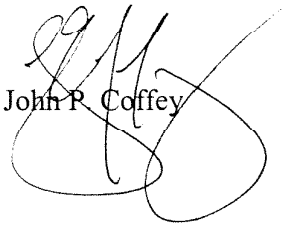
Accordingly, notwithstanding the discovery hiatus, Lead Plaintiff raised this issue with the Underwriter Defendants, demanding that the Underwriter Defendants either (a) produce the responsive e-mails of the newly-identified individuals by no later than June 4; or (b) refrain from referring to these individuals or their purported work on the Offerings in summary judgment motions and at the trial. See Tab F. The Underwriter Defendants responded on May 28, stating that they would produce these custodians' e-mails, but refusing to commit to a specific production date. See Tab G. On June 3, Lead Plaintiff responded to the Underwriter Defendants' letter, requesting an immediate meet and confer session about this and informing counsel to the Underwriters that their failure to respond would result in an application to the Court. See Tab H. We attempted to have the meet and confer with counsel to the Underwriters, but they did not take our call. Instead, they sent us a letter indicating that they will endeavor to produce the responsive e-mails of these individuals by the close of fact discovery (July 9). See Tab I. This position is unacceptable to Lead Plaintiff.

Accordingly, we respectfully request that the Court order the Underwriter Defendants to produce all responsive e-mails from each of the newly identified persons by June 11, or be precluded from referencing those individuals or their purported involvement in due diligence in the Underwriter Defendants' summary judgment motions

(to the extent they are made), or at the trial.[3] In light of the Underwriter Defendants' tardy disclosure of these ninety-three additional individuals, we respectfully submit that this would be the most fair and pragmatic manner of dealing with this situation during fact discovery. Lead Plaintiff reserves all rights to seek further relief in connection with this matter at summary judgment and trial.

Thank you for your consideration of this issue.

Respectfully submitted,



John P. Coffey

Enclosures

cc:
By hand, w/ all enclosures: Steven J. Kolleeny, Esq.
By fax, w/o enclosures: All Counsel
By overnight mail, w/all enclosures: All Counsel

[3] Of the 93 newly-identified due diligence participants, 71 of these individuals' e-mails are not currently being produced. See Tab H, Attachment A.