

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLDCOM, INC. : MASTER FILE NO
SECURITIES LITIGATION : 02 Civ. 3288 (DLC)

This Document Relates to: :

02 Civ. 3288 02 Civ. 4973 02 Civ. 8230 :
02 Civ. 3416 02 Civ. 4990 02 Civ. 8234 :
02 Civ. 3419 02 Civ. 5057 02 Civ. 9513 :
02 Civ. 3508 02 Civ. 5071 02 Civ. 9514 :
02 Civ. 3537 02 Civ. 5087 02 Civ. 9515 :
02 Civ. 3647 02 Civ. 5108 02 Civ. 9516 :
02 Civ. 3750 02 Civ. 5224 02 Civ. 9519 :
02 Civ. 3771 02 Civ. 5285 02 Civ. 9521 :
02 Civ. 4719 02 Civ. 8226 03 Civ. 2841 :
02 Civ. 4945 02 Civ. 8227 03 Civ. 3592 :
02 Civ. 4946 02 Civ. 8228 03 Civ. 6229 :
02 Civ. 4958 02 Civ. 8229 :

STIPULATION OF SETTLEMENT WITH BUFORD YATES AND DAVID MYERS

This Stipulation of Settlement (the “Stipulation”) is entered into between (i) the Lead Plaintiff, Alan G. Hevesi, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Trustee of the New York State Common Retirement Fund, and the Named Plaintiffs, Fresno County Employees Retirement Association, the County of Fresno, California, and HGK Asset Management, Inc., and the Class (as defined in paragraph 1(b) below) (collectively, “Plaintiffs”), by and through their undersigned attorneys, and (ii) Defendants Buford Yates and David Myers (collectively the “Settling Defendants,” and together with Plaintiffs, the “Parties”).

This Stipulation states all of the terms of the Settlement, as defined below and as set forth herein, and is intended by the Parties to fully and finally compromise, resolve, discharge and settle the Released Claims, as defined herein, subject to the terms and conditions set forth below.

WHEREAS:

The Litigation

A. On April 30, 2002, and thereafter, various class actions and individual actions (together, the “Litigation,” as more fully defined in paragraph 1(m) below) were filed in, or transferred to, the United States District Court for the Southern District of New York (the “Court”) by and (in the case of the class actions) on behalf of persons who purchased or otherwise acquired publicly traded securities of WorldCom, Inc. (“WorldCom”).

B. On August 15, 2002, the Court appointed the New York State Common Retirement Fund (“Lead Plaintiff” or “NYSCRF”) as Lead Plaintiff in Master File No. 02 Civ. 3288 (DLC), to pursue claims of persons or entities who purchased or otherwise acquired publicly traded securities of WorldCom, including persons or entities who acquired shares of WorldCom common stock in the secondary market or in exchange for shares of acquired companies pursuant to a registration statement, and persons or entities who acquired publicly traded debt securities of WorldCom in the secondary market or pursuant to a registration statement, and who were injured thereby. The Court further approved the appointment of the law firms of Barrack Rodos & Bacine and Bernstein Litowitz Berger & Grossmann LLP to serve as Co-Lead Counsel (“Lead Counsel”) for Lead Plaintiff and the putative class.

C. On October 11, 2002, Lead Plaintiff and the Named Plaintiffs, as defined below, filed a Consolidated Class Action Complaint (“Complaint”), which charged, *inter alia*, the Settling Defendants, with violations of Section 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated by the Securities and

Exchange Commission. The claims asserted against the Settling Defendants and the other defendants named in the Complaint are hereafter referred to as the “Action.” On December 5, 2002, the Action was stayed with respect to Myers. On May 12, 2003, the Action was stayed with respect to Yates.

D. On June 4, 2003, Plaintiffs filed a motion and supporting memorandum of law for certification of the Class sought in the Complaint.

E. On August 1, 2003, Plaintiffs filed the First Amended Class Action Complaint, which reasserted the claims against the Settling Defendants.

F. After discovery and briefing by the Parties, on October 24, 2003, the Court granted the Plaintiffs’ motion for certification of a class and certified the above-captioned Action to proceed as a class action on behalf of all purchasers or acquirers of publicly traded securities of WorldCom during the period from April 29, 1999 through and including June 25, 2002 (the “Class Period”). The Class includes all persons or entities who acquired shares of WorldCom common stock in the secondary market or in exchange for shares of acquired companies pursuant to a registration statement, and all persons or entities who acquired debt securities of WorldCom in the secondary market or pursuant to a registration statement, and who were injured thereby. Excluded from the Class are: (i) defendants in the Action; (ii) members of the family of each individual defendant; (iii) any entity in which any defendant has a controlling interest; (iv) officers and directors of WorldCom and its subsidiaries and affiliates; and (iv) the legal representatives, heirs, successors or assigns of any such excluded party.

G. On December 11, 2003, the Court ordered a Notice of Pendency of Class Action to be distributed to members of the Class. The Notice contained a deadline of February 20, 2004, for members of the Class to request to be excluded from the Class. By Order of February 3, 2004, the

United States Court of Appeals for the Second Circuit (the “Court of Appeals”) extended the date for members of the Class to request to be excluded until at least thirty days after the Court of Appeals decided a separate appeal involving certain individual plaintiff actions also pending before the Court of Appeals. That appeal was decided by a Court of Appeals decision of May 11, 2004.

H. Lead Counsel, assisted by certain other law firms approved by Lead Plaintiff to assist in the prosecution of the Action, have conducted an extensive investigation relating to the allegations of wrongdoing pertaining to each defendant in the Action, including the Settling Defendants, the alleged damages suffered by the Class, and the defenses asserted by the defendants in the Action. In connection therewith, Lead Counsel reviewed millions of documents produced by non-party WorldCom and other defendants and numerous non-parties, and have made additional inquiry as to pertinent facts, including the taking of depositions and consultation with the Lead Plaintiff’s experts and consultants.

I. As part of this investigation, Lead Counsel served interrogatories and document requests upon the defendants against whom the Litigation was not stayed; reviewed and analyzed those defendants’ responses to the interrogatories and document requests; reviewed and analyzed the report issued by the Special Investigation Committee appointed by WorldCom’s Board of Directors as well as the reports issued by the Examiner appointed in the bankruptcy proceedings involving WorldCom; reviewed and analyzed millions of documents and emails produced by the defendants in this Litigation, as well as in response to other investigations conducted by the New York Attorney General, the Securities and Exchange Commission, and various congressional committees. Lead Counsel conducted 70 depositions of witnesses with relevant knowledge, attended and asked questions at certain other depositions during which former WorldCom officers

and employees invoked the Fifth Amendment in response to counsels' questions, and reviewed all of the testimony and exhibits presented at the criminal trial against defendant Bernard Ebbers, including testimony of Ebbers. Lead Counsel also consulted extensively with experts retained to review and advise on the issues pertinent to Plaintiffs' claims against the defendants in the Litigation, including the damages that Lead Plaintiff would seek to prove at a trial of the case.

J. On July 1, 2004, Lead Plaintiff and the Named Plaintiffs entered into a stipulation of settlement with Citigroup, Inc., Citigroup Global Markets Inc. (f/k/a Salomon Smith Barney Inc.), Citigroup Global Markets Limited, and Jack Grubman (the "Citigroup Defendants"). The Court preliminarily approved the settlement with the Citigroup Defendants in an order dated July 16, 2004. The July 16, 2004 Order scheduled a fairness hearing for November 5, 2004, and set September 1, 2004 as the deadline for submission of requests to be excluded from the Class. The Court approved the settlement with the Citigroup Defendants on November 12, 2004. Appeals have been taken as to certain aspects of the Court's approval of that settlement.

K. In addition to the Citigroup Settlement, Lead Plaintiff and the Named Plaintiffs achieved settlements with all remaining defendants against whom the WorldCom securities class action was not stayed. These included settlements that Lead Plaintiff and the Named Plaintiffs entered into with all but one of those defendants from March 3, 2005 to March 21, 2005, within weeks and days prior to the start of trial on March 23, 2005. The final settlement was reached with Defendant Arthur Andersen LLP on April 22, 2005, after nearly five weeks of trial, and just days before closing arguments in the trial were to take place. The combined amount of those additional settlements was \$3,553,056,840.

L. On July 6, 2005, Plaintiffs entered into a stipulation of settlement with defendant Bernard Ebbers.

M. In 2002, the Settling Defendants each pleaded guilty to criminal charges arising from the WorldCom investigation, and signed cooperation agreements with the Office of the United States Attorney for the Southern District of New York (the “USAO”). Myers testified at the trial of Bernard Ebbers; Yates was available to do so, but was not called as a witness by the USAO.

N. The Parties have recently completed settlement discussions, which were based, in substantial part, on Lead Plaintiff’s and Lead Counsel’s review of detailed financial information provided by the Settling Defendants. After a thorough review of that financial information, Lead Plaintiff, Named Plaintiffs, Lead Counsel and counsel for the Named Plaintiffs determined that the Settling Defendants do not possess sufficient assets to contribute to a settlement, and, therefore, that it would be detrimental to the Class’ interests to incur the additional time and expense necessary to continue to prosecute the Action against the Settling Defendants. Accordingly, Lead Plaintiff, Named Plaintiffs, Lead Counsel and counsel for the Named Plaintiffs have determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate and in the best interests of the Plaintiffs and the Class Members.

O. While Lead Plaintiff has concluded that the financial situation of the Settling Defendants is, by itself, sufficient to justify a settlement with these defendants without payment to the Class, Lead Plaintiff also has concluded that the extensive cooperation these defendants provided to the USAO weighs in favor of this Settlement.

P. The Parties further agree that neither the Stipulation, the Settlement, nor any of their terms, nor any press release or other statement or report by the Parties or by others concerning the Stipulation, the Settlement, or their terms, shall constitute an admission or finding of wrongful conduct, acts or omissions on the part of any Settling Defendant Releasee (defined in paragraph 1(h) below), or be admissible in any proceeding, including but not limited to arbitrations, for any

purpose whatsoever, and that no Party will offer such materials in any proceeding, other than a proceeding to enforce the terms of the Stipulation and/or Judgment.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Lead Plaintiff and Named Plaintiffs, for themselves and on behalf of the Class Members, and the Settling Defendants that, subject to the approval of the Court and the other conditions set forth herein, the Action shall be settled, compromised and dismissed, on the merits and with prejudice, and that the Released Claims shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth.

Definitions

1. The following capitalized terms, used in this Stipulation, shall have the meanings specified below:

(a) “Authorized Claimant” means any Class Member who submits a claim that is allowed pursuant to the terms of this Stipulation.

(b) “Class” means all persons who purchased or otherwise acquired publicly traded securities of WorldCom during the period between April 29, 1999 and June 25, 2002, inclusive, and who were injured thereby, excluding the defendants in the Action, members of the families of the individual defendants in the Action, any entity in which any defendant in the Action has a controlling interest, officers and directors of WorldCom and its subsidiaries and affiliates, and the legal representatives, heirs, successors or assigns of any such excluded party. *See In re WorldCom, Inc. Securities Litigation*, 219 F.R.D. 267, 174-54 & n.3 (S.D.N.Y. Oct. 24, 2003). The Class includes persons or entities who acquired shares of WorldCom common stock or acquired debt securities of WorldCom by any method, including but not limited to, pursuant to a registration statement, in the secondary market, in exchange for shares of acquired companies

pursuant to a registration statement, or through the exercise of options including options acquired pursuant to employee stock plans, and who were injured thereby. As used in this Paragraph 1(b), “any entity in which any defendant in the Action has a controlling interest” means any entity that itself had a proprietary (*i.e.*, for its own account) interest in WorldCom common stock or debt securities. In the event that any such entity beneficially owned WorldCom common stock or debt securities in a fiduciary capacity or otherwise held WorldCom common stock or debt securities on behalf of third party clients or any employee benefit plans that otherwise fall within the Class, such third party clients and employee benefit plans shall not be excluded from the Class, irrespective of the identity of the entity or person in whose name the WorldCom common stock or debt securities were beneficially owned or otherwise held. For example, WorldCom common stock or debt securities shall not be excluded from the Class to the extent held (i) in a registered or unregistered investment company (including a unit investment trust) for which an entity in which any defendant in the Action has a controlling interest serves as investment manager, investment adviser or depositor; or (ii) (a) in a life insurance company separate account, or (b) in a segment or subaccount of a life insurance company’s general account to the extent associated with insurance contracts under which the insurer’s obligation is determined by the investment return and/or market value of the assets held in such segment or subaccount. A defendant shall be deemed to have a “controlling interest” in an entity if such defendant has a beneficial ownership interest, directly or indirectly, in more than 50% of the total outstanding voting power of any class or classes of capital stock that entitle the holders thereof to vote in the election of members of the Board of Directors of such entity. “Beneficial ownership” shall have the meaning ascribed to such term under Rule 13d-3 of the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

(c) “Class Member” means a member of the Class, who did not submit a timely, signed request for exclusion, or if a request for exclusion was submitted, revoked their prior request for exclusion as allowed by the Court.

(d) “Class Period” means the period beginning April 29, 1999 through June 25, 2002, inclusive.

(e) “WorldCom” means WorldCom, Inc., and its subsidiaries and predecessors.

(f) “Court” means the United States District Court for the Southern District of New York.

(g) “District Court Approval” means the entry of the Judgment.

(h) “Settling Defendant Releasees” means the Settling Defendants, and their family members, heirs, executors, administrators, successors, assigns, present and former attorneys, legal representatives, accountants, insurers, and agents, and any person or entity which is or was related to or affiliated with any Settling Defendant Releasee or in which any Settling Defendant Releasee has or had a controlling interest and the parents, subsidiaries, divisions, affiliates, predecessors, successors, present and former employees, officers and directors, attorneys, accountants, insurers, assigns, and agents of each of them.

(i) “Effective Date” or “Final Approval” means the first business day following the date the Judgment is finally affirmed on appeal and/or is no longer subject to appeal or certiorari, and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired, as further defined in paragraph 6 below.

(j) “Judgment” means the judgment to be entered in the Action pursuant to paragraph 5 below, and containing the bar order provisions set forth in paragraph 23 below.

(k) “Lead Counsel” means the law firms of Barrack, Rodos & Bacine and Bernstein Litowitz Berger & Grossmann LLP.

(l) “Lead Plaintiff” means the New York State Common Retirement Fund.

(m) “Litigation” means the actions filed in or transferred to the Court on and after April 30, 2002, which were consolidated by Orders of the Court of August 15, 2002 and May 28, 2003, and includes this Action (namely, the class action proceedings in the caption of this Stipulation within Master File No. 02 Civ. 3288 (DLC)).

(n) “Named Plaintiffs” means Fresno County Employees Retirement Association, the County of Fresno, California, and HGK Asset Management, Inc.

(o) “Parties” means Plaintiffs and the Settling Defendants.

(p) “Person” means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(q) “Plaintiff Releasees” means the Lead Plaintiff, Named Plaintiffs and all other Class Members, and their respective present and former parents, subsidiaries, divisions and affiliates, the present and former employees, officers and directors of each of them, the present and former attorneys, accountants, insurers, and agents of each of them, and the predecessors, heirs, successors and assigns of each, and any person or entity in which any Plaintiff Releasee has or had a controlling interest or which is or was related to or affiliated with any Plaintiff Releasee.

(r) “Preliminary Approval Order” means the Order that Lead Plaintiff and the Settling Defendants will seek from the Court, as described in paragraph 4 below. Entry of a “Preliminary Approval Order” shall constitute “Preliminary Approval” of the Settlement.

(s) “Previously Settling Defendants,” for purposes of this Stipulation, means each and all of the defendants, as identified in the Corrected First Amended Class Action Complaint filed by Lead Plaintiff on December 1, 2003, and not previously dismissed, other than (i) the Settling Defendants and (ii) former WorldCom Officer Scott Sullivan (the “Remaining Individual Defendant”).

(t) “Released Claims” means:

(i) with respect to the Settling Defendant Releasees, the release by Lead Plaintiff, the Named Plaintiffs and all Class Members of all claims and causes of action of every nature and description, known and unknown, whether under federal, state, common or foreign law, whether brought directly or derivatively, based upon, arising out of, or relating in any way to investments (including, but not limited to, purchases, sales, exercises, and decisions to hold) in securities issued by WorldCom, including without limitation all claims arising out of or relating to any disclosures, public filings, registration statements or other statements by WorldCom or the Settling Defendants, as well as all claims asserted by or that could have been asserted by Plaintiffs or any member of the Class in the Action against the Settling Defendant Releasees. Provided, however, that the “Released Claims” described in this paragraph do not operate to preclude any Class Member or Authorized Claimant from making any claim with respect to any funds made available as a result of the WorldCom bankruptcy, WorldCom’s settlement with the Securities and Exchange Commission, or any other regulatory agency fund.

(ii) with respect to Lead Plaintiff, the Named Plaintiffs, and all other Class Members, the release by the Settling Defendants of the Plaintiff Releasees, from any claims relating to the institution or prosecution of this Action.

(u) “Released Parties” means:

(i) with respect to the Settling Defendants, the Settling Defendant Releasees. The Releasees shall not include any Previously Settling Defendant or the Remaining Individual Defendant, as defined in paragraph 1(s) above.

(ii) with respect to Plaintiffs, the Plaintiff Releasees.

(v) “Settlement” means the settlement of the Action between and among Lead Plaintiff and the Named Plaintiffs, on behalf of themselves and the Class, and the Settling Defendants, as set forth in this Stipulation.

Submission of the Settlement to Court for Approval

2. Lead Plaintiff and the Settling Defendants shall promptly apply to the Court for preliminary approval of the Settlement. The Parties and their counsel shall use their best efforts to obtain final Court approval of the Settlement.

3. The following documents to be agreed upon by the Parties shall be exhibits to this Stipulation and will be submitted to the Court for its consideration along with this Stipulation: [Proposed] Preliminary Approval Order (Exhibit A); and [Proposed] Judgment Approving Settlement and Dismissing Action (the "Judgment") (Exhibit B). The Parties anticipate that, if the Court grants preliminary approval, the Parties will thereafter submit for the Court's approval a proposed summary notice to Class members consistent with the procedures set forth in the Notice of Proposed Settlements dated July 1, 2005, and thereby seek final approval of the Settlement.

4. The Parties shall jointly apply to the Court for entry of the Preliminary Approval Order:

- (a) preliminarily approving the Settlement;
- (b) enjoining pending further order of the Court the prosecution of any action or claims that are subject to the releases, dismissals and bar order contemplated by this Settlement; provided however that nothing in the Judgment shall release the Released Claims against the Settling Defendants of any Persons who submitted a timely, signed request for exclusion and did not submit a valid signed request to revoke a prior request for exclusion as allowed by the Court; and

- (c) enjoining pending further order of the Court the institution and/or prosecution of any claims, cross claims or counterclaims that will ultimately be the subject of a bar order pursuant to this Stipulation, including claims for contribution and/or indemnity.

5. At the Fairness Hearing, the Parties shall jointly request entry of the Judgment:

(a) approving finally the Settlement as fair, reasonable and adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms;

(b) confirming certification of the Class, and finding that each element for certification of the Class is met;

(c) directing that the claims of the Class Members against the Settling Defendants be dismissed without costs and with prejudice, and releasing, as against each of the Released Parties, the Released Claims;

(d) finding that the complaints filed by Lead Plaintiff and the Named Plaintiffs were filed on a good faith basis and that the Parties acted at all times in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure;

(e) permanently barring and enjoining the institution and prosecution, by Lead Plaintiff, the Named Plaintiffs and other Class Members, of any other action against the Settling Defendant Releasees in any court or other forum asserting any Released Claim; provided, however, that nothing in the Judgment shall release the Released Claims against the Settling Defendants of any Persons who submitted a valid signed request for exclusion and did not submit a valid signed request to revoke a prior request for exclusion as allowed by the Court;

(f) dismissing the Action with prejudice as against the Settling Defendants and barring, as against the Settling Defendant Releasees, the Released Claims by the Lead Plaintiff, Named Plaintiffs and all Class Members;

(g) reserving jurisdiction over the Action, including all further proceedings concerning the administration, consummation and enforcement of this Settlement;

(h) permanently barring, enjoining and finally discharging all claims as provided for in paragraphs 10 and 12 of this Stipulation; and

(i) containing such other and further provisions consistent with the terms of this Settlement to which the Parties hereto expressly consent in writing.

Finality/Effective Date

6. Approval of this Stipulation, and the exhibits hereto, including the Judgment, by the Court (and all appellate courts in the event of appeals or certiorari proceedings), without material modification, shall be conditions to the effectiveness of this Stipulation. The Settlement shall become effective on the Effective Date, as defined in paragraph 1(i) above.

Settlement Consideration

7. The Settling Defendants each have delivered a sworn statement of financial condition dated as of May 27, 2005 (Yates) and June 14, 2005 (Myers), which statements have been acknowledged to be satisfactory in form and content to Lead Plaintiff. After a thorough review of such statements of financial condition, Lead Plaintiff, Named Plaintiffs, Lead Counsel and counsel for the Named Plaintiffs have determined that the Settling Defendants do not possess sufficient assets to contribute to a settlement. Accordingly, neither Settling Defendant shall be required to pay, cause to be paid, or transfer any consideration to Lead Plaintiff, for the benefit of the Class, in settlement of the claims against him. However, should a court determine that either of the Settling Defendants made an intentional material misstatement on such financial statements, this Stipulation, with respect to such Settling Defendant, shall be voidable at the discretion of the Class, and, if voided, the parties shall be returned to their status as of the day before the signing of those stipulations. In the event that any intentional material misstatements pertain to a failure to disclose assets of either of the Settling Defendants, the Settling Defendants agree that, subject to

any rights the SEC may have and choose to exercise with respect to disgorgement, forfeiture or other remedies, those assets shall be transferred to Lead Plaintiff, for the benefit of the Class.

Releases and Bar Orders

8. The Released Claims against each and all of the Released Parties shall be released and dismissed with prejudice and on the merits, without costs to any party, upon entry of the Judgment. The releases described in this paragraph do not operate to preclude any Class Member or Authorized Claimant from making any claim with respect to any funds made available as a result of the WorldCom bankruptcy, WorldCom's settlement with the Securities and Exchange Commission, or any other regulatory agency fund. Moreover, nothing in this Stipulation shall release the Released Claims against the Settling Defendants of any Persons who submitted a timely, signed request for exclusion and did not submit a valid request to revoke the prior request for exclusion as allowed by the Court.

9. As of the Effective Date, Lead Plaintiff, Named Plaintiffs, all Class Members and their respective heirs, executors, administrators, successors and assigns, and any persons they represent, agree to release, and by operation of the Judgment shall have released, all Released Claims against the Settling Defendant Releasees.

10. As of the Effective Date, Lead Plaintiff, Named Plaintiffs, all Class Members and their respective heirs, executors, administrators, successors and assigns, and any persons they represent, will be forever barred and enjoined from commencing, instituting or prosecuting the Released Claims or any action or other proceeding against any of the Settling Defendant Releasees with respect to, based on, or arising from the Released Claims.

11. As of the Effective Date, the Settling Defendants agree to release, and by operation of the Judgment shall have released, all Released Claims against the Plaintiff Releasees, and will be forever barred and enjoined from commencing, instituting or prosecuting the Released Claims or

any action or other proceeding against any of the Plaintiff Releasees with respect to, based on, or arising from the Released Claims.

12. The Judgment shall, as a condition for the Settlement, permanently bar, enjoin and restrain all of the other defendants in the Litigation from (i) commencing, prosecuting, or asserting any claim for indemnity or contribution against the Settling Defendant Releasees or any other claim against the Settling Defendant Releasees where the injury to the entity/individual is the entity's/individual's actual or threatened liability to the Lead Plaintiff, Named Plaintiffs and other Class Members, arising out of or related to the claims or allegations asserted by Plaintiffs in the Complaint, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Complaint, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere. The Judgment shall further bar the Settling Defendants from commencing, prosecuting, or asserting any claim for indemnity or contribution against the other defendants in the Litigation or any other claim against the other defendants where the injury to the Settling Defendants is the Settling Defendants' actual or threatened liability to the Lead Plaintiff, Named Plaintiffs and other Class Members.

13. The Judgment shall also provide that the Remaining Individual Defendant shall be entitled to a judgment credit for each claim for which contribution would be sought, in an amount equal to each Settling Defendants' proportionate share of fault as determined at trial. However, this Settlement and entry of the Judgment are expressly conditioned on final approval of all other settlements that Lead Plaintiff reached with each of the Previously Settling Defendants prior to the date of this Stipulation. If such condition is not fulfilled, Lead Plaintiff shall immediately at that

time – notwithstanding whether District Court Approval or Final Approval has been given to this Settlement – have the right to unilaterally terminate this Stipulation and Settlement.

Effect of Disapproval, Cancellation or Termination of Agreement

14. If the Court fails to enter the Preliminary Approval Order, does not enter the Judgment substantially in the form provided for herein, or enters the Judgment and appellate review is sought and on such review, the entry of Judgment is vacated, materially and adversely modified, or reversed, then this Stipulation shall be cancelled and terminated, unless all parties who are adversely affected thereby, in their sole discretion within thirty days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the settlement under the terms of the Judgment as it may be modified by the Court. Such notice may be provided on behalf of Lead Plaintiff and the Class Members by Lead Counsel. No Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein. If any party hereto engages in a material breach of the terms hereof, any other party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this agreement on notice to the breaching party or sue for enforcement.

15. In the event this Stipulation is terminated or cancelled or fails to become effective for any reason, the Parties to this Stipulation shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action, as of the date and time immediately before the execution of this Stipulation and they shall proceed in all respects as if this Stipulation and related orders had not been executed and without prejudice in any way from the negotiation, fact or terms of this Settlement.

Miscellaneous Provisions

16. All of the Exhibits referred to herein to be agreed to by the Parties shall be incorporated by reference as though fully set forth herein.

17. The Settling Defendants have provided certain sworn financial disclosures to Lead Plaintiff. The financial disclosures have been designated and maintained as confidential, shall remain confidential, and shall be returned to Counsel for the Settling Defendants, together with all copies thereof, within 120 days after the later of (a) the Effective Date, or (b) the termination of this Stipulation as provided in paragraph 15 hereof.

18. It is expressly understood that the Lead Plaintiff's agreement to accept no payment from either of the Settling Defendants in consideration for this Stipulation and Settlement is based on the understanding that their financial condition was as stated as of the dates of the financial statements and other financial information provided to Lead Plaintiff.

19. This Stipulation may be amended or modified only by a written instrument signed by counsel for all parties hereto or their successors-in-interest.

20. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used or offered as an admission or evidence of the validity of any Released Claim or of any wrongdoing or liability of the Settling Defendants; or (ii) is or may be deemed to be or may be used or offered as an admission or evidence of any fault or omission of the Settling Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce the Stipulation, the Settlement or the Judgment.

21. The Parties intend the Settlement to be, *inter alia*, a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Settling Defendant Releasees with respect to the Released Claims. Accordingly, all Parties agree not to assert any claim under Rule 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation,

against any Party with respect to alleging that the Action was brought or conducted in bad faith or without a reasonable basis. The Parties agree that the terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

22. In recognition of the understanding stated in paragraph 17 hereto, the Parties agree that the Settlement set forth herein constitutes a fair, reasonable and adequate resolution of the claims that Plaintiffs asserted against the Settling Defendants, and that it promotes the public interest. The Parties further agree that unless ordered by the Court, they will not publicize, disseminate, refer to, or otherwise distribute to any third party any information regarding the negotiations between the Parties, or any information or documents they have obtained from the other side in connection with the Litigation, whether the information was obtained through document or other written discovery, or through depositions, or otherwise.

23. To the extent permitted by law, all agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

24. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

25. This Stipulation and the contemplated exhibits constitute the entire agreement among the Parties, and no representations, warranties or inducements have been made to any party concerning this Stipulation or its exhibits, other than the representations, warranties and covenants contained and memorialized in such documents.

26. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that

counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts.

27. The parties hereto and their respective counsel of record agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Stipulation.

28. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of his or her clients.

29. This Stipulation shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto, including any and all Released Parties and any corporation, partnership, or other entity into or with which any party hereto may merge, consolidate or reorganize.

30. Notices required by this Stipulation shall be submitted either by any form of overnight mail or in person to:

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
Max W. Berger
John P. Coffey
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31. This Stipulation shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles, to the extent that federal law does not apply. Any action based on this Stipulation or to enforce any of its terms shall be venued in the United States District Court for the Southern District of New York, which shall retain jurisdiction over all such disputes. All parties to this Stipulation shall be subject to the jurisdiction of the United States District Court for the Southern District of New York for all purposes related to this Stipulation.

Dated: July 26, 2005

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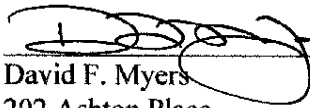
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