

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

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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 RESPONSE TO ARTHUR ANDERSEN LLP'S  
REQUESTED JURY INSTRUCTIONS AND JURY  
INTERROGATORIES**

Lead Plaintiff, by and through its counsel, respectfully submits this Response to the jury instructions and jury interrogatories requested by Defendant Arthur Andersen LLP ("Andersen").

**Andersen's Proposed Jury Instructions**

No. 1 - Lead Plaintiff objects to General Instruction 1 to the extent it seeks to instruct the Jury that Andersen was not involved in the preparation of WorldCom's financial statements when, in fact, there is evidence that WorldCom consulted with Andersen on various accounting treatments before compiling the financial statements. It further fails to note that Andersen was engaged in significant other consulting services provided to WorldCom.

Nos. 2-8 - Lead Plaintiff submits that there should be general instructions with respect to “Defendants” rather than that a single set with respect to Andersen. Thus, for instance, Lead Plaintiff submits that Plaintiffs’ versions of instructions on such matters as burden of proof (Andersen 2), preponderance of the evidence (Andersen 3), expert witnesses (Andersen 4), organizations (Andersen 5), and status of Lead Plaintiff and class actions (Andersen 7, 8) should be utilized.

No. 9 - Lead Plaintiff objects to Andersen 9, relating to adverse inferences from assertions of Fifth Amendment rights. *See* Lead Plaintiff’s motion *in limine* on this point.

No. 10 - Lead Plaintiff objects to Andersen 10, on the ground that it is contrary to the calculation of damages pursuant to Section 11(e) of the Securities Act.

No. 11 - Lead Plaintiff objects to Andersen 11, on the ground that the Section 10(b) claim also relates to bonds sold in the Offerings.

Lead Plaintiff reserves its right to object to the remainder of Andersen’s proposed jury instructions upon completing its comparison of Andersen’s proposed instructions with the Order and Opinion issued with respect to Andersen’s motion for summary judgment on January 18, 2005 (“ASJO”). Pending the completion of such a comparison, Lead Plaintiff offers the following:

No. 12 – the purchases of bonds by the Class has been stipulated, and the instruction is not correct as a matter of law because a plaintiff does not have the burden of establishing “proximate cause” under Section 11.

No. 13 – Lead Plaintiff submits there should be a general instruction pertaining to the Section 11 claims, and not one specific to Andersen on this point.

No. 14 – Lead Plaintiff objects to the second and third paragraphs as argumentative.

No. 15 - Lead Plaintiff objects to the second paragraph as argumentative.

No. 16 – Lead Plaintiff believes its proposed instruction on “materiality” is appropriate and objects to Andersen’s proposed instruction as argumentative and misleading.

No. 17 - Lead Plaintiff believes its proposed instruction on “reasonable investigation” is appropriate, and objects to Andersen’s proposed instruction on the ground, among others, that it would instruct the jury improperly on findings of fact that are for the jury to decide.

No. 18 – This instruction appears to conflict with the ASJO, and Lead Plaintiff objects to that extent to the instruction.

No. 19 – Lead Plaintiff objects on the ground the proposed instruction is not necessary and argumentative.

No. 20 – Lead Plaintiff objects on the ground the proposed instruction is not necessary and argumentative.

No. 21 - Lead Plaintiff objects on the ground the proposed instruction is not consistent with the Order and Opinion of December 15, 2004 (denying the Underwriter Defendants’ motion for summary judgment (“U/WSJO”), and is further confusing and argumentative.

No. 22 - Lead Plaintiff objects on the ground the proposed instruction is argumentative to the extent it is premised on the jury finding that Andersen performed a reasonable investigation.

No. 23 – Lead Plaintiff objects to this proposed instruction (“loss causation: generally”) as contrary to the law. For instance, Plaintiff does not have the burden of showing that the decline in the price of bonds “directly and proximately resulted from errors in WorldCom’s 1999 and 2000 annual financial statements that were audited by Andersen.”

Nos. 24 - 26 - Lead Plaintiff objects to these proposed instructions relating to “loss causation” as contrary to the law, and further as argumentative and impinging on the role of the jury in finding the facts.

No. 27 – Lead Plaintiff objects on the grounds asserted in the response to the motions *in limine* filed by the Underwriter Defendants and Andersen on the propriety of assessing aggregate damages, and further as contrary to law and argumentative.

No. 28 – Lead Plaintiff objects to this instruction as improper, contrary to law, and argumentative.

No. 29 – Lead Plaintiff objects on the grounds that an appropriate instruction on Section 11 damages claims should be utilized, rather than introducing terms such as “compensatory” damages.

Nos. 30-45 – Lead Plaintiff objects to the proposed Section 10(b) instructions as generally argumentative, and as seeking to convince the jury of Andersen’s view of the case and the potential damages attributable to Andersen. Lead Plaintiff submits that its proposed instructions are appropriate under the law, and that Andersen’s proposed instructions are skewed. Specifically, Lead Plaintiff further objects, as follows:

No. 30 – the reference to six elements is faulty; the reference to using instrumentality of interstate commerce is contrary to stipulations.

No. 31 – argumentative, confusing.

No. 32 – argumentative, and should track definition in governing case

No. 33 – argumentative (“scienter is defined as an intent to deceive, manipulate or defraud”)

No. 34 – contrary to ASJO with respect to requiring proof that an individual auditor acted with knowledge, and contrary to law in seeking to instruct jury, *inter alia*, that good faith belief in the audit opinions “is a complete defense” and that Lead Plaintiff is required to prove “fraudulent intent”; argumentative; and improperly seeking to instruct jury on weight to be given to Restatement and impact of failure to detect fraud

No. 35 - contrary to ASJO with respect to requiring proof that an individual auditor acted recklessly, and contrary to law in seeking to instruct jury, *inter alia*, that good faith belief in the audit opinions “is a complete defense” and that Lead Plaintiff is required to prove “fraudulent intent”; argumentative; and improperly seeking to instruct jury on weight to be given to Restatement and impact of failure to detect fraud

No. 36 – proposed instruction regarding “no collective knowledge or intent” is contrary to ASJO

Nos. 37-38 (missing from version served on Lead Plaintiff)

No. 39 – Lead Plaintiff objects on the ground that the proposed instruction is confusing.

No. 40 – Lead Plaintiff objects on the ground that in this fraud on the market case, an instruction on “reasonable reliance” is confusing and misleading. Lead Plaintiff submits that its proposed instruction on this point is adequate and appropriate.

Nos. 41 - 42 – Lead Plaintiff objects to Andersen’s proposed “loss causation” instructions, and believes Lead Plaintiff’s proposal is more appropriate. Lead Plaintiff further refers the Court to its memorandum of law in response to the Underwriter Defendants’ motion to “phase” the trial. Lead Plaintiff further objects to Andersen’s proposed instruction with respect to directing the jury concerning the “first public disclosure” of the fraud, and similar concepts in the proposed instruction. Lead Plaintiff further objects to the “duty to isolate and remove decline due to unrelated events” instruction.

No. 43 – Lead Plaintiff objects to the second paragraph as argumentative.

Nos. 44 - 45 – argumentative; list includes parties against whom Section 10(b) claims either were not asserted or were dismissed; and curative instruction is not sufficient; Lead Plaintiff submits that the Parties should attempt to develop an appropriate list, and make it consistent with the proposed Verdict Form.

### **Proposed Jury Interrogatories**

Lead Plaintiff submits that its proposed Jury Interrogatories are more appropriate than Andersen’s. Among other things, Lead Plaintiff objects as follows to Andersen’s proposed Jury Interrogatories concerning the Section 11 claims:

No. 1 – there should be a simple interrogatory concerning whether the Section 11 claim has been proven against each of the Defendants, rather than a specific interrogatory concerning Andersen, and the 1999 financial statements

No. 2 – interrogatory assumes argument based on Andersen’s damages defense, and is improper; Lead Plaintiff submits that a general interrogatory about the damages

arising from Defendants' violations of the Section 11 claims, if found by the jury, is sufficient and appropriate

No. 3 – please see response to proposed Jury Instruction 2, and proposed Jury Instructions 44-45.

No. 4 – please see response to proposed Jury Instruction 1 (but pertaining to proposed instruction regarding 2000 financial statements)

No. 5 – please see response to proposed Jury Instruction 2

No. 6 – please see response to proposed Jury Instruction 3

Lead Plaintiff submits that its proposed Jury Interrogatories are more appropriate than Andersen's with respect to the Section 10(b) claim, and further objects as follows to Andersen's proposed Jury Interrogatories concerning the Section 10(b) claim:

Nos. 1-3 – there should be a simple interrogatory concerning whether the Section 10(b) claim has been proven against each of the Defendants, rather than a specific interrogatory concerning Andersen, with specific sub-parts pertaining to the 1999 financial statements, 2000 financial statements, 2001 financial statements, and the audit opinion letters pertaining to each such financial statement.

Nos. 4-5 – there should be a simple interrogatory asking whether if Plaintiff established its claim against Andersen, did Andersen commit its Section 10(b) violation either “knowingly” or “recklessly”; Lead Plaintiff submits that the Jury Interrogatories should not repeat legal instructions or definitions, and further submits that the Jury should not be required to answer whether others “violated the securities laws” (column b) or acted “knowingly” or “recklessly” (column c).

Nos. 6-8 – Lead Plaintiff objects to particular interrogatories concerning each of the audit opinion letters, and further objects to these interrogatories as argumentative and seeking to convince the jury on Andersen’s defense to the level of damages.

Dated: January 21, 2005

Respectfully submitted,

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