

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 RESPONSE
PURSUANT TO LOCAL RULE
56.1(b) TO DEFENDANT BERT C.
ROBERTS, JR.'S STATEMENT OF
MATERIAL FACTS NOT IN
DISPUTE**

Pursuant to Rule 56.1(b) of this Court's Local Civil Rules, Lead Plaintiff Alan G. Hevesi, Comptroller of the State of New York as Administrative Head of the New York State and Local Retirement Systems ("Lead Plaintiff"), together with additional named plaintiffs Fresno County Employees Retirement Association ("FCERA"), the County of Fresno, California ("Fresno"), and HGK Asset Management, Inc. ("HGK"), respectfully submits the following Response to Defendant Bert C. Roberts, Jr.'s ("Defendant" or "Roberts") Statement of Material Facts Not Generally In Dispute in Support of his Motion for Summary Judgment with respect to Counts I, II and VII of the Corrected First Amended Class Action Complaint ("Complaint").

GENERAL OBJECTIONS

The following General Objections are incorporated into each specific response below as if fully repeated in each:

1. Lead Plaintiff objects to the submission by Defendant Roberts of more than one hundred paragraphs of purported material uncontested facts as unreasonable.

2. Lead Plaintiff objects to the extent that the Defendant Roberts asserts as material uncontested facts matters that have not been the subject of discovery and therefore cannot be relied upon in moving for summary judgment under Fed. R. Civ. Pro. Rule 56.

3. As used herein, the term "Admitted" shall mean that:

- a. with regard to quoted language, Lead Plaintiff admits that the quote appears in the cited material(s); and
- b. with regard to descriptions of what is in cited material(s), Lead Plaintiff admits that the descriptions accurately describe some (but not necessarily all) of the information contained in the cited material(s).

The term "Admitted" is not to be construed as a concession by Lead Plaintiff that the statement: (a) is material; (b) is complete; (c) supports the proposition for which it is cited in the respective brief; or (d) would be admissible at trial.

4. Lead Plaintiff reserves its right to challenge each statement as to admissibility at trial.

5. Any evidence cited in disputing a statement herein should not be construed as the only evidence of the dispute, and Lead Plaintiff specifically reserves its right to provide additional evidence as is necessary and appropriate.

RESPONSES

1. Denied. Defendant's quotation of portions of Scott D. Sullivan's allocution on March 2, 2004 appears to correctly quote the exhibit but is materially incomplete. The omissions render the statement misleading and incorrect with respect to the evidence of Defendant Roberts' role in the WorldCom debacle and his liability with respect to the claims for which Defendant seeks Summary Judgment.

In particular, Defendant fails to quote the following at the beginning of the second paragraph in the quoted allocution:

During that period, WorldCom's revenue growth rates were declining and expenses were increasing, thereby reducing the company's net profits. Despite those developments, management at the highest level continued to provide unduly optimistic guidance to securities firm analysts and to the investing public of our anticipated financial results in upcoming periods.

The omitted quotation is significant because Lead Plaintiff contends, contrary to Defendant Roberts' repeated assertion, that Defendant Roberts' was an "Executive Officer," and by reason of his industry experience, expertise, his former role as CEO of MCI and his close work with WorldCom's highest executives and its business activities, Roberts was, at all times relevant hereto, a member of WorldCom's "management" and therefore responsible for the material misrepresentations complained of. See, for example, Declaration of Jeffrey W. Golan in support of Lead Plaintiff's Opposition to Defendant Bert C. Roberts, Jr.'s Motion for Summary Judgment ("Golan Dec.") Ex. 45 at p. 151 ("Proxy Statement and Prospectus of WorldCom" dated April 26, 2001) which, in material part, states:

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table sets forth the compensation of the named executive officers of WorldCom for the three years ended December 31, 2000. The table also sets forth, for informational purposes, the compensation paid by MCI during 1998 to Mr. Roberts, who became an executive officer of WorldCom upon completion of the MCI merger.

Emphasis supplied.

See also: Golan Dec. Ex. 25, pp. 131, 139-140 (Transcript of Hearing before Congress 7/8/02 where Roberts' sought to justify the extremely generous termination package the WorldCom board gave to Mr. Ebbers by saying the decision was made by seven "independent" board members. When asked to list those members, Defendant Roberts left his own name off the

list.); Exs. 16 & 17 (minutes of Compensation Committee meeting on September 9, 1999 and December 22, 1999 each including Roberts in a description of the Company's "Executive Officers."); Ex. 23 (letter dated January 31, 2001 from Stiles Kellet, Chairman of Compensation Committee, making distinction between "Executive Officers," including Roberts, and non-executive officers); Ex. 28 (SIC 023964-023966) (WorldCom General Counsel email dated June 14, 2002, describing Roberts' central role in management.); Ex. 29 (SIC 023967-8) (Roberts' email describing his alignment at board meeting with "the insiders" and describing himself as "the only top executive in history....that will be forced out without a package.")

Further, the text omitted from the last quoted paragraph in Defendant Roberts' quotation from the Sullivan allocution materially misrepresents Mr. Sullivan's statement and ignores the responsibility of Defendant Roberts as an "Executive Officer" of WorldCom, for the "understatement of WorldCom's actual costs for the period and inflated reported net earnings, EBITDA, and earnings per share" in the Company's publicly reported financial statements as contained, inter alia, in its quarterly and annual filings with the SEC and in its Registration Statements all as alleged in the Complaint.

2. Denied. Defendant's quotation of portions of what is purported to be David F. Myers' allocution on September 26, 2002, correctly quotes the fragment presented but is materially incomplete with respect to substance. The omission renders the statement quoted misleading and incorrect with respect to evidence of Defendant Roberts' role in the WorldCom debacle and his liability with respect to the claims for which Defendant seeks Summary Judgment.

In particular, Defendant fails to quote the following at Ridge Ex. 2, (Tr. 14, l. 16-24) :

From at least October 2000 through June 2002, internal financial reports at WorldCom consistently reflected that WorldCom's expenses as a percentage revenue were too high to meet analysts'

expectations and management's guidance to professional securities analysts and the investing public. As a result, I was instructed on a quarterly basis by senior management to ensure that entries were made to falsify WorldCom's books to reduce WorldCom's reported actual costs and therefore to increase WorldCom's reported earnings.

The omitted quotation is significant because, as set forth in response to Defendant's Statement No. 1, Defendant Roberts was an "Executive Officer" of WorldCom and, as such, responsible for the Company's publicly reported financial results and the material misstatements communicated therein as set forth in the Complaint.

3. Denied. Defendant's quotation of portions Buford Yates, Jr.'s allocution on October 7, 2002, correctly quotes the fragment presented but is materially incomplete. The omissions render the statement quoted misleading and incorrect with respect to evidence of Defendant Roberts' role in the WorldCom debacle and his liability, as an "Executive Officer" with respect to the claims for which Defendant seeks Summary Judgment. See response to Statement No. 1.

In particular, the omitted text states, in material part:

Among my responsibilities as director of general accounting was to help prepare financial statements and information that were later incorporated into 10-K and 10-Q statements that WorldCom was required by law to file with the Securities and Exchange commission. I understand that the purpose of these statements was to provide the public with accurate information about Worldcom's financial condition.

In or about October 2000, following the third quarter of 2000, I, along with others in my department, became aware of the fact that WorldCom's expenses as a percentage of revenue were substantially higher than they had been in previous quarters and higher than anticipated by professional securities analysts.

Ridge Ex. 3 (Tr p. 14, l. 6-18). The omitted quotation is significant because, as an "Executive Officer," Defendant Roberts was responsible for ensuring the Company's public reports on, inter alia, SEC forms 10-K and 10-Q and the Company's Registration Statements

filed with respect to its public offerings were not materially misleading and in compliance with SEC regulations and would in fact “provide the public with accurate information about WorldCom’s financial condition.”

4. Denied. Defendant’s quotation of portions of Troy Normand’s allocution on October 10, 2002 correctly quotes the fragment presented but is materially incomplete. The statement as quoted is misleading and incorrect with respect to evidence of Defendant Roberts’ role in the WorldCom debacle and his liability as an “Executive Officer” with respect to the claims from which Defendant seeks Summary Judgment. See response to Statement No. 1.

5. Denied. Defendant’s quotation of portions of Betty Vinson’s allocution on October 10, 2002 correctly quotes the fragment presented but is materially incomplete. The statement as quoted is misleading and incorrect with respect to evidence of Defendant Roberts’ role in the WorldCom debacle and his liability as an “Executive Officer” with respect to the claims from which Defendant seeks Summary Judgment. See response to Statement No. 1.

6. Denied. Although portions of the quoted text appear in the document provided as support, the document is not titled as represented. Deny that the substance of the text quoted was adhered to in practice within WorldCom. Object, that whether WorldCom had such a written policy is not material. See, S.E.C. v First Jersey Securities, Inc., 890 F. Supp. 1185, 1202-3 (S.D.N.Y. 1995) (“[S]imply having procedural manuals on a book shelf as First Jersey did, is insufficient to support a “good faith” defense. Those procedures must be shown to have been adequate and enforced by the “controlling defendant.”); affirmed, 101 F. 3d 1450 (2nd Cir. 1996). Moreover, as an “Executive Officer” Defendant Roberts was responsible for the implementation and, ultimately enforcement of this policy. See, response to Statement No. 1

7. Admitted that the single document referred to contains the quoted text with respect to the year ended December 31, 2001 only. Otherwise, denied. Defendant fails to offer evidence to support the statement as required by Local Rule 56.1 for any other year.

8. Admitted that Ms. Coopers testimony reads as stated.

9. Denied. Lead Plaintiff also objects that this statement is a complex and compound statement that does not comply with the requirements of Local Rule 56.1 for a simple concise statement. The evidence provided for each of the five enumerated statements fails to support the proposed statement for which it is cited as required by Local Rule 56.1.

In particular:

-Roberts' Footnote 10 does not support the statement made and, instead, merely cites a portion of Defendant Galesi's deposition transcript which states **Mr. Galesi's individual** opinion that Mr. Sullivan was a "very sound CFO."

-Roberts' Footnote 11, does not indicate "trust and confidence" by Arthur Andersen. Instead, it merely cites testimony of Arthur Andersen partner Mark Schoppet that, as auditor, Arthur Andersen had "to necessarily rely in certain areas on representations from management which includes Mr. Sullivan."

The second citation in Roberts' Footnote 11 does not correspond to any document found in Ridge Exhibit 9 as purported.

-Roberts' Footnotes 12 and 13 do not refer to "trust and confidence" by analysts but to an article concerning CFO Magazine's embarrassment at previously having named, inter alia, Scott Sullivan and Enron CFO Andrew Fastow for honors now that they were admitted felons.

-Roberts' Footnote 14 does not demonstrate "trust and confidence" by WorldCom's entire Board of Directors as purported. Instead, it merely cites deposition testimony of

Defendant Roberts' own, individual, personal opinion of Mr. Sullivan that "He was an outstanding young man. I thought he was a top notch CFO."

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Denied. Mr. Sullivan's presentations were not "thorough" as they were materially false and misleading. See, e.g., Ridge Exs. 1 through 5. Otherwise, admitted.

16. Denied. Defendant fails to provide adequate admissible evidence of the purported fact other than his own personal opinion. Lead Plaintiff specifically refers to and incorporates herein General Objection No. 2 as if set forth in its entirety.

17. Admitted.

18. Admitted.

19. Denied. Lead Plaintiff objects to this statement as compound and complex and not conforming to Local Rule 56.1's requirement for a concise statement. Defendant Bobbitt's reports at almost every meeting were not "thorough." Instead, the reports failed to disclose the fraud being perpetuated at WorldCom as alleged in the Complaint. See, e.g. Ridge Exs. 1 through 5. Deny that adequate admissible evidence is provided in support of the remainder the statement as required by Local Rule 56.1.

20. Denied. The testimony cited does not support the proposed statement and simply states Mr. Allan "was an accountant" to Defendant Galesi's knowledge.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted
25. Admitted.
26. Admitted. Except deny proposed statement 26(b). See, Ridge Ex. 20 at SIC 036156, (a summary oral report was given and the Committee told “full audit reports are available.”)
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted.
32. Admitted.
33. Admitted.
34. Admitted.
35. Admitted.
36. Admitted.
37. Admitted.
38. Denied. Andersen was responsible for auditing WorldCom’s financial statements in accordance with Generally Accepted Auditing Standards. Ridge Ex. 28. (i. e., “GAAS” not “GAAP”)
39. Admitted, except deny any implication that the statement encompasses the full range of Arthur Andersen’s responsibilities. See, e.g. Golan Dec. Ex. 13.
40. Admitted.
41. Admitted, except deny adequate evidentiary support is provided as required by Local Rule 56.1. In particular, Lead Plaintiff denies that any color coding is discernable on the particular copy of the exhibit proffered as support for the statement and notes that no

apparent difference is discernable between an “effective” and an “ineffective” assessment on such copy.

42. Admitted, except deny adequate evidentiary support is provided as required by Local Rule 56.1. In particular, Lead Plaintiff denies that any color coding is discernable on the particular copy of the exhibit proffered as support for the statement and notes that no apparent difference is discernable between an “effective” and an “ineffective” assessment on such copy.

43. Admitted.

44. Admitted, except deny that the evidence proffered supports the statement that Andersen reported to the Audit Committee on February 6, 2002 that “financial reports” were “effective.” At pg. AA33515 of Ridge Ex. 7 the “Assessment” by Andersen was that the “process is effective, however certain process improvement opportunities were identified.”

45. Admitted, except deny adequate evidentiary support is provided as required by Local Rule 56.1. In particular, Lead Plaintiff denies that any color coding is discernable on the particular copy of the exhibit proffered as support for the statement and notes that no apparent difference is discernable between an “effective” and an “ineffective” assessment on such copy.

46. Denied. Object that the proposed statement is compound and complex and contains mixed statements of law and fact inappropriate to a Local Rule 56.1 statement. Subject to, as limited by, and without prejudice to these objections, Lead Plaintiff responds:

a. Arthur Andersen was not “independent”; Golan Dec. Ex. 36 (AA011564-80) (List of audit procedures to be performed was provided to WorldCom senior management); Exs. 37 & 38 (8 BRB: 048717 and AA 309364-376, at 366) (Concerning the “personal chemistry” between WorldCom and Arthur Andersen Auditors.); Ex. 11 (Cooper

Tr. p. 406, l. 15-25) (Devor Report, para. 275-284).

REDACTED

and Ex. 13

b. Arthur Andersen's "review" of "regular internal audit reports" was not adequate. It was not "always" done and did not even allow Andersen to evaluate Internal Audit's capabilities. See, Golan Dec. Ex. 46 (Dick Tr. 77-78) (Andersen Partner Melvin Dick testified ... "it would not be fair to say that we had reviewed the work of Internal Audit per se..." "and while we did interface with internal audit, did review some of their audit reports... we wouldn't have had a basis for, in my opinion, concluding as to their capabilities one way or another.")

c. Arthur Andersen's discussions with the Audit Committee, as contemplated by AU Section 380, were inadequate, as were its audits; See, Golan Dec. Ex. 13.

d. Arthur Andersen did not adequately delineate all relationships between the auditors and the company and, in particular, failed to delineate adequately its own lack of independence and failure to evaluate, inter alia, the Company's Internal Audit function. See citations for Response to Statement 46(a),(b), and (c) above.

e. Arthur Andersen failed to communicate sufficiently with the Audit Committee independent of WorldCom management. See citations for response to Statements 46(a),(b),(c) and (d).

47. Admitted.

48. Admitted.

49. Admit that the quoted statement appears at page 8 BRB: 209681 of Ridge Ex. 31. Deny knowledge or information as to the truth of the statement and specifically refer to and incorporate herein General Objection No. 2 with respect to whether the referred to "Peer Review" was, in fact, "the most extensive peer review in Andersen's history."

50. Admitted.

51. Denied. The evidence cited does not support the statement made. Ridge Ex. 9 (Tr. 161) states that Melvin Dick, an Arthur Andersen partner, personally “understood that the public from an investing point of view would be relying on the company’s financial statements and our audit report thereon.” The cited testimony also states that “there is an understanding that there are various users of those financial statements...(including, inter alia) company board of directors...”

52. Admitted that in April 2002, the Audit Committee recommended, and the WorldCom Board, thereafter in May 2002, did, substitute KPMG as WorldCom’s outside auditors. Deny that adequate admissible evidence is proffered for this fact by Defendant as required by local Rule 56.1 and note that, in particular, Ridge Ex. 32 is a “draft.” Deny knowledge or information as to whether “Changing auditors is the most significant decision that an Audit Committee can make” and, in particular, refer to and incorporate the General Objection No. 2 with respect to this statement. Deny that changing auditors in April 2002 “further demonstrates the independence and objectivity of this committee.” See, Golan Dec. Ex. 13, para. 275-286 and Ex. 48 (April 3, 2002 Board Minutes indicating that WorldCom’s change of auditors from Andersen to KPMG was directly motivated by a report from Audit Committee Chairman Max Bobbitt that the Andersen offices primarily responsible for performing audit functions for WorldCom had negotiated a letter of intent to move to KPMG.)

53. Admitted.

54. Admitted.

55. Admitted.

56. Admitted.

57. Admitted that Internal Audit discovered the fraud. Deny that any “system of internal control” was responsible for the discovery. See, Golan Dec. Ex. 11 (Cooper Tr. 195, l. 16-25) which states in relevant part:

Q.

A.

REDACTED

58. Admitted

59. Admitted.

60. Denied. Lead Plaintiff objects that this statement consists of compound and complex statements and not the concise simple statements required by Local Rule 56.1. Deny that Roberts’ Footnote 80 provides substantive support for the statement referred to. The transcript reference cited states “...there was an internal audit of line costs. I’m not certain about the period.”

61. Admitted.

62. Admitted.

63. Denied. The evidence cited does not support the statement made. In particular, the cited testimony of Ms. Cooper reads, “Internal Audit should be able to meet with audit committee privately in executive session...”(Ridge Ex. 50 (Tr. 59, l.7) The statement does not support the statement that such meetings may have occurred. Moreover, the statement as made is materially misleading because the cited testimony also states “...there was nothing formally in writing within the company that defined these factors...” (Ridge Ex. 10 (Tr. 60, l. 16-17).

64. Denied. The evidence cited does not support the statement made. In particular, the cited testimony of Ms. Cooper reads,

REDACTED

REDACTED

(Ridge Ex. 10, l. 6-10) Deny there is

any reference whatsoever in the cited material as to whom Mr. Bobbitt is purported to have reported.

65. Denied. The evidence cited does not support the statement made. In particular, there is no reference whatsoever in the cited testimony of Ms. Cooper that the "list" referred to was ever presented to the Audit Committee. See, Ridge Ex. 10 (Tr. 78, l. 8-21).

66. Admitted.

67. Admitted.

68. Admitted.

69. Admitted.

70. Admitted.

71. Admitted.

72. Admitted.

73. Denied. The evidence cited does not support the statement made. In particular, the citation is to a question fragment evident in Ridge 35, (Tr. P. 170, l. 22-25) for which no answer is provided.

74. Admitted.

75. Admitted.

76. Denied. The evidence cited by Defendant Roberts in support of this statement is inapposite and does not support his statement.

77. Denied. The evidence cited by Defendant Roberts in support of this statement is inapposite. Deny that any SEC review of WorldCom Financial statements as included in the Company's quarterly, annual and other filings, including its Registration Statements, with

the SEC, is material or an appropriate assertion of fact. The SEC has a longstanding rule providing that filings, such as a prospectus/registration statement must contain a bold-face legend that:

These Securities have not been approved or disapproved by the Securities and Exchange Commission nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

See, 17 CFR 229.501(c)(5). See, also Joseph v. Wiles, 223 F.3d 1155, 1165-66 (10th Cir. 2000) (“That defendants filed a misleading document with a regulatory agency does not lend any more credibility or veracity to the document...it is...not sufficient for an individual to claim reliance on this process.”)

78. Denied. See response to Statement No. 77 upon which this statement is grounded.

79. Denied. The evidence cited does not support the statement proposed. In particular, Ridge Ex. 36 contains no information relevant to the statement. Instead, it appears it may simply relate to a KPMG presentation made on or about May 22, 2002. Furthermore, the cited testimony of Ms. Cooper does not indicate “KPMG detected no accounting irregularities,” as proposed. Instead, the transcript reference provided reads

REDACTED

80. Object that this statement is compound and complex and does not comport with Rule 56.1. Deny knowledge or information sufficient to determine whether MCI is or was “the leading telecommunication company in the world” and, in particular, refer to and incorporate General Objection No. 2 with respect to this statement. Admit that, in 1998, Defendant Roberts was MCI’s Chairman of the Board and Chief Executive Officer prior to

becoming an “Executive Officer” of WorldCom in 1998 upon WorldCom’s acquisition of MCI. See, Golan Dec., Ex. 45 at p. 151 and citations provided in response to Statement No. 1.

81. Denied. See, Golan Dec., Ex. 45 at p. 151 and evidence cited in response to Statement No. 1. Deny the characterization of Defendant Roberts’ contract as a “stay put” contract is accurate and defer to the terms of that contract and the manner in which it was fulfilled. Object that the contract referred to is not provided as required by Local Rule 56.1 and assert the contract was in fact, for continuing employment as an “Executive Officer” of WorldCom as set forth, inter alia, in WorldCom’s Proxy Statement and Prospectus dated April 26, 2001, as cited in response to Statement No. 1.

82. Admitted.

83. Denied. The evidence cited by Defendant Roberts in support of this statement appears to relate to the deponent’s own purported personal lack of knowledge that line costs were being capitalized. See, Ridge Ex. 33 (Tr. 21, 38-39, 46, 205).

84. Denied. The evidence cited does not support the statement that “much debate surrounded the decision to not incorporate ‘corporate accounts.’” In particular, the witness’ purported testimony repeatedly manifests his lack of knowledge or recall and, at best, indicates “assumptions” as in Ridge Ex. 33 (Tr. 80, l. 6-8): “I can’t recall specifically who it was but I’m assuming as this came together it would have been, could perhaps been...” The quoted text in the statement appears to accurately reflect the text of the exhibit referred to but, as stated with respect to Statement No. 83 above, there is no reference to “Corporate Accruals” in the cited material.

85. Admitted.

86. Admitted.

87. Admitted.

88. Denied. The evidence cited does not support the proposed statement and merely states that Mr. Bobbitt “said” he believed and that “Farrell agreed.” Deny knowledge or information to whether Mr. Bobbitt or Mr. Malone actually had such belief as set forth in the proposed statement.

89. Denied. Object that the statement is a compound and complex mixture of argument and unsupported facts and purported logical conclusion improperly derived therefrom which does not comply with Local Rule 56.1. Deny that the evidence cited (Ridge Ex. 40) supports the statement that Mssrs. Bobbitt and Malone “had not reached the conclusion...” Instead, Ridge Ex. 40 states “...because IA (Internal Audit) was still in the middle of the audit and support had not yet been obtained.” The correct implication to derive is that there was concern that sharing the conclusions reached with the Audit Committee or Scott Sullivan, at that time, could compromise Internal Audit’s work before it was completed. This is demonstrated by the following text in Ridge Ex. 40:

Cynthia and Farrell both agreed it would be best for Max to just ask Scott about the issue without presenting Scott with preliminary schedules. Max agreed he would discuss the issue with Scott on the return flight and that IA could carry on with their audit as planned Monday morning (6/17).

Emphasis supplied.

90. Denied that “Proof Positive” of the facts asserted in Statement No. 89 consists of the quoted material and object to Defendant Roberts’ use of hyperbole and argument in his Local Rule 56.1 statement as inappropriate. Admit the document cited reflects the comments in the statement.

91. Denied. See, e.g. Ridge Exs. 38, 40, concerning a conversation occurring prior to June 20, 2002 and response to Statement No. 89.

92. Denied, except admit that Defendant Roberts, under oath, denies having such knowledge before June 20, 2002. Deny knowledge or information sufficient to form a belief

as to whether such denial is “affirmative.” Deny Defendant Roberts had no such knowledge, see response to Statements 89 and 91.

93. Denied. Lead Plaintiff objects to this statement as compound, complex, argumentative, inappropriate to and not in compliance with Local Rule 56.1. In particular, the statement is devoid of specific evidentiary citation to the numerous complex facts and conclusions set forth. Moreover, inasmuch as this statement purports to repeat portions of prior statements prepared by Defendant Roberts which have been responded to previously, Lead Plaintiff incorporates herein the responses previously made. Lead Plaintiff objects that Ridge Ex. 42 referred to by Defendant does not appear to bear any appropriate title or reference to any document used in deposition or produced in discovery and therefore specifically refers to and incorporates General Objection No. 2 with respect to that document and objects to its admissibility on that ground.

94. Denied, except admit that Defendant Roberts so denies, under oath. Deny information or knowledge sufficient to form a belief as to whether such denial by Defendant Roberts is “affirmative.” Deny that Defendant Roberts lacked grounds to believe revenues were improperly manipulated and line costs capitalized. See, e.g., response to Statement No. 1. As an “Executive Officer” of WorldCom and the former CEO of MCI, Roberts knew or should have known that financial reporting had long been manipulated at MCI and at WorldCom to achieve stable publicly reported financial results. See, Golan Dec. Ex. 47 (Slocum, Tr. 147-162) (Slocum, a former MCI employee with WorldCom post merger, testified that “reserves” were commonly released to eliminate “blips” in reported financial results both before and after the merger except that “Changes became more frequent” after the merger.)

95. Denied, except admit that Defendant Roberts so asserts under oath. Object that Defendant Roberts fails to proffer support for this statement other than his uncorroborated testimony.

96. Admitted, except deny Defendant Roberts provides adequate support for this statement other than his uncorroborated testimony. In particular, Lead Plaintiff refers to and incorporates General Objection in No. 2 herein.

97. Admitted, except deny Defendant Roberts provides adequate support for this statement other than his uncorroborated testimony. In particular, Lead Plaintiff refers to and incorporates General Objection in No. 2 herein.

98. Denied. Defendant has provided no citation to evidence in support of this statement as required by Local Rule 56.1.

99. Admitted, except deny any implication that Arthur Andersen's audits were adequate or that WorldCom's financial statements were prepared in accordance with GAAP. Golan Dec. Ex. 13.

100. Denied. Lead Plaintiff objects that this statement is so vague and ambiguous as to be incomprehensible, does not comport with Local Rule 56.1 and is not susceptible to substantive response as framed.

101. Denied, except admit that Defendant Roberts so asserts, under oath. The statement is so incomplete as to be misleading and inaccurate. Defendant Roberts, as an "Executive Officer," had a duty to investigate. The implication that he did not is denied. Information came to Defendant Roberts' attention that should have caused a reasonable person to investigate further, but Roberts claims that he did not. See, Golan Dec. Ex. 9 (Roberts Tr. 58-59; 198-199) (While at MCI, Roberts observed that line costs as a percentage of revenue changed over time from 50% to 65% between periods. Line costs at WorldCom were significantly lower (i.e. 41.8% for three quarters in 2001) yet Roberts

testified that no one on the WorldCom Board questioned why line costs were not rising.) See also, response to Statement No. 1.

102. Admitted.

103. Denied as stated. WorldCom periodically issued bonds including the May 2000 and May 2001 bond offerings that are the subject of this litigation. See, Golan Dec. Exs. 14 and 15 (Prospectus Supplements).

104. Admitted.

105. Admitted.

106. Denied. Defendant Roberts was an "Executive Officer" at WorldCom at all relevant times. See Golan Dec. Ex. 45, p. 151 and response to Statement No. 1.

107. Denied. Defendant Roberts was an "Executive Officer" at WorldCom at all relevant times. See, Golan Dec. Ex. 45, p. 151 and response to Statement No. 1.

108. Denied. Object that the proposed statement is compound and complex and does not comport with Local Rule 56.1. Defendant Roberts was an "Executive Officer" at WorldCom at all relevant times. See, Golan Dec. Ex. 45, p. 151 and response to Statement No. 1.

109. Denied, except admit that Defendant Roberts so asserts, under oath. Object that no other basis to support the uncorroborated statement is provided. Object that the statement is compound and complex and that no "facts," as such, are asserted but rather a suite of vague and ambiguous alternative facts are propounded which are in the nature of a pleading and that mixed statements of law and fact are asserted as facts. Object that the statement so thoroughly fails to comply with local Rule 56.1 that no substantive response is possible or required.

110. Denied. Object that the proffered statement is a contested legal conclusion central to this litigation and not appropriate for inclusion in Defendant Roberts' Rule 56.1

statement. Object that, other than his uncorroborated oath in his declaration, Defendant Roberts provides no citation to support his assertion. As a signatory to various filings by WorldCom with the SEC, and their dissemination to the investing public, Defendant Roberts had responsibility for the contents of such public statements as alleged in the Complaint and as stated by the Court in this litigation. See In re WorldCom, Inc. Securities Litigation, 294 F. Supp.2d, 392, 420 (S.D.N.Y. 2003) (“... as a practical matter, just what is a signature on an SEC filed document meant to represent if it does not represent a degree of responsibility for the material contained in the document?”) To the extent these documents were incorporated in the Registration Statements or extent in the mix of publicly available information concerning WorldCom at the time of the offerings, Defendant Roberts had responsibility for them and the polluted data in the market. As an “Executive Officer” of WorldCom, Defendant Roberts had responsibility for the contents of all of these documents. See, Golan Dec., Ex. 45 p. 151 and response to Statement No. 1.

111. Admitted, however object that the document speaks for itself and is the best record of its contents.

112. Admitted, however object that the document speaks for itself and is the best record of its contents.

113. Admitted, however object that the document speaks for itself and is the best record of its contents.

114. Denied. Object that Defendant Roberts’ uncorroborated assertion of fact in his affidavit provides inadequate support for the asserted statement and does not comply with the requirements of Local Rule 56.1.

115. Denied. Object that this statement is compound and complex and consists of four separate and ambiguous assertions of fact the interplay of which renders the statement impossible to respond to as presented. Object that no evidence is cited for the statement

other than Defendant Roberts' uncorroborated statement in his Declaration. Object that the statement is not a factual assertion but a mixed question of law and fact which is central to the resolution of this litigation. Subject to, as limited by, and without prejudice to these objections, Lead Plaintiff responds as follows:

- Admit that Defendant Roberts read the May 2000 and May 2001 Registration statements;

- Deny that Defendant Roberts had reasonable grounds to believe the Registration Statements did not omit a material fact. On this motion, Defendant Roberts continually asserts he is an outside director, nonetheless, the Proxy and Registration Statement filed April 26, 2002 states that Defendant Roberts was, at all times relevant hereto, an "Executive Officer" of WorldCom Golan Dec. Ex. 45, p. 151, and see response to Statement No. 1. Defendant Roberts knew or should have known upon reading the Registration Statements that they omitted, inter alia, to describe his true role in WorldCom accurately. Deny knowledge or information to form an understanding of what statements known to Defendant Roberts were or were not known to other signatories of the Registration Statements.

116. Denied. Object that this statement consists of mixed assertions of argument and legal opinion by Defendant Roberts and does not comport with the requirement for evidentiary citation in Local Rule 56.1. Moreover, as an "Executive Officer" of WorldCom, Defendant Roberts had a duty to investigate but failed to do so. See, Golan Dec. Ex. 45, p. 151 and response to Statement No. 1.

117. Denied. The evidence proffered in support of this statement does not indicate the inclusion of a "Risk Factors" section in the Registration Statements for the May 2000 and May 2001 Bond Offerings. The evidence cited also contains no hint of the "apparent surprise" referred to in this statement as it is referred to repeatedly in Defendant Roberts' other papers in his motion. Significantly, Mr. Roberts' own testimony at Ridge Ex. 14, (Tr.

265-66.1, 3-6,12-15 6, 12-15) acknowledges that the risks referenced in the Registration Statement are “perhaps not as detailed as the other document” and that “I would regard these, albeit in somewhat summary form, risk factors that were an integral part of the prospectus.”

118. Denied. The exhibit provided in support of this statement merely refers to the filing of complaints with respect to the Intermedia transaction between September 5 and November 1, 2002 following the purported disclosure of the transaction. The exhibit thus does not contradict paragraphs 236 and 237 of the Complaint in material part.

119. Denied. Object that Defendant Roberts fails to provide any evidence of support for this statement.

120. Admitted.

121. Admitted.

122. Admitted, except deny there is any corroborating evidence of the February 2001 informal poll referred to in Ridge Exhibit 48, therefore deny as to such assertion.

123. Admitted that the Intermedia transaction is referred to in WorldCom’s Form 10-K/A for FY 2000 and that the 10-K/A is incorporated by reference in the May 2001 Registration Statement. Denied that adequate due diligence was performed. See, Roberts Decla. Para. 66 (i.e., The WorldCom Board relied on work performed by Cravath, Swain & Moore while working for a different client.) Deny that “all material facts surrounding the Intermedia merger were disclosed” and object that the proffered support for Defendant’s Statement does not support the statement as required by Local Rule 56.1. See also, Golan Dec. Ex. 35 (Galesi Tr. 311-13) (Former Director testified that WorldCom Board members became “leery” of the Intermedia deal but Ebbers unilaterally removed the contract clause allowing WorldCom to back out of the transaction.)

124. Admitted.

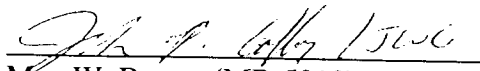
125. Admitted.

126. Admitted.


127. Denied. Object that the evidence provided simply does not support this statement as required by Local Rule 56.1.

Dated: September 30, 2004

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