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. 4990	02 Civ. 9513
02 Civ. 3416	02 Civ. 5057	02 Civ. 9514
02 Civ. 3419	02 Civ. 5071	02 Civ. 9515
02 Civ. 3508	02 Civ. 5087	02 Civ. 9516
02 Civ. 3537	02 Civ. 5108	02 Civ. 9519
02 Civ. 3647	02 Civ. 5224	02 Civ. 9521
02 Civ. 3750	02 Civ. 5285	02 Civ. 2841
02 Civ. 3771	02 Civ. 8226	02 Civ. 3592
02 Civ. 4719	02 Civ. 8227	03 Civ. 6229
02 Civ. 4945	02 Civ. 8228	03 Civ. 7298
02 Civ. 4946	02 Civ. 8229	03 Civ. 7299
02 Civ. 4958	02 Civ. 8230	
02 Civ. 4973	02 Civ. 8234	

LEAD PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO ARTHUR ANDERSEN LLP'S MOTION TO DELINEATE THE CLASS PERIOD AS BEGINNING ON MARCH 24, 2000 WITH RESPECT TO ARTHUR ANDERSEN LLP

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I. PRELIMINARY STATEMENT

Defendant Arthur Andersen LLP ("Andersen") moves this Court, without citing to any supporting law, for an order "delineating" the Class Period previously approved by the Court (April 29, 1999 through June 25, 2002) and creating a new Andersen-only class period beginning no earlier than on March 24, 2000. In its two-page Memorandum of Law In Support of Its Motion to Delineate the Class Period, Andersen argues that because its first allegedly false statement – its audit opinion for WorldCom's financial statements for the year ended December 31, 1999 – was made by Andersen on March 24, 2000, the Class Period should not start until that date as to Andersen because the Complaint "rests exclusively on allegations that Andersen's audit opinions for 1999, 2000 and 2001 were materially misstated." See Andersen Memorandum of Law at 2.

Andersen's attempt to "delineate" a different class period for Andersen than was earlier certified for this Class Action should be rejected. As shown below, Andersen's argument entirely misapprehends the notion that it is a case that is certified for class action status, and not individual claims against individual defendants within that case. It was within that framework that this case was certified as a Class Action. There is no basis for the relief Andersen seeks pursuant to Rule 23 and applicable case law, and the motion should be denied.

II. PROCEDURAL HISTORY

On October 24, 2003, the Court certified this consolidated case as a Class Action on behalf of persons and entities that purchased or otherwise acquired publicly traded securities of WorldCom during the period from April 29, 1999 through June 25, 2002 (the "Class Period"), and who were injured thereby. In re WorldCom Sec. Litig., 219

F.R.D. 267, 275, 302 (S.D.N.Y. 2003). Certification of the case for the Class Period was appropriate because Plaintiffs sufficiently demonstrated a common scheme involving the misstatements of WorldCom's financial statements, and other material misstatements and omissions made or caused to be made by defendants throughout the Class Period. Id. at 278-87, 287-304. The Court properly determined that the Action satisfied all of the requirements of Rule 23(a) and 23(b)(3), and, *inter alia,* that there was a predominance of common issues of fact or law for the claims made by Plaintiffs on behalf of Class members throughout the Class Period. Id. Andersen submitted no opposition to class certification, and failed at the time the class motion was being considered to raise the argument now asserted for the first time in this motion.

III. ARGUMENT

The fact that a plaintiff does not assert claims against certain defendants throughout the entirety of the Class Period is of no moment. The present case is an excellent example of this point. As this Court found, claims within the Class Period could properly include the Section 11 claim against Andersen relating to issuance of the May 2000 and May 2001 bond offerings by WorldCom (Count III), as well as the Section 10(b) claim against Andersen (Count VIII) which alleged that Andersen violated Section 10(b) in connection with its statements made in the prospectuses for the May 2000 and May 2001 bond offerings, and in WorldCom's Form 10-K annual reports for the years ended December 31, 1999, 2000 and 2001. The latter claim alleged that Andersen disseminated material misrepresentations and further participated in a scheme to misrepresent WorldCom's financial condition, to consummate acquisitions and the 2000 and 2001 Offerings, and to inflate artificially or maintain WorldCom securities prices.

See id. at 278. There is simply no requirement that plaintiffs were required to assert that Andersen had violated the federal securities laws every day during the Class Period in order to maintain the present case as a class action with respect to Andersen.

Andersen's motion is similar to the arguments presented in In re Health Management, Inc. Sec. Litig., 184 F.R.D. 40 (E.D.N.Y. 1999), where the plaintiffs moved to certify a class with a proposed starting date of August 25, 1994 (when the company announced its quarterly earnings results) and an ending date of February 27, 1996 (when the company announced that it had discovered certain accounting irregularities). The defendants objected to the length of the class period, arguing that it should be shorter. See id. at 43. Their proposal to limit the time period of the action was based, in part, on an argument made by the company's auditor, BDO Seidman, that it could not be held liable prior to the July 31, 1995 date when Health Management's Form 10-K (which included BDO's audit opinion) was filed with the Securities and Exchange Commission. Id. at 44. The court rejected BDO's argument. It held: "Instead, in this case, the more inclusive class period will be certified, namely, August 25, 1994, through February 27, 1996. '[A] jury can determine which statements, if any, they find actionable and therefore which plaintiffs, if any, can recover from [which d]efendants.'" Id. (emphasis added) (quoting Bharucha v. Reuters Holdings, No 90 CV 3838, 1993 WL (657863) (E.D.N.Y. Oct. 29, 1993)). Similarly here, the jury can determine which statements are actionable and which plaintiffs can recover from which defendants. There is no need or reason to shorten the Class Period for Andersen when the relief that Andersen seeks, namely to be held liable for only its misrepresentations, is exactly what will occur during the natural development of this case.

In re Oxford Health Plans, Inc. Sec. Litig., 244 F.Supp.2d 247, 248-49 (S.D.N.Y. 2003), similarly makes clear that a defendant can only be liable based on claims that are proven against that defendant at trial, notwithstanding the class period that a court may have certified for the overall case. As Judge Brieant stated: "Notwithstanding the length of the class period, a principal Co-defendant, accounting firm KPMG, is liable only to persons who purchased Oxford stock after February 18, 1997." Id. (referring to the date of KPMG's audit opinion) (emphasis added). Similarly here, notwithstanding the length of the Class Period, Andersen will only be liable for its misrepresentations of material facts which, plaintiffs agree, begin with the March 24, 2000 issuance of its audit opinion for the year ended December 31, 1999. But that is a matter to be left for trial; not for a pre-trial shortening of the Class Period with respect only to Andersen.

As the above cases demonstrate, there is no basis or reason to shorten or, as Andersen says, "delineate" the Class Period for Andersen.

IV. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court deny Arthur Andersen LLP's Motion to Delineate the Class Period as Beginning at the Earliest on March 24, 2000 With Respect to Arthur Andersen LLP.

DATED: September 17, 2004

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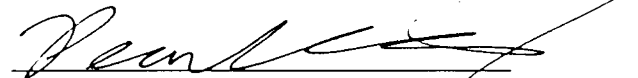

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