

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE WORLDCOM, INC. SECURITIES
LITIGATION

MASTER FILE
02 Civ. 3288 (DLC)

This Document Relates to:

02 Civ. 3288	02 Civ. 4990	02 Civ. 9514
02 Civ. 3416	02 Civ. 5057	02 Civ. 9515
02 Civ. 3419	02 Civ. 5071	02 Civ. 9516
02 Civ. 3508	02 Civ. 5087	02 Civ. 9519
02 Civ. 3537	02 Civ. 5108	02 Civ. 9521
02 Civ. 3647	02 Civ. 5224	02 Civ. 2841
02 Civ. 3750	02 Civ. 5285	02 Civ. 3592
02 Civ. 3771	02 Civ. 8226	03 Civ. 6229
02 Civ. 4719	02 Civ. 8228	03 Civ. 7298
02 Civ. 4945	02 Civ. 8229	03 Civ. 7299
02 Civ. 4946	02 Civ. 8230	
02 Civ. 4958	02 Civ. 8234	
02 Civ. 4973	02 Civ. 9513	

**LEAD PLAINTIFF'S MOTION *IN LIMINE* NO. 6: TO PRECLUDE
DEFENDANTS FROM INTRODUCING THE CRIMINAL INDICTMENTS OF
BERNARD EBBERS, SCOTT SULLIVAN, DAVID MYERS, BUFORD YATES,
TROY NORMAN AND BETTY VINSON**

Lead Plaintiff respectfully submits this motion *in limine* to preclude Defendants from introducing evidence or otherwise referring to the criminal indictments, informations, complaints, or any other hearsay documents relating to criminal proceedings instituted against former WorldCom officers and employees.¹

PRELIMINARY STATEMENT

In 2002, a number of WorldCom employees were criminally indicted for violations of the federal securities laws. During negotiations with respect to the PTO, certain of Defendants' counsel indicated that they intend to introduce these indictments as substantive evidence at trial.

¹ Unless otherwise defined here, the defined terms used in this memorandum shall have the meaning as defined in Lead Plaintiff's Pre-trial Memorandum submitted concurrently herewith.

Based on these assertions, Lead Plaintiff respectfully requests that the Court issue an order precluding the criminal indictments, and any other United States Attorney's Office pronouncements, as inadmissible hearsay.²

ARGUMENT

It is beyond dispute that criminal indictments and similar documents are not admissible as evidence, for they are nothing more than hearsay allegations of criminal conduct levied by the Government for which no hearsay exception exists. Indeed, as every judge in this courthouse instructs the jury in every criminal case, an indictment is evidence of nothing and cannot be considered by the jury as such. *See Taylor v. Kentucky*, 436 U.S. 478 (1978) (trial court committed reversible error in failing to instruct jury that an indictment was not evidence, and could not be considered against the defendant).

This rule is equally true in civil actions such as the instant case. *See Fujisawa Pharmaceutical Co., Ltd. v. Kapoor*, No. 92 Civ. 5508, 1999 WL 543166, *11 (N.D. Ill. July 21, 1999) (“[i]t is hornbook law that indictments cannot be considered as evidence...’ especially in a civil case....”) (citing *U.S. v. Cox*, 536 F.2d 65, 72 (5th Cir. 1976) and *McGhee v. Joutras*, No. 94 Civ. 7052, 1996 WL 706919, at *7 (N.D. Ill. Dec. 5, 1996)).

Accordingly, Defendants’ position that the criminal indictments of former WorldCom employees should be admitted in this case is specious, and the Court should preclude them from offering any indictments or other United States Attorney’s Office pronouncements -- whether they be informations, complaints, press releases, or any other statements other than statements against interest of the criminal defendants themselves -- as inadmissible hearsay.

² This motion does not seek to exclude the plea allocutions of WorldCom employees, which all of the Parties agree are admissible in the instant trial. *See, e.g., In re Blech Sec. Litig.*, No. 94 Civ. 7696, 2003 WL 1610775, at *10 (S.D.N.Y. Mar. 26, 2003) (“Blech’s allocution, a statement against his penal interest, is not hearsay”).

CONCLUSION

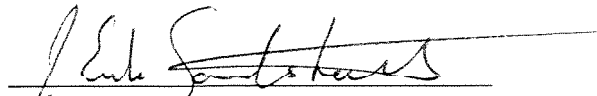
For all of these reasons, Lead Plaintiff respectfully requests that the Court grant this motion *in limine*.

Dated: New York, New York
January 7, 2005

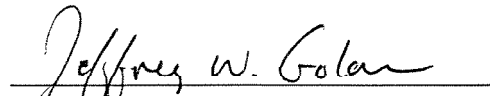
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