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. 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	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF FINAL APPROVAL OF SETTLEMENTS WITH THE REMAINING DEFENDANTS, LEAD PLAINTIFF'S PLANS OF ALLOCATION, LEAD PLAINTIFF'S SUPPLEMENTAL PLAN OF ALLOCATION, AND AWARDS OF ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff New York State Common Retirement Fund ("NYSCRF"), Named Plaintiffs Fresno, FCERA and HGK, and Lead Counsel, respectfully submit this reply memorandum of law in further support of the motions for final approval of the Settlements between the Class and the remaining Defendants, the Plans of Allocation associated with the settlements, the Supplemental Plan of Allocation (as modified with certain suggestions herein), and Lead Counsel's fee and expense applications.[1]

PRELIMINARY STATEMENT

Beginning on June 28, 2005, the Notice of Proposed Settlements of Class Action with Settling Defendants and Bar Order Notice ("Notice") and the Supplemental Plan of Allocation ("Supplemental Plan") were mailed to the more than 800,000 Class members (or their representatives) who had already submitted proof of claim forms, and the Notice and Summary of Supplemental Plan of Allocation were mailed to approximately 3.5 million other potential Class members. Garr Aff. (Exhibit 2 to Joint Decl.) ¶¶ 5, 7. Summary Notices were published in *The Wall Street Journal* and *The New York Times*, and over the PR Newswire and Bloomberg News on July 6-8, 2005. *Id.* ¶ 9.

On August 2, 3 and 4, 2005, a separate Notice of Proposed Settlements with Former WorldCom Executive Defendants ("Executive Defendant Notice") was published in *The Wall*

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[1] Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Stipulations with the various Settling Defendants, Lead Plaintiff's Memorandum of Law in Support of Final Approval of Settlements with the Settling Defendants, the Plans of Allocation and Supplemental Plan of Allocation, filed July 29, 2005 ("Lead Plaintiff's Initial Mem."), Lead Counsel's Memorandum of Law in Support of Awards of Attorney's Fees and Reimbursement of Expenses, filed July 29, 2005 ("Lead Counsel's Initial Mem."), and the Declaration of Jeffrey W. Golan and John P. Coffey in Support of Final Approval of Settlements with the Settling Defendants, Lead Plaintiff's Proposed Plans of Allocation and Supplemental Plan of Allocation, and Awards of Attorney's Fees and Reimbursement of Expenses, filed July 29, 2005 (the "Joint Decl."). We are submitting concurrently herewith a Supplemental Declaration of Jeffrey W. Golan and John P. Coffey in Further Support of Final Approval of Settlements with the Settling Defendants, Lead Plaintiff's Proposed Plans of Allocation and Supplemental Plan of Allocation, and Awards of Attorney's Fees and Reimbursement of Expenses (the "Supplemental Declaration" of "Supp. Decl."). The Supplemental Declaration includes a Supplemental Affidavit of Shandarese Garr ("Garr Supp. Aff.").

Street Journal and *The New York Times*, and over the PR Newswire and Bloomberg News. *See* Garr Supp. Aff. (Exhibit A to Supp. Decl.) ¶ 3.

The Notice informed Class members that any objections to (i) the Settlements with the Underwriter Defendants, Director Defendants and Andersen, (ii) the Plans of Allocation associated therewith, the (iii) Supplemental Plan and (iv) Lead Counsel's fee and expense applications were required to be filed and served for receipt by one of the Lead Counsel by August 12, 2005. The Executive Settlement Notice informed Class members that any objections to the Executive Settlements or the Plans of Allocation associated with the Ebbers and Sullivan Settlements were required to be filed and served for receipt by one of the Lead Counsel by August 26, 2005.

There have been only ten objections by Class members in response to these Notices. This stands in stark contrast to the more than eight hundred thousand members of the Class who had filed proof of claim forms by mid-July 2005, seeking a distribution from the Citigroup Settlement previously approved by the Court and the present Settlements. *See* Garr Aff. (Exhibit 2 to Joint Decl.) ¶ 12. Indeed, as of the August 26, 2005 deadline for the submission of claims, the Administrator had received more than 830,000 proofs of claim forms. *See* Garr Supp. Aff. ¶ 6. The reaction of the Class to the above applications thus has been overwhelmingly positive, and underscores the broad approval by Class members of the settlements achieved by Lead Plaintiff for the benefit of the Class, the Plans of Allocation associated therewith, the Supplemental Plan, and Lead Counsel's fee and expense applications.

Notably, there are no objections whatsoever by Class members to the amounts of any of the proposed Settlements or to the Plans of Allocation associated with the Settlements. There is

only one objection made by any Class member with purchases of bonds from the May 2000 or May 2001 Offerings, and that objection is limited to certain provisions in the Supplemental Plan.

- Six objectors (three, including the sole bond purchaser objector, filed formal objections, and three sent letters or emails to voice their objections) raise issues stemming from disagreements with the proposed Supplemental Plan.

- One objector, who has been barred from prosecuting claims that she raised in a separate NASD proceeding, asserts arguments that actually relate to the Citigroup Settlement and the August 2, 2004 Notice of that Settlement.

- One objector, who brought a separate putative class action on behalf of holders of WorldCom's MCI Tracking stock against Ebbers, Sullivan and nine of the Director Defendants, objects to the scope of the releases in the Settlements with those Defendants.

- One objects only to the proof of claim form.[2]

- And one objector who purchased only WorldCom stock and, therefore, is not even a potential beneficiary of the Underwriter Settlements, raises a scattershot of arguments relating to the class definition; the notices issued in this case; alleged "intraclass conflicts"; the breadth of the release; and the fee and expense applications.[3]

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[2] Lead Counsel wrote directly to Charles Lee Thomason, who served this objection, to advise him of how to proceed in terms of submitting his proof of claim. *See* Supp. Decl. ¶ 3 and Exhibit B. Lead Plaintiff further responds to this objection in Section V, below.

[3] This objection of Cynthia R. Levin Moulton is the only objection made by any Class member to Lead Counsel's fee and expense applications. Moulton filed her objection notwithstanding that she: (a) claims to have suffered a loss of only $404.02 from the entirety of her transactions in WorldCom stock; and (b) has not submitted a proof of claim. *See* Garr Supp. Aff. ¶ 7. For the reasons stated in Section IV, below, Moulton lacks standing to object to any portion of lead counsel's fee and expense requests, and her arguments against the fee and expense applications are without merit.

Jane B. Selfe also submitted an objection to the fee requests. However, Selfe – whose only transaction in WorldCom Securities consists of the receipt of 100 shares of WorldCom stock in a three-for-two stock split that became effective December 31, 1999 (*see* Objection of Jane B. Selfe at 3) – is not a member of the Class. Moreover, like Moulton, Selfe has not submitted a proof of claim form seeking a distribution from the Settlement Funds. *See* Garr Supp. Aff. ¶ 8. For these reasons, Selfe also lacks standing to object either to the settlements or the fee requests, and her arguments against the fee requests are similarly without merit. *See* Section IV, below.

A non-Class member, Cheryl H. Silverman, wrote a letter to Judge Barbara S. Jones, who presided over the Ebbers criminal trial, and Ms. Wendy Olsen-Clancy, the Victim/Witness Coordinator at the United States Attorney's Office. Ms. Silverman is not a member of the Class, having purchased or acquired all of her WorldCom through the Employee Stock Purchase Plan when she was employed by MCI from 1986 through 1991. Lead Counsel wrote to Ms. Silverman, informing her why the Class in this case was limited to persons who purchased or otherwise acquired WorldCom Securities during the Class Period, and further suggested that she contact counsel for the WorldCom ERISA class action to ascertain if she might be eligible to participate in the recovery achieved in that case. *See* Supp. Decl. ¶ 4 and Exhibit C.

As demonstrated below, none of the objections should cause this Court to withhold final approval of the Settlements, the Plans of Allocation, the Supplemental Plan of Allocation (with certain modifications as proposed for the Court's consideration herein) or Lead Counsel's fee and expense applications.

A summary of the objections, which Lead Plaintiff will address in greater detail below, follows:

> **Kenneth D. Laub** – Laub's objection centers on the provision in the Supplemental Plan that precludes Class members who sold their WorldCom Securities before January 29, 2002 (the first partial disclosure claimed by Plaintiffs) from receiving a distribution from the Settlement Funds. Laub argues that: (a) none of the earlier notices disclosed that persons who sold their WorldCom Securities during the Class Period might not be able to recover under the Supplemental Plan to be submitted by Lead Plaintiff; (b) Lead Plaintiff's loss causation analysis is contradicted by allegations in the Complaint and legal authority in the Second Circuit (including a decision that post-dates *Dura Pharmaceuticals, Inc. v. Broudo*, ___ U.S. ___, 125 S. Ct. 1627 (April 19, 2005)); and (c) unless the Supplemental Plan is modified in this regard, such Class members who previously determined to remain in the Class should be granted an additional opportunity to opt out of the Class.
>
> The objection attaches a copy of the proof of claim form Laub submitted in January 2005, which identifies his purchases of WorldCom stock between May 14, 1999 and January 3, 2000 (for an overall cost of $59.2 million), and his sales of WorldCom stock in its entirety between June 7, 1999 and January 11, 2000 (for overall proceeds of $54.2 million), for an overall claimed loss of just over $5 million.[4]
>
> **W. Caffey Norman, III** – Norman, who in his position as the plaintiff and proposed class representative for a class of people who invested in Salomon Smith Barney's Guided Portfolio Management ("GPM") program had objected to, and thereafter appealed from, the release included in the Citigroup Settlement, objects to the Supplemental Plan (a) for not providing a distribution to persons who sold before January 29, 2002 (similar to the objection raised by Objectors Laub, Kolko, Roberts and Baxter), and (b) on the ground that there should be a separate $50 million set-aside fund for Class members who were GPM account holders.

[4] Three other Class members (**Larry Kolko, Tom Roberts and Dennis Baxter**), who purchased WorldCom stock during the Class Period and sold some or all of it before January 29, 2002, have written to the Court or otherwise communicated their disagreement with the Supplemental Plan on the same basis. While such letters do not conform to the requirements for filing objections pursuant to the Notice, Lead Plaintiff responds in Section I, below, to the points made in all objections to the Supplemental Plan.

The objection states that in December 1999, Salomon sold the WorldCom shares that Salomon had earlier purchased for Norman. Norman Obj. at 1 n.1. At that time, WorldCom stock was trading in the range of $50 to $54 per share. *See* Supplemental Plan, Table A at 1. The Citigroup Defendants have informed Lead Counsel that there was only one purchase of WorldCom stock in Norman's account, and that Norman lost just $894 in connection with this single purchase and sale of WorldCom stock. Supp. Decl. ¶ 6.

Cerberus Partners, L.P. et al. – Cerberus raises four issues, all relating to the Supplemental Plan: (a) the Supplemental Plan should be clarified to ensure that profits achieved from post-Class Period purchases of WorldCom Securities are not netted from losses incurred from Class Period purchases; (b) the "disposition price" for WorldCom bonds held through the bankruptcy proceedings should not be $357 per $1,000 face amount of bonds if a Class member elected to accept new MCI stock rather than cash in the bankruptcy proceeding because, according to Cerberus, at the time of disposition, the stock was worth only $255 per $1,000 face amount of bonds; (c) the Supplemental Plan does not include a chart for assessing claims relating to purchases of Intermedia 13.5% preferred stock; and (d) the Supplemental Plan further does not provide a mechanism for a Class member to dispute the Administrator's calculation of that Class member's Recognized Claim Amount.[5]

Roslyn Berger – Berger, who at the time of her objection was the subject of an application by the Citigroup Defendants for enforcement of the Judgment approving the Citigroup Settlement and dismissing the claims Berger filed against certain Citigroup Releasees in a separate NASD proceeding (*see* Order of July 20, 2005), and who has since been barred from pursuing such claims (*see* Order of August 26, 2005), filed an "Objection to the WorldCom Class Action Settlement," which is actually directed to the settlement with the Citigroup Defendants. Berger objects to the class definition, the lack of another opportunity to opt out of the Class, and the failures of the plan of allocation approved in connection with the Citigroup Settlement and the Supplemental Plan to provide for payments for purchases of WorldCom Securities before the Class Period.

Richard F. Reynolds – Reynolds, who has a separate putative class action brought on behalf of holders of WorldCom's MCI Tracking stock as of June 30, 2002, to recover for a dividend that was declared on March 6, 2002 but not paid by WorldCom, objects to the release of such claims (presumably as they pertain to the defendants in his case, which include nine of the Director Defendants, Ebbers and Sullivan) by Class members, and further objects to the proposed bar order with respect to the Insurers.

Cynthia R. Levin Moulton – Moulton, a lawyer who is being represented by her law partner on this objection, purchased and sold all of her WorldCom stock by January 21, 2001 and incurred a total loss of just $404.02 on her transactions. Moulton, who has not

[5] This Objector was originally represented by lawyers at Lowenstein Sandler PC, which firm has served throughout the course of this case as bankruptcy counsel for Lead Plaintiff and the Class. However, in a proposed Consent Order on Substitution of Counsel, Cerberus has sought to withdraw Lowenstein Sandler and to have counsel from another firm substituted as its counsel.

even filed a proof of claim form, asserts a host of objections and arguments, including that: (a) the class definition, which identifies Class members as persons with purchases of WorldCom securities during the Class Period and who "were injured thereby," is improperly vague and subjective; (b) there are "intraclass conflicts" between bond purchasers and share purchasers; (c) the releases are overbroad, as they release claims not asserted in the Complaint and against persons and entities affiliated with the Settling Defendants; (d) the Court should require production of counsel's underlying time records and expense vouchers; (e) the fee request is excessive because it fails to reflect a "declining percentage" compared to the fee awarded in connection with the Citigroup Settlement; and (f) the expense request is excessive.[6]

As we show below, none of the Objections raises any valid reason for the Court to withhold approval of the Settlements, the Plans of Allocation associated therewith, or the fee and expense applications. There is similarly no valid basis for this Court allowing any Class member an additional opportunity to opt out of the Class.

With respect to the Supplemental Plan, Lead Plaintiff and Lead Counsel believe that the Supplemental Plan, as originally submitted, is fair and reasonable and that it accurately reflects the law governing loss causation. In light of the several objections that the Supplemental Plan should have allocated some of the Settlement Funds to Class members who sold before January 29, 2002 (the first partial corrective disclosure that, in Lead Plaintiff's view, affected the market price of WorldCom Securities), however, Lead Plaintiff and Lead Counsel propose for the Court's consideration an alternative that Lead Plaintiff and Lead Counsel believe is also fair and reasonable, and that would allow each Class member who timely filed a valid proof of claim form to participate in some manner in the distribution of the Settlement Funds. As a result, Lead Plaintiff and Lead Counsel propose for the Court's consideration a modification to the Supplemental Plan for Class members who sold their WorldCom Securities before January 29, 2002 that would allow such Class members to participate in the distribution of the Settlement

[6] Moulton has further served a "First Set of Requests for Production to Plaintiffs' Counsel," with a return date of September 12, 2005. Lead Counsel is preparing a response to the putative document request, and addresses the document request, along with Moulton's other arguments, in Section IV of this Reply Memorandum.

Funds, with their Recognized Amount for WorldCom Securities sold before January 29, 2002 being calculated at 10% of the Recognized Amount otherwise calculated based on their dates of purchases.[7]

ARGUMENT

I. Responses to Objections Relating to Supplemental Plan of Allocation

Only six Class members – Laub, Norman, Kolko, Roberts, Baxter and Cerberus – raised objections to the Supplemental Plan. Notably, not one of these Objectors objected to: (i) the calculations of Recognized Amounts for purchasers of the May 2000 and May 2001 bonds (the "Bond Offerings"); (ii) the calculations of Recognized Amounts for purchasers of WorldCom stock and other publicly-traded securities; (iii) the charts showing the day-by-day inflation calculations, which start with relatively smaller inflation percentages during the first quarters of the Class Period and gradually increase over time until the percentage inflation in the market prices of the non-Bond Offering WorldCom Securities reaches almost 100% in the fourth quarter of 2001; or (iv) the mechanism of how the Net Settlement Funds are to be divided into component parts.

The five objectors to the Supplemental Plan other than Cerberus center their objections on the provision in the Supplemental Plan that would have barred any recovery for Class members who sold WorldCom Securities before the first partial disclosure alleged by Lead Plaintiff as having occurred on January 29, 2002.[8] Lead Plaintiff, the Named Plaintiffs and Lead

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[7] The Court reserved the right to modify the Supplemental Plan without further notice to the Class. *See* Supplemental Plan ¶ 4.

[8] The Supplemental Plan ¶ 17 provided:

> **No Recovery for WorldCom Securities Sold or Redeemed On or Before January 28, 2002.** For any WorldCom Security that was sold or redeemed on or before January 28, 2002, the Recognized Amount is $0. Only investors who can show their loss was caused by the defendants' alleged misrepresentations or material omissions are entitled to recover in a federal securities law

Counsel believe that this provision is an accurate reflection of the law governing loss causation, as enunciated in the Supreme Court's decision in *Dura Pharmaceuticals, Inc. v. Broudo*, 125 S. Ct. 1627, 1631-32 (April 19, 2005), and the Second Circuit's decision in *Emergent Capital Investment Managements, LLC v. Stonepath Group, Inc.,* 343 F.3d 189, 198 (2d Cir. 2003). However, after taking into consideration the totality of arguments included in the objections, Lead Plaintiff and Lead Counsel propose for the Court's consideration an alternative which provides some recovery – albeit a limited recovery – to Class members who sold all or a portion of their WorldCom Securities before January 29, 2002.[9]

For reasons more fully described below, Lead Plaintiff and Lead Counsel are proposing for the Court's consideration a modification of the Supplemental Plan which provides that the claims of Class members who purchased and sold WorldCom Securities before January 29, 2002, be allowed by the Court, but that such claims be accorded 10% of the Recognized Amount which would otherwise be calculated for them under the Supplemental Plan and the Charts attached in Sections A through F. Such a modification recognizes, among other things, that: (a) on the one hand, such Class members may have formed an expectation that their claims would be compensated in some manner through the Supplemental Plan, and there had been no actual

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> case. Here, the first alleged partial disclosure of the prior misrepresentations in WorldCom's financial statements occurred on January 29, 2002. Therefore, the first decline in the price of WorldCom Securities that could be said to be caused by public disclosure of the misrepresentations was a decline on and after January 29, 2002. As a result, investors who purchased WorldCom Securities during the Class Period but sold those securities before January 29, 2002, are not entitled as a matter of law to collect damages. It is for this reason that this Supplemental Plan of Allocation provides that investors who sold their WorldCom Securities before January 29, 2002 do not have a claim compensable from the Settlement Funds.

While applicable to all WorldCom Securities, this provision had no practical impact on purchasers of WorldCom bonds, since it was not until after January 28, 2002, that the prices of those bonds fell below par value.

[9] All aspects of settlement approval, including the plan of allocation, rest in the sound discretion of the trial court. *See, e.g., In re Ivan F. Boesky Sec. Litig.*, 948 F.2d 1358, 1368 (2d Cir. 1991). A plan of allocation need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *See In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004); *accord In re RJR Nabisco, Inc. Sec. Litig.*, 1992 U.S. Dist. LEXIS 12702, *12-13 (S.D.N.Y. Aug. 24, 1992).

dismissal of their claims at the time of the Settlements; and (b) on the other hand, the claims of such Class members bear a substantially greater risk of non-recovery than claims of Class members who retained their WorldCom Securities until after the date of the first partial disclosure, these Class members sold their WorldCom Securities at higher prices than those who retained or sold their WorldCom Securities after January 29, 2002, and pre-January 29, 2002 sales were made when the artificial inflation in the market prices for WorldCom Securities as a result of the fraud was increasing so that, in a sense, those who sold before January 29, 2002 could be said to have benefited from the fraud.

As further described below, Lead Plaintiff proposes a second modification of the Supplemental Plan, after review of an issue raised in the Cerberus objection concerning its purchases of Intermedia 13.5% preferred stock during the Class Period.

A. Class Members Who Sold Their WorldCom Securities Before January 29, 2002 Are Not Entitled to the Same Recovery as Class Members Who Held After January 29, 2002

Paragraph 17 of the Supplemental Plan, as originally submitted, would bar distributions to Class members who sold their WorldCom Securities before January 29, 2002, the date of the first partial disclosure alleged in the Complaint. Laub, Norman, Kolko, Roberts and Baxter – each of whom purchased WorldCom stock, but not bonds – objected to this provision of the Supplemental Plan. Certain of the objectors sought to contradict Lead Plaintiff's interpretation of the law of loss causation, while others cited to the losses they incurred in their WorldCom stock transactions and their expectation that they would be entitled to some recovery from the case.

Notwithstanding Lead Plaintiff's and Lead Counsel's belief that the provision in paragraph 17 of the Supplemental Plan is an accurate reflection of the law governing loss

causation, in view of the totality of the objections, Lead Plaintiff's recognition that the claims of such Class members had not been actually dismissed from the case and that Class members generally may have expected that they would receive some distribution from the Settlement Funds if they timely filed proof of claim forms demonstrating a loss from Class Period transactions in WorldCom Securities, Lead Plaintiff and Lead Counsel propose for the Court's consideration that some limited recovery for such Class members is fair and reasonable, and will allow all Class members with losses stemming from their transactions in WorldCom Securities (and who filed timely proof of claim forms) to participate in the distribution of the Settlement Funds. However, the distributions to Class members should not be on a par with distributions to Class members who purchased and retained their WorldCom Securities past the date of the first partial disclosure.

Indeed, under the standards in this Circuit – as recently confirmed as the proper standards nationwide by the Supreme Court in *Dura* – it would likely be the case that only investors who purchased WorldCom Securities during the Class Period and retained those securities until January 29, 2002 (the date when questions were first raised publicly as to the propriety of WorldCom's financial reporting), could satisfy the loss causation elements of a federal securities law claim. Second Circuit precedent sets forth two requirements in establishing loss causation: (1) the loss must be foreseeable (there must be a concealment of a risk); and (2) the loss must be caused by materialization of the concealed risk. *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161 (2d Cir. 2005); *Emergent Capital*, 343 F.3d at 198-99. Here, while it is conceivable that a Class member might have been able to point to some earlier statement or disclosure as a "materialization" of the concealed risk of the many misrepresentations and omissions pled in this case, the case as presented by Lead Plaintiff through summary judgment proceedings and at trial

against Andersen pointed to nothing before January 29, 2002, that could be construed as a partial disclosure (*i.e.*, a materialization of the concealed risk) of the material misrepresentations and omissions pled in the Corrected First Amended Class Action Complaint.

Judge Scheindlin's recent opinion in in *In re Initial Pub. Offering Sec. Litig.*, 2005 U.S. Dist. LEXIS 12845 (S.D.N.Y. June 28, 2005), provides a thorough analysis of the evolution of the loss causation standard in this Circuit. Judge Scheindlin examined Second Circuit loss causation precedent chronologically, beginning with *Manufacturers Hanover Trust Co. v. Drysdale Sec. Corp.*, 801 F.2d 13 (2d Cir. 1986), and *Weiss v. Wittcoff*, 966 F.2d 109 (2d Cir. 1992). As Judge Scheindlin notes, both cases "involved a concealment of negative information which caused the plaintiff's loss when the concealed information eventually caused the transaction to fail." *IPO*, 2005 U.S. Dist. LEXIS 12845, at *20.

Judge Scheindlin then moved to the Second Circuit's holding in *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763 (2d Cir. 1994), which provided that, to adequately allege loss causation, a plaintiff must "allege a material misstatement (*i.e.*, concealment of a risk), and that misstatement must be the cause of plaintiff's loss (*i.e.*, the risk must materialize)." *IPO*, 2005 U.S. Dist. LEXIS 12845 at *21. Judge Scheindlin further examined *Suez Equity Investors, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87 (2d Cir. 2001), *Emergent Capital*, and, ultimately, *Lentell*. As Judge Scheindlin noted, and as was acknowledged by the Second Circuit in *Emergent Capital* and thereafter in *Lentell*, the analysis of loss causation in *Suez Equity* was incomplete, and "the *Emergent Capital* court applied the earlier standard of concealment of a risk and materialization of that risk without an explicit acknowledgment." *Id*. at 24. *Lentell* has ultimately shown that the "Second Circuit 'require[s] both that the loss be foreseeable *and* that

the loss be caused by the materialization of the concealed risk.'" *Id*. (quoting *Lentell*, 396 F.3d at 173).

Laub, who is the only Objector who takes issue with the loss causation presentation in the Supplemental Plan, bases his argument on a portion of the decision in *In re Parmalat Securities Litig.*, 2005 U.S. Dist. LEXIS 12553 (S.D.N.Y. June 28, 2005). However, an examination of the *Parmalat* decision reveals its consistency with earlier Second Circuit precedent. Parmalat, an Italian dairy conglomerate, attempted to expand its operations into South America, a venture which ultimately resulted in the company losing hundreds of millions of dollars a year. *Id.* at *4. To mask these difficulties, Parmalat "concocted a scheme involving misleading transactions and off-shore entities that created the appearance of financial health." *Id*. However, as stated in the decision, by the end of 2003:

> the scheme became unsustainable, and Parmalat had a liquidity crisis. The collapse was rapid. In early December, Parmalat could not pay certain maturing bonds. By December 11, the company's stock had lost half its value.

Id. at *7.

While it is clear that Parmalat did not disclose the risk that ultimately led to its insolvency, according to the *Parmalat* decision it was still necessary for plaintiffs to show that the concealed risk actually materialized, thereby resulting in plaintiffs' loss. Indeed, before finding that plaintiffs in *Parmalat* had satisfied the loss causation standard, Judge Kaplan found:

> Among the risks concealed by these reports was that Parmalat had massive undisclosed debt and was unable to service it. Defendants reasonably could have foreseen that Parmalat's inability to service its debt would lead to a financial collapse. The concealed risk materialized when Parmalat suffered a liquidity crisis on December 8, 2003 and was unable to pay bonds as they came due.

Id. at *77-78.

This passage, read in conjunction with Second Circuit precedent, demonstrates that based on the facts pled in the complaint, the "corrective disclosure" or "materialization" prong of the loss causation test could be satisfied where the concealed risk materializes without a company's explicit issuance of a corrective disclosure. Instead, materialization may be satisfied when the concealed risk is exposed through natural economic forces, as was the case in *Parmalat*. Here, such a showing would have been extremely doubtful before the January 29, 2002 articles cited by Lead Plaintiff as constituting the first partial disclosure. As a result, it is doubtful that Class members who sold before January 29, 2002 would be entitled to a recovery and, at the least, they are surely not entitled to the same type of recovery as those who sold after January 29, 2002.[10]

There are additional reasons why Class members who sold before January 29, 2002 should not recover from the Settlement Funds at the same rate as those who held after that date.

First, such Class members were able to sell their WorldCom Securities for much more than purchasers who held until and past the January 29, 2002 disclosure. The Laub and Norman Objections provide concrete examples of this.

All of Laub's transactions in WorldCom common stock occurred between May 14, 1999, and January 11, 2000, when Laub sold his last 100,000 shares. On all the days on which Laub *sold* his WorldCom stock, the lowest split-adjusted closing price was $42.563 (January 11, 2000). *See* Supplemental Plan, Chart A. Many of Laub's sales occurred on days when the split-adjusted closing price of WorldCom common stock was over $50.00. Similarly, all of Norman's shares of WorldCom stock were sold by December 1999, when the split-adjusted closing price

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[10] Laub's argument amounts to a contention that, because of the concealed fraud at WorldCom, Class members purchased WorldCom stock at inflated prices and, therefore, suffered damages, notwithstanding that they may have sold their WorldCom securities prior to January 29, 2002. Such an assertion, however, does not by itself satisfy the loss causation element for a Section 10(b) claim. *See Dura*, 125 S. Ct. at 1630; *see also IPO*, 2005 U.S. Dist. LEXIS 12845 at *24, n.50 (citing *Dura* and noting that "even if *Emergent Capital* had explicitly reaffirmed the standard of *Suez Equity*, which calls only for a disparity between price and investment quality at the time of purchase … the standard would no longer be valid.").

was approximately $50.00. By contrast, those Class members who held WorldCom stock through January 29, 2002, would have received, at most, approximately $10.40 for their shares, while many other Class members ultimately received less than $1.00.

Second, Lead Plaintiff's expert found that the percentage of inflation in the market prices of WorldCom's Securities increased over time and did not begin to diminish until after the January 29, 2002 articles questioning WorldCom's financial reporting. In light of this finding, those Class members who sold prior to January 29, 2002 could be said to have actually benefited from the fraud. Thus, a distribution plan that provides a 10% recovery for such Class members, compared to other Class members who retained their WorldCom Securities on and after January 29, 2002, is fair and reasonable. Such a distribution plan is also consistent with the Notice advising Class members of the Citigroup Settlement, in which Class members were expressly placed on notice that their ultimate payment would depend, at least in part, on when they purchased and sold WorldCom Securities. *See* Citigroup Notice at 1 ("Some Class Members may recover more or less than these amounts [referring to the "average recovery" per share and per $1,000 face amount of bonds] depending on, among other factors, when their shares and bonds were purchased or sold.").

Courts in this District and throughout the country for years have approved plans of allocation that provide a varied apportionment of settlement funds to class members based on the time that class members purchased, sold or held securities, including plans that awarded no compensation to some class members and discounted compensation to other class members. Such an allocation is permissible, where the plan has a reasonable basis. In *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588 (S.D.N.Y. 1992), the court held that such a plan of allocation was reasonable. *Id*. at 596. There, under the plan of allocation,

> most of the proceeds [were] allocated to those who purchased from July 13 to July 30, who have the strongest claim, and the rest to those who purchased after July 30 when news of the FTC lawsuit and other adverse information was already at work in the market.

Id. Therefore, although those who purchased after the disclosure of adverse information did receive something under the plan of allocation, their recovery was significantly below that of those who purchased before the disclosures.

In *In re Sapiens Sec. Litig.*, 1996 U.S. Dist. LEXIS 17644 (S.D.N.Y. 1996), the court approved a plan of allocation as "fair and equitable" where a greater portion of the settlement fund was allocated "to those claimants who sold at a time when the stock price decline could be directly attributed to revelation of facts that the plaintiffs claim the defendants had misrepresented or failed to disclose." *Id.* at *6-7. The court further noted that lower recoveries were appropriate for those who sold their shares when the prices of Sapiens stock were higher. *Id.* at *7.

In *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418 (S.D.N.Y. 2001), the court approved a plan of allocation as fair and reasonable, specifically noting that "[a]llocation formulas, including certain discounts for certain securities, are recognized as an appropriate means to reflect the comparative strengths and values of different categories of the claim." *Id.* at 429. The court emphasized that "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel." *Id*. at 429-30.

In *In re Charter Comm., Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 14772 (E.D. Mo. June 30, 2005), which was decided after the decision in *Dura*, class members challenged the plan of allocation believing that they were being treated unfairly in only receiving "modest compensation" from the settlement. *Id.,* 2005 U.S. Dist. LEXIS 14772 at *28. The district court,

citing *Dura*, noted that "[t]he federal securities laws limit damages to those losses that can be causally linked to the fraud, not simply the loss of investment value," *id*. at *29, and held, in approving the proposed plan of allocation, that "the timing of purchases and sales of the securities at issue" is an entirely appropriate consideration in formulating interclass allocations. *Id*. at *33.

In *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000), the court approved a plan of allocation that reimbursed claimants at various percentages for their defined losses based largely on when they bought and sold stock. In that case, some class members received only 10% of their calculated loss based on their difficulty in proving loss causation. *Id*. The court held that each distinction between class members in the plan was "reasonable and accurately reflect[ed] the different risks and harms experienced by individuals who acquired Ikon stocks at different times in different ways." *Id*. at 184-85. In finding the plan of allocation fair and reasonable, the court stated:

> The plan acknowledges that those who purchased Ikon stock in an inflated market and sold before disclosure of damaging information would have difficulty in proving damages; more difficulty, for example, than those who held their shares after the disclosures.

Id. at 184.

The court in *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654 (E.D. Va. 2001), similarly approved a plan of allocation that awarded a discounted recovery to "in-and-out traders." The court stated:

> …the plan of allocation provides a recovery, albeit at a significant discount, to those who purchased MicroStrategy shares during the class period, but sold those shares prior to the end of the class period. Specifically, the plan of allocation awards such "in-and-out traders" 10% of any loss they sustained through the purchase of MicroStrategy common stock. Although under plaintiffs' theory of the case a correction of defendants' alleged fraud did not occur until March 20, 2000, and these traders did not suffer damages by selling their shares before the

> correction, the plan of allocation's award of a discounted recovery recognizes the possibility that these traders were damaged by certain disclosures made prior to March 20, 2000. Thus, the plan of allocation acknowledges that these traders have weaker claims than do other class members and that these traders' damages claims are susceptible to attack from the MicroStrategy Defendants; nonetheless, the plan appropriately seeks to compensate them for the far lesser damages they potentially sustained because of the MicroStrategy Defendants' alleged fraud.

Id. at 668.[11]

Certain of the Objectors point to the earlier Notices, which they assert did not put Class members on notice that they may not be able to participate in the distribution of the Settlement Funds. In fact, however, the Notices accurately stated that those who chose to remain in the Class would merely be eligible to share in the proceeds of recoveries achieved by Lead Plaintiff, but that the amount of any individual class member's recovery would be based on when their shares were purchased or sold. The Notice of Class Action, dated December 11, 2003, stated:

> [i]n the event any settlement is reached … against any defendant, only persons who do not exclude themselves from the Class at this time will be eligible to participate in the distribution of the settlement … proceeds.

Notice of Class Action at 5. The same concept was reiterated in the Citigroup Notice, dated August 2, 2004. Moreover, the Citigroup Notice stated explicitly that an individual Class

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[11] Three further cases show the range of allocations that courts have found to be fair and reasonable. In *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484 (E.D. Pa. 2003), the court approved a plan of allocation that significantly discounted the recovery for some class members while providing <u>no</u> recovery at all for others. Denying any recovery to some members of the class was predicated on the fact that, for those members, the "estimated inflation per share at the time of purchase was equal to the estimated inflation at the time of sale." *Id.* at 493. In *Maley v. Del Global Technologies Corp.,* 186 F. Supp. 2d 358 (S.D.N.Y. 2002), the approved plan provided for distributions based on 100% of the calculated "Recognized Loss" for class members who retained their stock through the end of the class period and 20% for class members who sold their stock during the class period. Finally, at least one court has approved a plan of allocation that awarded nominal damages to class members who, the court determined, had suffered no actual damages. In *In re Oracle Sec. Litig.*, 1994 U.S. Dist. LEXIS 21593 (N.D. Cal. June 16, 1994), the plan of allocation assessed claims of class members who purchased in seven different time periods according to different percentages of the mean inflation per share, as calculated by plaintiffs' expert, when purchased. The various percentages of recovery were determined by class counsel and based on counsel's assessment of the relative merits of the claims for the various time periods. *Id.* at *4. While noting that, according to plaintiffs' expert, purchasers in the period from September 27, 1990 through March 27, 1991 "did not suffer any damages," the court approved a disbursement of $0.10 per share for these class members representing "nominal damages." *Id.* at *5, n.1.

member's recovery was contingent on when that individual bought and sold WorldCom securities. The Citigroup Notice provided that "[s]ome Class Members may recover more or less than [the average] amounts depending on, among other factors, when their shares … were purchased or sold." Citigroup Notice at 1. The Citigroup Notice further stated: "Only those Class Members who purchased or acquired publicly traded securities of WorldCom during the Class Period and were damaged will be eligible to share in the distribution of the settlement fund." *Id*. at 9 (emphasis added).[12]

The earlier notices to Class members, which were drafted and approved at different stages in the case, and provided detailed information to Class members, did not promise that all Class members would share in any settlement. Nor were they misleading in terms of what types of claims might be compensated, and what types of claims might not be compensation through a supplemental plan of allocation to be submitted later by Lead Plaintiff.

Nevertheless, especially upon review of the letters submitted by Objectors Kolko, Roberts and Baxter, Lead Plaintiff understands that a Class member may have formed the impression that all Class members who submitted timely proof of claim forms that demonstrated a loss from purchases of WorldCom Securities during the Class Period would be able to participate in a distribution of the Settlement Funds. To alleviate any inequity that such an impression may have caused – and recognizing that the claims of such Class members had not actually been dismissed at the time of the Settlements and the possibility that a Class member might have been able to point to another statement, made during the Class Period, which conceivably could have been seen as a partial disclosure before the January 29, 2002 articles

[12] The Special Notice to those who previously requested exclusion from the Class, dated August 2, 2004, which Objector Laub cites, similarly said that only members of the Class would be eligible to share in any recovery. *See* Special Notice at 1-2; *see also In re WorldCom Sec. Litig.*, 2004 WL 2591402, at *12-13 (S.D.N.Y. Nov. 12, 2004) (noting that "[t]he recovery of individual class members will depend on when class members purchased and sold WorldCom securities").

cited as the first partial disclosure by Lead Plaintiff and its expert – Lead Plaintiff and Lead Counsel are proposing for the Court's consideration a modification to the Supplemental Plan that would allow such Class members to participate, to a limited extent as described previously, in the distribution of the Settlement Funds. Lead Plaintiff and Lead Counsel believe that such a modified Supplemental Plan – like the original Supplemental Plan – is fair and reasonable to all Class members, and meets the standards for approval of allocation plans in this District. *See, e.g., In re American Bank*, 127 F. Supp. 2d at 429-30 (emphasizing that an allocation formula need only have a reasonable, rational basis).

Based on all of the foregoing reasons, Lead Plaintiff and Lead Counsel propose for the Court's consideration a modified Supplemental Plan that allows for a distribution of the proceeds from the Settlement Funds to Class members who purchased and sold their WorldCom Securities, either in part or in full, before January 29, 2002 (the first partial disclosure asserted by Plaintiffs), but that limits the distributions to such Class members by calculating their Recognized Amounts at 10% of the Recognized Amounts for losses on those WorldCom Securities that would otherwise be available for Class members who retained and/or sold after January 29, 2002.

B. There Is No Basis to Allow Another Opportunity for Class Members to Opt Out of the Class

In the alternative to his objection to the loss causation provision of the Supplemental Plan, Laub asserts that if Class members who sold before January 29, 2002, are not eligible to participate in the distribution of the Settlement Funds, they should be granted another opportunity to opt out of the Class. Objector Berger also seeks another opportunity to opt out of the Class. This position is utterly without merit, and Laub's argument, in any event, is moot based on Lead Plaintiff's proposed modification to the Supplemental Plan.

Relevant authority both within and outside the Second Circuit makes clear that due process only requires that class members be given an initial opportunity to opt out of a class action. For this reason, courts have repeatedly denied class members' requests for a second opt out under circumstances similar to those found in this case.

In *In re Lloyd's American Trust Fund Litig.*, 2002 U.S. Dist. LEXIS 22663 (S.D.N.Y. Nov. 26, 2002), several class members objected to the proposed settlement because it purported to release claims against Lloyd's, which was not a party to the litigation. Objectors contended that the court should have permitted a second opt out because the Notice of Pendency did not disclose the fact that any claims against Lloyd's would be released. *Id.* at *33. The court rejected this argument:

> Due process requires only that Class Members have notice of the proposed settlement and an opportunity to be heard at a fairness hearing. If the proposed settlement is fair, adequate and reasonable, due process does not afford Class Members a second opportunity to opt out.

Id. at *33-34. The court found that the Notice of Pendency had fairly protected the interests of absent class members because it explicitly set forth whose rights would be affected in the action, identified what the case was about, and detailed the relief being sought. *Id*. at *34-36. Moreover, to allow a second opt out would "impede the settlement process so favored in the law." *Id*. at *34.

The holding in *Lloyd's* is indicative of similar holdings throughout the country on this issue. *See Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615 (9th Cir. 1982) (due process did not require second opt out opportunity where objectors were not satisfied with terms of the settlement); *Class Plaintiffs v. Seattle*, 955 F.2d 1268 (9th Cir. 1992) (due process did not require second opt out where objectors argued that settlement released claims not originally set forth in the class complaint); *In re Brand Name Prescription Drugs Antitrust Litig.*, 1996 U.S.

Dist. LEXIS 4359 (N.D. Ill. April 4, 1996) (due process did not require second opt out opportunity where settlement extinguished Robinson-Patman claims, which objectors argued was not disclosed in Notice).

More recently, in *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp.2d 503 (E.D.N.Y. 2003), *aff'd, Wal-Mart Stores Inc. v. Visa U.S.A.,* 396 F.3d 96 (2d Cir.), *cert. denied sub nom, Leonardo's Pizza by the Slice Inc. v. Wal-Mart Stores Inc.,* ___ U.S. ___, 125 S. Ct. 2277 (May 16, 2005), the district court refused to allow class members a second opt out opportunity, noting that allowing a second opt out under Rule 23 is committed to a district court's discretion. *Visa*, 297 F. Supp.2d at 518 n.18.[13] Of prime consideration to the court in this regard was the "infinitesimal number of objections" by absent class members. *Id*. Here, Laub and Berger are the only Class members seeking another opportunity to exclude themselves from the Class, compared to the more than 830,000 Class members who have filed proof of claim forms. Under *Visa*, this fact weighs heavily in favor of this Court refusing to exercise its discretion to allow a second opt out opportunity.

As shown above, due process only requires that the class receive an original opportunity to opt out, that there be a fairness hearing where absent class members are allowed to voice their objections, and a right of review on appeal. Further, the cases support the proposition that allowing a second opt out would frustrate the general policy favoring settlements. As demonstrated above, courts around the country have held uniformly that due process does not require a second opt out even when there are material developments, including something as fundamental as the terms of a settlement.

[13] Rule 23 was amended in 2003, and the Advisory Committee's notes to the amendment provide that "[t]he decision whether to approve a settlement that does not allow a new opportunity to elect exclusion *is confided to the court's discretion*." The district court in *Visa* noted that its decision was issued within weeks of when the Rule 23 amendments took effect.

Moreover, as shown above, the earlier Notices simply said that Class members who filed timely proof of claim forms would be eligible to participate in a distribution, but noted expressly that the actual distribution would depend on when each Class member purchased and sold her WorldCom Securities. These facts, combined with the minimal number of objectors seeking a second opt out opportunity, mandate that no additional opt out opportunity be provided.[14]

C. Members of the Putative Class in *Norman* Are Not Entitled to Any Additional Payment from the Settlement Funds

In addition to objecting to the loss causation provision in the Supplemental Plan, Norman asserts that, in view of the "superiority" of the claims of GPM account holders, this Court should set aside a portion of the Settlement Funds specifically for Class members with GPM accounts. Norman suggests that a $50 million fund (which Norman estimates, without any supporting evidence, is 10% of such Class members' trading losses on their WorldCom investments) should be set aside for distribution to these Class members over and above the *pro rata* share of the recovery they might receive otherwise. Norman argues that such a "set-aside" is warranted because Class members with claims against Salomon Smith Barney (which paid the lion's share of the Settlement Fund allocated to purchasers of WorldCom stock) for WorldCom losses "are far stronger and different than those with claims solely as open market purchasers." Norman Obj. at 5-6.

Norman's position has no merit. First, as this Court determined in the Opinion and Order of November 12, 2004, Norman's claims as they relate to investments in WorldCom securities are barred by the release in the Citigroup Settlement. *In re WorldCom, Inc. Sec. Litig.*, 2004 WL

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[14] Although no additional opportunity to opt out of the Class would be warranted even if there were no proposed modification of the Supplemental Plan, in recognition of the several objections of Class members to the Supplemental Plan, Lead Plaintiff and Lead Counsel propose for the Court's consideration that the Supplemental Plan modified to allow some distribution of the Settlement Funds to Class members who, like Laub, purchased and sold their WorldCom Securities before the January 29, 2002 partial disclosure, making the request for an additional opportunity to opt out even less warranted.

2591402, at *12-13 (S.D.N.Y. Nov. 12, 2004). Such claims thus are not entitled to any special treatment in the Supplemental Plan. Second, if Norman believed that his claims relating to purchases of WorldCom stock in his GPM account were "superior" to the Section 10(b) claims asserted on behalf of the Class here, and "far stronger … than those with claims solely as open market purchasers," his obligation to his class may well have been to opt out of the WorldCom case in its entirety, and seek to pursue those claims in their entirety in the *Norman* case. Recognizing that this Court held open the possibility that Norman might renew his request for a set-aside when Lead Plaintiff submitted a more detailed plan of allocation, *id.* at *13 n.35, the Court said as much in its Opinion and Order of November 12, 2004. *Id.* at *13 ("If a member of the putative *Norman* class believed she would have been better served by pursuing her WorldCom related claims in the Norman action, that person could have 'opted out' of the consolidated class action. As noted, Norman himself did not opt out of the WorldCom class action.").[15]

Third, while Norman posits that the claims alleged in his case, primarily for breach of fiduciary duty, are "stronger" and "far superior" (primarily because, he claims, they do not require proof of scienter or loss causation, and because the potential damages for those claims are allegedly greater) than the claims asserted in this case, that has not been established. No class has yet been certified in the *Norman* case and, if Norman's class motion were denied, he would not be able to pursue the claims in his case on a class-wide basis. The size of the class in *Norman* is also unclear because *Norman* class members may have instituted separate arbitration

[15] Two further points are worth noting in this regard. First, Norman's entire market loss on his trading in WorldCom Securities is $894 (*see* Supp. Decl. ¶ 6). Second, both the Notice of Class Action and the Citigroup Notice made clear that a Class member was required to opt out in order to pursue any other action against the Citigroup Defendants relating to transactions in WorldCom Securities. Thus, even though Class members who were also GPM account customers of Salomon may not have known of the pendency of the *Norman* action, any Class member who participated in the GPM program at Salomon knew that she had the option of opting out of the Class in this case and pursuing a separate claim through litigation or arbitration if she thought that claim was more valuable than the Class' claims.

proceedings against Salomon, as their customer agreements contemplate, which would diminish both the size of that class and the potential damages that Norman could pursue in his action. Norman has also not established that WorldCom stock was widely held in GPM accounts. Indeed, his own account held no WorldCom stock after December 1999, and he suffered only an $894 loss from the one purchase and sale of WorldCom stock made in his account. Supp. Decl. ¶ 6. Nevertheless, if the Court approves the proposed modification of the Supplemental Plan, Norman would be able to recover to some extent on his trading loss in WorldCom stock. Moreover, while Norman purports to represent GPM customers of Salomon and claims that their claims are "stronger" than the claims of Class members generally, in fact, there may be many other Class members who could assert that they also had direct dealings with Salomon (or other Defendants) and, therefore, that their claims are also "stronger."

All of these issues undercut Norman's blanket assertion that his claims are "superior." They further show that Norman certainly has not provided a reasonable basis for the Court to find that Norman and his putative class members are entitled to a "set-aside" of any amount, let alone one of $50 million.

The decision of Judge Lynch rejecting an argument asserted by Norman concerning the release in a separate class action involving securities issued by Global Crossing supports the notion that Norman's putative class is not entitled to any special treatment through the Supplemental Plan here. *See In re Global Crossing Sec. Litig.*, 2005 U.S. Dist. LEXIS 14245 (S.D.N.Y. July 12, 2005). In *Global Crossing*, Norman's objection to the class settlement was rejected by Judge Lynch – who presides over the *Norman* case. *Id.* In *Global Crossing*, the settlement agreement between plaintiffs and Salomon Smith Barney included the same type of release of claims as in the present case. Norman objected to the release, arguing that, by

releasing "all claims of every nature and description, known and unknown, arising out of or relating to any Investment Decision in Global Crossing Securities," plaintiffs had agreed to release claims "that Norman and other GMP accountholders – but not the class representatives in [the *Global Crossing*] case – have against [SSB]." *Id.* at *15-16.

Judge Lynch found this objection "unpersuasive." *Id.* at *16. Citing the Second Circuit's decisions in *Wal-Mart Stores Inc. v. Visa U.S.A.,* 396 F.3d 96, 111-12 (2d Cir.), *cert. denied sub nom, Leonardo's Pizza by the Slice Inc. v. Wal-Mart Stores Inc.,* ___ U.S. ___, 125 S. Ct. 2277 (May 16, 2005) – which was issued less than two months after this Court's decision rejecting Norman's objection to the Citigroup Settlement here and approving the Citigroup Settlement) – and *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 4620 (2d Cir. 1982), Judge Lynch found that the claims in the *Norman* putative class action relating to losses from Global Crossing securities arose from the same factual predicate as the claims asserted in the class case and, therefore, were properly released. After noting his approval of this Court's November 12, 2004 decision, as well, Judge Lynch explained the rationale for rejecting Norman's objection in *Global Crossing*, as follows:

> By the settlement at issue here, plaintiffs in this case purport to release only claims that arise out of or relate to a participating class members' decisions to invest in Global Crossing securities. … [T]he objectors here have precisely the same claims that Lead Plaintiffs have in common with all class members, defined by virtue of their decision to purchase securities in Global Crossing, as a consequence of allegedly false research reports issued by those defendants.
>
> If Norman seeks, in the separate action, damages attributable to trading losses in Global Crossing securities, such damages result directly from the same alleged misconduct at issue in this case. It makes no difference whether such losses were incurred as a result of his own reliance on defendants' bogus reports (or on the integrity of the market price to which those reports presumably contributed), or were incurred by the investment decisions of an investment manager (at SSB or elsewhere) who relied on such reports in purchasing the securities on the investor's behalf. The losses were incurred as a result of the same investment decision, as a result of the same alleged misconduct, resulting in the same loss to

> the same plaintiff. If Norman and other GPM account holders have a different legal theory of liability based on these facts, which they believe is stronger, and therefore more likely to yield a larger recovery or a better settlement, than the theories being advanced by Lead Plaintiffs, they were free to opt out of the present class and pursue recovery based on that theory. He and they are not free, however, to remain a part of the instant class, partake of an award of damages under the present settlement, and then pursue further damages in a separate action based on the same losses arising from the same investment decision as a result of the same misconduct. Any such result would be substantively unfair, as well as frustrating to class action settlements. A defendant can hardly be expected to settle an action based on claims of a particular wrong, pay damages to plaintiffs under that settlement, and then have to continue to defend claims by some of the same plaintiffs for further compensation based on the same harm.

2005 U.S. Dist. LEXIS 14245, at *17-19 (emphasis added).

Notably, Judge Lynch recognized that Norman's claims for rescission of fees paid by GPM customers of Salomon potentially stand on a different footing, and ruled that whether such claims are released pursuant to the *Global Crossing* settlement will depend on the facts as they are developed in the *Norman* case. *Id.* at *19-24. However, that did not require a rejection of the release in *Global Crossing*, or any modification to it. To the contrary, as Judge Lynch wrote: "What is known now is that the release, as worded, applies only to claims against the Citigroup defendants arising out of or relating to a decision to invest in Global Crossing securities. Those are precisely the claims being advanced in this litigation by Lead Plaintiffs on behalf of all class members, and a full release as to any such claims is entirely appropriate in exchange for a substantial payment to the class by those defendants." *Id.* at *23-24 (emphasis added).

For all of these reasons, it is not appropriate to provide the *Norman* putative class with additional compensation through the Supplemental Plan, and Norman's Objection in this regard should be rejected.

D. <u>Response to Cerberus Objection</u>

Cerberus raises four points with respect to the Supplemental Plan. One stems from the objectors' misinterpretation of the Supplemental Plan, while another appears to stem from their lack of knowledge of terms included in the Court's Hearing Order of July 16, 2004. Lead Plaintiff has investigated another of the issues Cerberus raised, and is suggesting a modification of the Supplemental Plan to allow for persons with purchases of preferred stock of Intermedia (which was acquired by WorldCom during the Class Period) to collect under the Supplemental Plan. Lead Plaintiff respectfully submits that the other point raised by Cerberus is entirely without merit and should be rejected.

We deal with each of the issues raised by Cerberus below.

1. Cerberus first objects on the ground that the Supplemental Plan should be clarified to ensure that profits achieved from post-Class Period purchases of WorldCom bonds are not netted from losses incurred from Class Period purchases. Cerberus' first argument is groundless and there is nothing in the Supplemental Plan that would lead to such a conclusion. The Supplemental Plan provides that gains obtained from the sale of WorldCom Securities that were purchased within the Class Period would be netted from losses incurred either on the sale or retention of other WorldCom Securities that were purchased within the Class Period. The Supplemental Plan states: "For each Claim Form that includes more than one <u>Class Period purchase or acquisition of WorldCom Securities</u>, the Recognized Amounts <u>for all such purchases or acquisitions</u> will be added to determine the 'Aggregate Recognized Amount' for the Claim Form as described in Section E." Supplemental Plan ¶ 2 (emphasis added). Paragraph 27 of the Supplemental Plan (which is within Section E) expands on this, but continues to refer to

WorldCom Securities "purchased or acquired by the Class Member during the Class Period." *See* Supplemental Plan ¶ 27. Thus, the concern raised by Cerberus in this regard is misplaced.[16]

2. Cerberus next complains that the "disposition price" for WorldCom bonds purchased in the May 2000 or May 2001 offerings that were held through the bankruptcy proceedings should not be $357 per $1,000 face amount of bonds if a Class member elected to accept new MCI stock rather than cash in the bankruptcy proceeding. According to Cerberus, at the time of disposition, the stock was worth only $255 per $1,000 face amount of bonds, and that should be considered the "disposition price" for such Class members.

Cerberus' objection in this regard is without merit. Indeed, it would be inequitable not to determine the "disposition price" as provided in the Supplemental Plan.

Under the Plan of Reorganization, bondholders had a <u>choice</u> of accepting $357 worth of new notes for each $1,000 face amount of bonds, or agreeing to take a certain amount of stock in exchange for their bonds. Bondholders could elect to have 14.28 shares of new MCI common stock for each $1,000 of such holders allowed senior debt claim, <u>or</u> new notes in a principal amount equal to 0.357 multiplied by the allowed amount of such WorldCom senior debt claim, <u>or</u> a combination thereof as set forth on a properly delivered election form or as modified in the event of an under-subscription or over-subscription. *See* Plan of Reorganization, Article IV, §

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[16] Cerberus notes that the proof of claim form requires claimants to identify their post-Class Period transactions in WorldCom bonds, but not stock. There is a simple reason for this. Post-Class Period sales of bonds bought during the Class Period are relevant to the calculation of a claimant's Recognized Amount for May 2000 and May 2001 bonds. *See* Supplemental Plan ¶ 8. The prices of such bonds were not constant after June 25, 2002. In fact, the prices of these bonds rose from the levels to which they fell on June 26, 2002. As a result, given the damages provision in Section 11(e) of the Securities Act, the Supplemental Plan could not simply utilize the prices to which these bonds fell on June 26, 2002, as the measure of the "disposition" price, and it would also be necessary to know if the sale of bonds after the Class Period related (on a FIFO basis) to purchases of such bonds made during the Class Period. In contrast, the Recognized Amounts for persons who retained their WorldCom or MCI Tracking stock through June 25, 2002, were established through the price charts in Tables A and B of the Supplemental Plan irrespective of subsequent sales of such stock. Also, unlike WorldCom bonds, the stock prices did not rebound in any material manner after June 26, 2002, and the stock essentially lost its entire value with WorldCom's bankruptcy filing of July 21, 2002. Thus, there were valid reasons for requiring post-Class Period information from bond claimants and not stock claimants, but requiring such information from bond claimants does not mean that Lead Plaintiff is planning to net profits from post-Class Period purchases of WorldCom bonds.

4.06(c). Lead Plaintiff utilized the amount of $357 as the disposition price, for purposes of calculating the Section 11 final price for persons who held through the bankruptcy proceedings, because each Class member who continued to hold bonds had the opportunity to realize $357 per $1,000 face amount for those bonds. If someone elected to take stock instead (either entirely or partially) – thereby potentially benefiting if the stock appreciated in the future, but taking the risk that it might be worth less when issued than $357 per $1,000 face amount for each bond – that was an investment decision the bondholder made independent of any distribution from the Class.

By seeking to have only $255 per $1,000 face amount taken as the disposition price, Cerberus is seeking to have the Class provide a post-election guarantee against the drop in the price of MCI stock as it was eventually issued. Such a provision would clearly be contrary to the federal securities laws. *See In re Initial Pub. Offering Sec. Litig.*, 2005 U.S. Dist. LEXIS 9318 (S.D.N.Y. May 16, 2005) (the statutes make private securities fraud actions available, "not to provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause") (internal citation omitted); *Podany v. Robertson Stephens, Inc.*, 318 F. Supp.2d 146, 156 (S.D.N.Y. 2004) ("The securities laws are not intended as investor insurance every time an investment strategy turns out to have been mistaken."); *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 234 (2d Cir. 2000) (J. Winter, dissenting) ("The securities laws are, of course, not an insurance policy against all losses by investors, and the concept of proximate cause limits recovery to plaintiffs and to losses for which the intent of the laws is served by recovery and denies recovery when that intent is not served.").

Having chosen to accept stock in lieu of cash, Cerberus should not be heard to argue that they made a faulty investment decision – not impacted at all from the misrepresentations asserted in this case – and that the Class should reimburse them for their decision. Indeed, had the stock

appreciated in value (as it may now have, stemming from the competing bids and the presently anticipated acquisition by Verizon of MCI), we hardly think that Cerberus would offer a "give-back" in that instance. Thus, the Cerberus objection in this regard should be rejected.

3. Cerberus' third objection is that the Supplemental Plan of Allocation does not include a chart for assessing claims relating to purchases of Intermedia 13.5% preferred stock after WorldCom's acquisition of Intermedia on July 1, 2001. Lead Plaintiff and its consultant considered Intermedia 13.5% preferred stock (Intermedia Preferred Series B) in the formulation of the Supplemental Plan, but were not able to locate reliable, sufficient information about its trading prices.

Having discussed the issue with Cerberus' counsel, reviewed its trading records, and obtained further information from Lead Plaintiff's consultant, Stanford Consulting Group, Lead Plaintiff proposes a modification to the Supplemental Plan that will allow purchasers of Intermedia 13.5% preferred stock (after July 1, 2001, when WorldCom acquired Intermedia) to recover.[17] The modification would impact Paragraphs 1 and 22 of the Supplemental Plan, and would provide that Recognized Amounts be calculated for purchases of Intermedia 13.5% preferred stock utilizing the same methodology as was utilized by Stanford Consulting to calculate the charts that are currently in the Supplemental Plan for Intermedia preferred stock Series D, E and F (Charts E-1, E-2 and E-3). If such a modification is approved by the Court, the precise chart would also be tailored to account for trading data that is both available and reliable

[17] Lead Plaintiff respectfully submits that no new notice need be sent to Class members with respect to this or the other recommended modification. *See* Supplemental Plan ¶ 4 (notifying Class members that Court reserves right to modify Supplemental Plan without further notice). Moreover, the few Class members who have contacted Lead Counsel or the Administrator concerning Intermedia 13.5% preferred stock (and other securities that might potentially have been within the Class definition) have been advised consistently to include such transactions on their claim forms so that the Administrator can deal with them according to the final Supplemental Plan as approved by the Court. Sending a further notice and Supplemental Plan would be very expensive, and Lead Counsel can post an advisory on the case website once the Court rules on the present motions.

for the Intermedia 13.5% (Series B) preferred stock, so that the resulting chart accurately reflects the Security-specific price inflation.

4. In the final section of the objection, Cerberus criticizes the Supplemental Plan on the ground that it does not provide a mechanism for a Class member to dispute the Administrator's calculation of that Class member's Recognized Claim Amount. However, there are two procedures that will safeguard a Class member's interests in this respect.

First, the Hearing Order entered July 16, 2004, provides a detailed dispute resolution mechanism with respect to any claim that the Administrator finds to be deficient or rejected. Paragraphs 22 and 23 of that Order states in relevant part:

> … For each claim determined to be either deficient or rejected, the Administrator shall send a deficiency letter or a rejection letter, as appropriate, describing the bases on which the claim was so determined. Each Class Member who receives a deficiency letter or rejection letter shall have 30 days from the date of such letter to supply to the Administrator documentation and/or an explanation sufficient to remedy the deficiency or rejection. Any Class Member who receives a deficiency letter or a rejection letter and who fails to submit documentation sufficient to remedy the deficiency or reason for rejection within the time prescribed herein shall have such claim deemed finally rejected. Such finally rejected claims shall be submitted to the Court as rejected claims at such time as Lead Plaintiff moves the Court for an Order approving distribution of the Net Settlement Fund, unless the recipient objects in writing to the deficiency letter or rejection letter, in which case the claim shall be submitted to the Court as a disputed claim. Notice of any hearing on such motion shall be provided to all Class Members whose claims are dispute.
>
> If a Class Member timely responds to a deficiency letter or rejection letter by providing an explanation and/or documentation in response to such a deficiency letter or rejection letter, Lead Counsel, through the Administrator, shall determine whether such explanation and/or documentation is sufficient to remedy the deficiency or reason for rejection. If Lead Counsel, through the Administrator, determines that the explanation and/or documentation submitted in response to the deficiency letter or the rejection letter is sufficient, such claim shall be deemed a valid claim. If, on the other hand, Lead Counsel, through the Administrator, determines that the explanation and/or documentation is not sufficient to remedy the deficiency or reason for rejection, such claim shall be deemed finally rejected. Such finally rejected claims shall be submitted to the Court as disputed claims at such time as Lead Plaintiff moves the Court for an Order approving distribution

> of the Net Settlement Fund. Notice of any hearing on such motion shall be provided to all Class Members whose claims are disputed.

Thus, the Court (and Lead Plaintiff) has already established a rigorous claims dispute process.

Second, Lead Plaintiff envisions that the distribution of the Settlement Funds will be accomplished in at least two distributions, with a sufficient amount held back from the initial distribution to take care of any successful disputes concerning a Class member's distribution. This will be a process separate and apart from the earlier ordered deficiency and rejection letter dispute resolution process cited above. Lead Plaintiff and Lead Counsel utilized a similar procedure in *In re Cendant Corp. Litigation,* No. 98-cv-1664 (WHW) (D.N.J.), in which the lead plaintiffs sought an order allowing an initial distribution of 90% of overall settlement funds (approximately $2.9 billion of the overall $3.2 billion in settlement funds), so there would be sufficient funds remaining in the fund in the event that any class member successfully objected to her distribution. Lead Plaintiff anticipates suggesting to the Court a similar mechanism here, including that each Class member receive a letter from the Administrator, with her initial distribution payment, that will state the Recognized Amount determined by the Administrator for the claim. As we understand the Cerberus objection in this regard, such a mechanism would satisfy Cerberus' concern that there be a mechanism for challenging determinations made by the Administrator with respect to their claims.

II. Response to Objection of Roslyn Berger

The objection submitted by Roslyn Berger must be examined in its proper context.

First, the objection is directed almost entirely to the Citigroup Settlement, rather than any of the present Settlements, and only peripherally to the Supplemental Plan. Indeed, on the first page of the objection, Berger states: "Roslyn Berger objects to the *Settlement of Class Action Against the Citigroup Defendants*, otherwise known as "*WorldCom Securities Class Action*

Settlement." Berger Obj. at 1. To the extent her objection pertains to the Citigroup Settlement, the objection is far too late, and has been waived.

Second, during the Class Period, Berger bought only WorldCom stock (100 shares on September 20, 2000) and continued to hold those 100 shares, plus 300 shares from pre-Class Period purchases, throughout the rest of the Class Period. *See* Berger Objection, Exhibit B (Proof of Claim form) at 6-7. She received the Notice of Class Action, dated December 11, 2003 ("Class Notice"), and the Notice of Proposed Settlement of Class Action with the Citigroup Defendants, dated August 2, 2004 ("Citigroup Notice"), and chose to remain as a Class member.

The Notices stated explicitly that persons who purchased or acquired WorldCom securities during the Class Period were *required* to exclude themselves from the Class if they did not wish to remain as members of the Class and be bound by any Judgments entered in the Action. They further provided the date by which such exclusion requests had to be submitted.

The Notice of Class Action – which Berger admits receiving in a timely fashion (*see* Berger Mem. at 5, in which Berger acknowledges receipt of this Notice on or about December 11, 2003) – provided (underscoring in original):

> If you want to attempt to pursue a claim on your own outside of the Class Action, and that claim arises from the facts alleged in the Complaint or the Amended Complaint, then you must complete and submit a written request for exclusion from the Class, as described below.

The Citigroup Notice – which Berger also admits receiving in a timely fashion (*see* Berger Mem. at 5-7, in which Berger acknowledges receipt of Citigroup Notice and "other relevant documents" on or about August 2, 2004) – provided with even greater clarity that Class members who wished to pursue either individual lawsuits or arbitrations were required to exclude themselves from the Class, as follows:

> 4. If you are a member of the Class and you wish to pursue an arbitration or an individual lawsuit against Citigroup Defendants or any of the parties identified in paragraph 17 as the Citigroup Releasees, you must opt out of the Class. The mere filing of an arbitration or an individual lawsuit does not operate as an exclusion from the Class and a Class member's failure to opt out will result in the release of the Released Claims (defined in paragraph 16 below) by that Class member, as described more fully in paragraph 15 of this Notice.

Because the final date for exclusions to be submitted was extended to September 1, 2004, Berger had *more than eight months* from her receipt of the Notice of Class Action to submit an exclusion request, but failed to do so.

Berger claims that she did not understand that, by remaining as a member of the Class, she would be releasing claims not only with respect to the WorldCom stock purchased during the Class Period, but also relating to her decision to hold the WorldCom stock that she held at the outset of the Class Period. Berger Mem. at 8. In fact, however, the release of claims described in the Citigroup Notice stated explicitly that claims of Class members "arising out of or relating to investments (including, but not limited to, purchases, sales, exercises, and decisions to hold) in securities issued by WorldCom" will be released. Thus, as of the time Berger received the Citigroup Notice, she still had the opportunity at that point to opt out of the Class and she was specifically on notice that such claims – including decisions to hold pre-Class Period shares – would be released if the Citigroup Settlement was approved.

Under the terms of the Hearing Order entered on July 16, 2004, any objection Berger now seeks to make to the release of claims in this regard has been waived.[18] Paragraph 14 of the

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[18] Berger seeks to prosecute claims only against Salomon Smith Barney and certain of its affiliates based on her pre-Class Period purchases, and not against any of the other defendants in the Class Action. Pursuant to a motion of the Citigroup Defendants, this Court issued an Order to Show Cause why Berger, *inter alia*, should not be enjoined from pursuing her NASD arbitration claim against the Citigroup Defendants to the extent the claim relates to investments in securities issued by WorldCom. *See* Order of July 13, 2005. The hearing on that motion was held on August 26, 2005, during which it was shown that: (a) Berger had adequate notice of the claims that would be released through approval of the Citigroup Settlement; and (b) Berger's contention that claims relating to her pre-Class Period purchases were not based on the same factual predicate were contrary to the allegations in her NASD statement of claim. *See* Transcript of Proceedings of August 26, 2005; *see also* Order of August 26, 2005.

Hearing Order required objections to the Citigroup Settlement to be filed with the Court (and sent for receipt by Lead Counsel) no later than October 8, 2004. Paragraph 15 stated that any Class Member "who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the … Judgments and Orders to be entered approving the Settlement …." The Citigroup Notice, which Berger received in a timely fashion (*see, e.g.,* Berger Mem. at 5-7), expressly stated these conditions for the filing of any objection. *See* Citigroup Notice ¶¶ 31-32. Thus, there is no question that any objection Berger may have had was not filed or served in a timely manner, and that her objection in this regard is waived and foreclosed.

The law is clear that the failure to comply with an objection deadline is a valid ground for rejection of a late-filed objection. *See*, *e.g.*, *In re Cendant Corp. Litig.*, 264 F.3d 201, 252 (3d Cir. 2001) (plaintiff class members who objected to the settlement on Rule 23 grounds waived their objections by failing to assert them prior to the settlement approval stage); *see also Joel A. v. Giuliani*, 218 F.3d 132, 140 (2d Cir. 2000) (objectors to a class settlement who failed to object until the fairness hearing waived their objections because they were untimely); *Assoc. for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 477–78 (S.D. Fla. 2002) (denying motion for reconsideration because of lateness of objection); *Manners v. American Gen. Life Ins. Co.*, 1999 WL 33581944, at *24 (M.D. Tenn. 1999) (rejecting objection to class settlement as untimely). Indeed, the Judgment entered by the Court approving the Citigroup Settlement made express findings regarding both the adequacy of the notice of that settlement to the Class, and the release of claims included in the Judgment. *Accord Patrowicz v. Transmerica HomeFirst, Inc.,* 359 F. Supp.2d 140, 148-153 & 153-55 (D. Conn. 2005) (finding notice adequate and proper release of claims based on or related to the conduct that was the subject of the case).

This is the proper context within which Berger's present objections must be considered. She complains that the release of claims in the settlement (which Berger herself defines to mean the Citigroup Settlement) is overbroad because "it includes claims outside the class period." Berger Obj. at 1. But the present Settlements include the same type of release as was approved as part of the Citigroup Settlement, and Berger had the Citigroup Notice that placed all Class members on notice that such claims were being released.

Nor is there any question that Berger is a member of the Class. As Berger notes in her submission, the definition of who is a member of the Class has not changed from the day Lead Plaintiff filed the Consolidated Complaint on October 11, 2002; through the proceedings and Opinion and Order granting class certification on October 24, 2003; through the time of the Citigroup Settlement; and through the times of the present Settlements. It has always consisted of persons and entities who purchased or otherwise acquired publicly traded securities of WorldCom during the period from April 29, 1999 through June 25, 2002, and who were injured thereby.

Berger now asserts that the class definition is not "clearly ascertainable by reference to objective criteria." Berger Mem. at 10, citing *Intratex Gas Co. v. Beeson*, 22 S.W.3d 398, 403 (Tex. Sup. 2000). But scores of classes in federal securities law cases have been certified utilizing similar definitions. *See, e.g.*, *In re Cendant Corp. Litig.*, 264 F.3d 201 (3d Cir. 2001) (approving settlement in favor of class consisting of all persons and entities who purchased or otherwise acquired publicly traded securities of the issuer during the relevant period "and who were injured thereby").

Indeed, after receiving both the Class Notice and the Citigroup Notice, Berger submitted a proof of claim form on September 16, 2004, <u>in which she admits that she is a member of the</u>

Class. *See* Berger Mem., Exhibit B. By signing the proof of claim form, among other things Berger certified that she: (a) is a Class member; (b) read and understood the contents of the Notice and the Proof of Claim and Release; (c) did not file a request for exclusion; and (d) "desires to participate in the Settlement described in the Notice and agrees to the terms and conditions thereof." *Id.* at 19 (items 1, 2, 4 & 7). Berger clearly understood the class definition, and that she is a member of the Class.

Berger's further argument that she was not afforded an opportunity to opt out of the Class is similarly without merit. As noted above, there were two mailed Notices that provided Class members with the opportunity to opt out, along with the two Summary Notices that also informed Class members of their ability to opt out of the Class. Berger admits receiving both the Notice of Class Action, which set the opt out deadline as February 20, 2004, and the Citigroup Notice, which identified September 1, 2004 as the final deadline for opting out of the Class. Thus, Berger had *more than eight months* from her receipt of the Notice of Class Action to submit an exclusion request – including a full month after receiving the Citigroup Notice that notified Class members of the claims that were being released in the Citigroup Settlement and that if a Class member wanted to pursue an individual case or arbitration, she was required to submit an exclusion request. However, she failed to do so.

Berger's argument that the release is overbroad because it does not compensate Class members for a release of claims relating to the retention of WorldCom stock purchased before the Class Period is without merit. First, Berger is bound by the Judgment approving the Citigroup Settlement entered on November 12, 2004. Second, her claim for damages associated with her retention of such shares arises from the same alleged misconduct as the claims in this case on behalf of Class members (including Berger) who purchased WorldCom securities during

the Class Period. The allegedly false reports, which Berger admits were issued during the Class Period and not before, include the allegedly false and misleading research reports issued by Salomon and WorldCom's false financial statements, that Plaintiffs (and Berger in her NASD Statement of Claim) alleged present a false and misleading portrayal of WorldCom. Under the precedents in this Circuit, including *Visa* and *TBK Partners*, such claims – when based on the identical factual predicate – may also be released even if such claims were not, and could not have been, presentable in the case at bar.

Berger claims that she was not apprised of the "incongruity" between the Class Definition and the Release. But she clearly understood the Class definition, as she certified that she is a member of the Class. Indeed, unlike other Class members, Berger had retained counsel in connection with her arbitration proceeding, but there is no indication that she ever inquired of her counsel whether she had to exclude herself from the Class in order to pursue those claims. In these circumstances, Berger – and all other Class members – had all the information they needed to make an informed decision on whether to remain in, or opt out of, the Class before the September 1, 2004 deadline.

Berger cites *In re The Prudential Ins. Co. of America Sales Practices Litig.*, 148 F.3d 283, 324 (3d Cir. 1998), and *W. Alton Jones Foundation v. Chevron U.S.A., Inc.*, 97 F.3d 29, 36-38 (2d Cir. 1996), for the unremarkable propositions that notices to class members must be clear, and that if a person is not within a class, there is no need for her to opt out. Here, the Citigroup Notice – including the release of claims in the Citigroup Settlement – has previously been found to have been clear and understandable. *See In re WorldCom,* 2004 WL 2591402, at *13. Moreover, in *Alton Jones*, the court ruled that the party seeking to prosecute claims (Cities) against the settling defendant (Gulf) in another proceeding was not a member of the Class, and

that no party to the proceedings considered Cities to be a member of the class or bound by the judgment entered approving the settlement. *Alton Jones,* 97 F.3d at 32-33 ("Judge Mukasey concluded that no one, not Gulf, not Cities, not the lawyers for the class, nor the court, intended to include Cities within the Class. … We agree."). The class, as defined in *Alton Jones*, consisted of all persons: (i) who tendered to Gulf shares of Cities common stock; or (ii) who purchased shares of Cities common stock or calls on the open market during the alleged class period. *Id*. at 30. It was undisputed that Cities neither tendered to Gulf nor purchased its shares on the open market. Thus, it was not included within the definition of the class. *Id.*

The circumstances of the present case at bar are far different. The definition of the Class remained the same throughout the course of this case, and there has never been a question about whether Berger, or others who purchased WorldCom stock on the open market, were members of this Class. Thus, this objection is without merit.

III. Response to Objection of Richard F. Reynolds

Reynolds is the plaintiff in another case which has been dismissed and which is currently being appealed from the United States Bankruptcy Court, Southern District of New York.[19] *Objection of Class Member Richard F. Reynolds to Final Approval of Settlement and Class Action Determination* ("Reynolds Objection") at 5. His action was commenced on behalf of himself and a putative class – holders of WorldCom's MCI Tracking stock ("MCIT Shares") as of June 30, 2002 – against nine of the Director Defendants in this case as well as Ebbers and Sullivan.[20] Each of Reynolds' four causes of action is based on either Georgia common law or Georgia statutory law. Reynolds asserts in his Objection that his claims:

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[19] *See In re WorldCom, Inc., et al.,* 323 B.R. 844, 857 (Bankr. S.D.N.Y. Apr. 26, 2005) (because Reynolds' causes of action were derivative and not direct, the claims belonged to the Debtor and could not be brought by Reynolds), *on appeal,* No. 05-cv-5373 (LAP) (S.D.N.Y.).

> arise exclusively from the fact that on March 7, 2002, the Board announced that on March 6, 2002, it declared a cash dividend of $0.60 per share to be paid on July 15, 2002, to the holders of record of MCIT Shares on the close of business on June 30, 2002 (the "July 15 Dividend"), and the fact that (after confirming on two separate occasions that the July 15 Dividend would be paid) on July 11, 2002, the Board announced that the July 15 Dividend would not be paid. Two causes of action – Count One and Count Two –challenge the conduct of Defendants that affected the individual right of the holders of MCIT Shares to receive a dividend, and two causes of action – Count Three and Count Four –challenge the conduct of Defendants that affected the individual right of the holders of WCOM shares and the holders of MCIT Shares to make voting and investment decisions based upon accurate information.

Reynolds' Objection at 1-2. The crux of Reynolds' objection is that these settlements improperly extinguish his claims against the former WorldCom directors, Ebbers and Sullivan, and against the insurers of the Director Defendants. The Objection is without merit.

The Release portion of the Settlements to which Reynolds objects states:

> Each Class Member shall release all "Released Claims," which includes, with respect to the Settling Defendant Releasees, as identified below, the release by Lead Plaintiff, the Additional 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, 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.[21]

Reynolds objects to the Settlements on the basis that this Release is overbroad and extinguishes his rights to pursue his claims against the former WorldCom directors (inclusive of Ebbers and Sullivan). However, courts have regularly approved releases similar to the one

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[20] Reynolds' objection should thus be read as limited to the settlements reached between the Class and the Director Defendants, Ebbers and Sullivan.

[21] *See* Notice at 8. The Settling Defendant Releasees in the Director Defendant Settlement include each of the named defendants as well as the Insurers who issued the Insurance Policies and are contributing to the Settlement Amount of the Director Defendant Settlement. *See* Notice at 8-9. The Releasees in the Ebbers and Sullivan Settlements include Ebbers and Sullivan.

presented here. *See, e.g., In re Global Crossing Sec. Litig.,* 2005 U.S. Dist. LEXIS 14245, *24-25 (S.D.N.Y., July 12, 2005) (approving release of "all claims of every nature and description, known and unknown, arising out of or relating to any Investment Decision in Global Crossing Securities"); *In re AnnTaylor Stores Sec. Litig.,* 1993 WL 183732 (S.D.N.Y. 1993). As the Second Circuit and others have recognized, settling defendants require broad releases of claims, asserted and unasserted, in order to "buy peace" and thus, the approval of such releases comports with the public policy of encouraging settlements of complex class action cases. *See Visa*, 396 F.3d 96 at 106; *In re Baldwin-United Corp.,* 770 F.2d 328, 337 (2d Cir. 1985) ("The success of any [class action] settlement was dependent on the parties' ability to agree to the release of any and all related civil claims the plaintiffs had against the settling defendants based on the same facts."); *accord In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998); *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 194 (S.D.N.Y. 2005). "The law is well established in this circuit and others that class action releases *may include claims not presented and even those which could not have been presented* as long as the released conduct arises out of the 'identical factual predicate' as the settled conduct." *Visa,* 396 F.3d at 107 (emphasis added) (citing *TBK Partners*, 675 F.2d at 460). Based on this well-developed law, it is clear that the releases in these Settlements fit comfortably within the types of releases approved by courts in this Circuit and elsewhere and are entirely appropriate.

Further, if this Court were to decide whether such a release should be effective with respect to Reynolds' claims (which Lead Plaintiff submits this Court need not decide), the fact is that Reynolds' claims are based on the same underlying facts as the Class claims, and are therefore properly extinguishable in connection with the Settlements. Reynolds argues that his claims are different from those advanced by the Class against the former WorldCom directors.

But while the causes of action may be different, in large measure they are based on the same factual predicate – that WorldCom, its officers and directors, and others, made false and misleading statements during the Class Period that artificially inflated the prices of WorldCom Securities, and influenced investors to purchase and make improperly informed decisions about WorldCom stock. Reynolds' complaint merely alleges another example of how the Defendants led the market to believe that WorldCom was financially stable when, for reasons alleged in the Class Complaint (and proven during the summary judgment and trial portions of this case), it was not.

Reynolds' complaint expounds on how WorldCom's earnings were intentionally overstated throughout the Class Period. *See* Complaint of Richard F. Reynolds ("Reynolds' Complaint") ¶¶ 44-55. *See* Supp. Decl. ¶ 7 and Exhibit D. The same allegations are at the heart of the Class claims. The dividend that Reynolds claims is owed was announced on March 6, 2002 (during the Class Period). Reynolds Complaint ¶ 56. Reynolds claims that this announcement violated Georgia law because the Company was <u>insolvent</u> at the time the dividend was declared, and bases his insolvency allegation on the same financial improprieties alleged in the Class case. Thus, the two cases are based on the same factual predicate.

Reynolds further claims that while some of the statements upon which his case is based were issued during the Class Period in this case, certain confirmation statements were made after the close of the Class Period, thus making his claims different from the Class claims. Contrary to Reynolds' contention, however, the specific dates of such statements are not relevant to this inquiry, so long as the same factual predicate is advanced. The fact that the dividends were

confirmed after the Class Period does not change the similarities of the factual underpinnings of the claims. Reynolds' claims clearly fall into the category of appropriately released claims.[22]

In further support of his argument that the Release is too broad, Reynolds uses the example that if one group of investors purchased MCIT Shares on June 25, 2002, and held the shares until the close of business on June 30, 2002, and another group of investors purchased the MCIT Shares on June 26, 2002 and held through June 30, 2002, the former, but not the latter group would be barred from enforcing the rights to compel such a payment because "such right accrued subsequent to the Class Period." Reynolds' Objection at 12. This argument misses the point in two critical respects. First, Reynolds is a member of the Class, and the claims he seeks to assert are appropriately barred by the releases in the present Settlements. Second, as noted in Reynolds' Complaint and in the Supplemental Plan, WorldCom common stock was subject to a trading halt after the June 25, 2002 announcement, and did not begin trading again until July 1, 2002. *See* Supplemental Plan at 3 n.2. Because Reynolds alleges that the right to obtain a dividend was for holders of MCIT Tracking stock as of June 30, 2002, his argument in this regard is not persuasive for both reasons.

Reynolds' next objection – made in passing – with respect to the release of claims in the Director Defendant Settlement in favor of the Insurers is similarly without merit. Such a bar is appropriate in the circumstances of this case. It is simply not the case that a settlement must completely eviscerate available insurance proceeds before a court may issue a bar against further claims against the insurers who provided such coverage. If that were the case, there would be

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[22] As noted, Judge Gonzales of the Bankruptcy Court dismissed Reynolds' case finding that the claims were derivative in nature and, therefore, Reynolds lacked standing to bring them. Whether the claims are considered to be direct or derivative, however, they are properly released in the Settlements here because they were brought by a Class member. *See* Notice at 8 (releasing all claims, both direct and derivative).

little, if any, incentive for insurers to settle claims against their insured. Reynolds' objection should be rejected for this reason alone.

Reynolds' objection on this point is also deficient for an independent reason. Reynolds, as a claimed injured party, does not have standing to assert claims against the Insurers. *See, e.g., Adams v. General Accident Assurance Co. of Canada*, 133 F.3d 932 (10th Cir. 1997) (injured parties are not intended beneficiaries of insurance policies and may not sue thereon). Further, courts have repeatedly recognized that bars of claims are often essential for settlement agreements. Indeed, in a similar vein, in approving a settlement bar order, the Court in *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995), ruled that because indemnification to party defendants was prohibited in a federal securities law action, a bar of such indemnification claims was appropriate. The same rationale applies here: Reynolds has no cognizable claim against the Insurers, and a bar of such a potential claim is appropriate. This is especially significant when the bar against claims against the Insurers is a necessary condition to encourage and facilitate the historic settlement of this complex class action against the Director Defendants.

For all these reasons, Reynolds' objection to the settlements with the Director Defendants, Ebbers and Sullivan should be rejected.

IV. Response to Objection of Cynthia R. Levin Moulton

The objection submitted by Cynthia R. Levin Moulton is without merit on many levels. Before turning to the merits of the Objection, however, a few preliminary observations are necessary.

First, Moulton bought a very limited amount of WorldCom stock during the Class Period, and suffered a minimal loss. According to the brokerage statements appended to her objection, the sum total of Moulton's transactions in WorldCom securities were as follows: (a) she

purchased 30 shares of WorldCom stock on September 29, 2000, which she sold on October 31, 2000, for a loss of $186.32; and (b) she purchased another 24 shares of WorldCom stock on October 4, 2000, which she sold on January 26, 2001, for a loss of $217.70. *See* Moulton Obj., Exhibit A (brokerage statements) at 1-2, 4 & 8. Thus, Moulton lost just $404.02 in total from her WorldCom stock transactions, all of which had ceased by January 2001.

Second, the Objection fails to cite or show any knowledge of the pleadings filed in this case (all of which are accessible on the website Lead Counsel established for this case, with the approval of the Court). For instance: (1) she objects to the definition of the Class, but cites only one Texas state court case as the basis for her objection, and she clearly understands that she is a member of the Class; (2) she asserts that there are "intraclass conflicts" but *ignores* this Court's rulings that a single Class was appropriately certified, and the further Order approving the plan of allocation for the Citigroup Settlement Amount; (3) she asserts that the release "in the proposed settlement" is overly broad, yet fails to cite in any tangible manner the claims that she would pursue if they were not being released, or even that there are multiple Settlements for which Lead Plaintiff seeks approval on behalf of the Class; (4) she cites *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), for the proposition that a lodestar cross-check based on the Court's examination of counsel's detailed time records should be undertaken, but *ignores* the portion of the very same opinion that holds that district courts need not require detailed time records to be produced (*id.*); (5) she objects to the fee request on the ground that it seeks "the same 5.5% of the current settlement as they did for the previous Citigroup settlement" (which was actually a 5.45% fee request and fee award), but *ignores* both the Retainer Agreement and the fact that the present Settlements were reached after extensive further litigation (meaning that, unlike the Citigroup Settlement, the Underwriter Defendant and

Director Defendant Settlements were reached on the eve of trial; the Andersen Settlement was reached after nearly five weeks of trial; and the Executive Settlements were reached on the eve of their sentencings); and (6) she claims that the record is insufficient to support an "award of $12.5 million in out of pocket expenses," but *ignores* that Lead Counsel filed a motion, supported by a detailed memorandum of law and declarations of the Lead Plaintiff and Lead Counsel (which were posted on the case website on July 29, 2005), for reimbursement of expenses of $7.75 million – and that all of the requested expenses were reviewed in detail by Lead Plaintiff and approved for the application.

Third, to the extent Moulton objects to the fee and expense applications, she has no standing to do so. She certainly has no standing to object to the fee application submitted in connection with the Underwriter Settlements, since Moulton bought only WorldCom stock, and has no interest in the award of fees from those Settlements. But more than that, she lacks standing to object to even the portion of the fee and expense requests which related to the WorldCom stock settlements (which encompass the Director Defendant, Andersen, Ebbers and Sullivan settlements) because she did not file a proof of claim form and, thus, has no interest in any of the fee and expense applications. Garr Supp. Aff. ¶ 7.[23]

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[23] Jane B. Selfe similarly lacks standing to object to the fee applications. As indicated in the documentation supplied with Selfe's objection, her sole "transaction" in WorldCom Securities during the Class Period was the receipt – for no consideration and no additional value whatsoever – of additional shares of WorldCom stock in a three-for-two stock split. *See* Selfe Obj. at 4. Selfe is therefore not a Class member. *See Gurvitz v. Bregman & Co.*, 379 F. Supp. 1283, 1285-86 (S.D.N.Y. 1974) (a stock split does not constitute a purchase or sale, as it is "simply the distribution of two or more pieces of paper for one"). As a result, she lacks standing to object either to the present Settlements or fee applications. *See In re Prudential Secs. Ltd. P'ships Litig.*, 1995 U.S. Dist. LEXIS 22103, *60 (S.D.N.Y. Nov. 20, 1995) (those who are not members of the class do not have standing to object because the action "does not adjudicate their interests"); *In re Drexel Burnham Lambert Group*, 130 B.R. 910, 917 & 923 (S.D.N.Y. 1991) (citing cases for proposition that those who are not members of the class do not have standing to object); *In re Union Carbide Corp. Consumer Products Business Sec. Litig.*, 718 F. Supp. 1099, 1108 (S.D.N.Y. 1989) (court determined that objector was not a member of the class and therefore lacked standing to assert his objection, and held that "[o]nly class members and the defendants will be bound by these proceedings and only they have a financial interest in the outcome of this litigation."); *accord New York by Vacco v. Reebok Int'l*, 96 F.3d 44, 47 (2d Cir. 1996) (to have standing to object, "a would-be litigant must have sustained a palpable injury that is likely to be redressed by a favorable decision"). Moreover, like Moulton, Selfe did not submit a proof of claim form (*see* Garr

In *Knisley v. Network Associates, Inc.*, 312 F.3d 1123 (9th Cir. 2002), the objector, Noel Gage, originally appealed both a settlement and fee award to class counsel. However, while his appeal was pending, Gage reached a separate agreement with defendant that resolved his challenge to the settlement. As a result, all that remained was his appeal from the fee award. *Knisley*, 312 F.3d at 1125. Writing for a unanimous court, Judge Kozinski began his analysis by citing a series of Supreme Court decisions, including *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), which held that a party must meet three conditions to have constitutional standing to sue, including that "it must be likely, and not merely speculative, that a favorable decision will provide redress." *Knisley*, 312 F.3d at 1126. The Court of Appeals explained that standing to appeal depended upon the nature of the objector's participation in the common fund settlement:

> A class member who participates in a common fund settlement … generally has standing to appeal the fee award. Both the recovery and the fee come out of the same pot, so by reducing the latter, the court increases the former and thus redresses the appellant's injury …. The class member may have standing to appeal the fee even if he doesn't also appeal the settlement. The reason is that common funds typically distribute to claimants whatever amount is left over after all expenses are paid … so a court could provide redress while leaving the terms of the settlement agreement intact. Finally, a class member who doesn't participate in the fund distribution – for example, one who fails to file a claim form – might still have standing to appeal the *settlement*; an appellate court could arguably provide redress by vacating the settlement, rendering moot the failure to submit a claim.
>
> In contrast, where a class member refuses to participate in the settlement and appeals only the fee award, serious standing issues arise. The court must closely scrutinize the terms of the settlement agreement to determine whether modifying the fee award would actually benefit the objecting class member. If not, the appeal would not redress his injuries, and he would lack standing to proceed.

Knisley, 312 F.3d at 1126 (emphasis in original). The Court of Appeals added that where, as in the current matter, any reduction in the fee would require class counsel to return the excess to the

Supp. Aff. ¶¶ 7-8), and, for the reasons stated above, would lack standing to object to the fee or expense applications even if she were a Class member.

fund for distribution to the class according to the terms of the settlement agreement, rather than reverting to the settling defendants, "[t]he agreement … precludes class members who fail to submit claim forms from sharing in any reduction of attorney's fees." *Knisley*, 312 F.3d at 1127.

The Court of Appeals also considered and rejected other suggested grounds for permitting the non-claiming class member to appeal the fee award, including the theoretical possibility that if the objector were successful on the fee appeal, he could subsequently seek to participate in the new money available to the class. However, the *Knisley* Court rejected this suggested basis for standing because the express terms of the settlement with the defendant company– just like those in the present action (*see* Notice at 1, informing Class Members that submission of a proof of claim form "is required in order for a Class Member to participate in the distribution of the funds recovered for the benefit of the Class" and that "THE COURT HAS ORDERED THAT, EXCEPT FOR GOOD CAUSE SHOWN, THERE SHALL BE NO FURTHER EXTENSION OF THE PROOF OF CLAIM SUBMISSION DEADLINE") (caps in original) – provided that only class members who submit claims forms may share in the settlement. Accordingly, the objector's "appeal simply cannot redress the injury he claims to have suffered." *Id*. The Court of Appeals concluded:

> Gage has failed to show that the relief he seeks will redress the injury he claims to have suffered. He therefore lacks standing to appeal.
>
> Gage refused to submit a claim for his losses, as he was required to do in order to get his share of the settlement proceeds. He nonetheless appealed the settlement, arguing that the amount he would have received, had he bothered to claim it, was inadequate. He managed to convince Network Associates to settle that appeal, so his complaint now relates only to [class counsel's] fee – a fee he didn't pay, in connection with a settlement that he forsook. His lack of standing should be apparent.

Knisley, 312 F.3d at 1127-28 (footnote omitted).[24]

With these preliminary points in mind, and without waiver of the arguments that Objectors Moulton and Selfe lack standing to object to the fee and expense applications, Lead Plaintiff responds to each of the arguments raised in the objections.

A. The Notice to the Class is Adequate and the Phrase "Injured Thereby" Appropriately Defines the Class

Objector Moulton argues that the Notice provided by Lead Plaintiff is defective because it defines the Class as all persons or entities who purchased or otherwise acquired WorldCom securities during the Class Period and who were "injured thereby." Moulton asserts that the definition of class membership (consisting of purchasers who have been "injured thereby") is vague and ambiguous and, because the inquiry as to whether one is so injured is subjective, class membership is ultimately unknowable. *See* Moulton Obj. at 2.

For the reasons stated earlier in connection with the Berger Objection, this argument is without merit. First, the argument is untimely, as the same definition appeared in each and every Notice used in this litigation, including the Notice of Class Action and the Citigroup Notice, both of which were available on the website maintained by Lead Counsel for the benefit of the Class, www.worldcomlitigation.com. Second, definitions of class membership similar to that stated

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[24] The reasoning of the *Knisley* Court is consistent with other decisions limiting standing to object to a settlement or fee request. *See generally In re School Asbestos Litig*., 921 F.2d 1330, 1332-33 (3d Cir. 1990) ("To establish standing to appeal a settlement, a non-settling defendant may not merely claim an interest in the lawsuit but must show some cognizable prejudice to a legal relationship between it and the settling parties."); *Ragsdale v. Turnock*, 941 F.2d 501, 506 (7th Cir. 1991) (Posner, J., concurring in part and in judgment) ("to object to a settlement on the ground that you shouldn't have done as well in the settlement as you did identifies you as an ideological litigant; and an affront to one's ideology is not an interest that will support standing to sue.").

The conclusion that a litigant challenging a fee award must show that a successful prosecution of that appeal would produce a tangible benefit to the objector has been reached in analogous cases. *Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1352-55 (11th Cir. 2003) (receiver of two defendants and their creditors' committee lacked standing to appeal fee awarded to plaintiffs' counsel out of the common settlement fund where "none of the appellants is responsible for paying the plaintiffs' attorneys' fees; none would suffer any imaginable concrete injury if those fees were increased, nor would they enjoy any concrete benefit if those fees were eliminated altogether."); *see also In re First Capital Holdings Corp. Financial Products Sec. Litig*., 33 F.3d 29, 30 & n.1 (9th Cir. 1994).

above have been consistently used and approved in other class action securities cases during both the class certification and settlements phases. *See, e.g.*, *In re Initial Pub. Offering Sec. Litig.*, 227 F.R.D. 65, 74 (S.D.N.Y. 2004) (defining the class as "all persons and entities that purchased or otherwise acquired the securities of [Specific Issuer] during the Class Period and were damaged thereby"); *In re Cendant Corp. Litig.*, 264 F.3d 201 (3d Cir. 2001) (approving settlement in favor of class consisting of all persons and entities who purchased or otherwise acquired publicly traded securities of the issuer during the relevant period "and who were injured thereby"). Furthermore, the inquiry as to whether a stockholder has been so injured in connection with her transactions in WorldCom securities is not a subjective inquiry, but is objectively ascertainable and is explained in many documents submitted by Lead Plaintiff, including the various notices to stockholders, which were sent to all Class members and posted on the litigation website.

B. No Conflicts Exist Between Class Members That Would Justify the Rejection of the Proposed Settlements

Moulton also argues that there are "intraclass conflicts" that preclude approval of the proposed settlements. The entirety of her Objection on this point reads as follows:

> Based upon the plans of allocation, intraclass conflicts exist between stockholders and bondholders. Intraclass conflicts also exist between class members who possess Securities Act Claims and those who do not possess those claims. The proposed settlement should be rejected for these reasons as well.

Moulton Mem. at 2.

Moulton's positions are without merit. First, she does not even identify the "proposed settlement" or the "plans of allocation" to which she is referring, or the "intraclass conflicts" that supposedly exist. Second, she ignores the extensive section in the Notice that described how and why the Plans of Allocation associated with the various Settlements were determined. Third, the

objection is untimely as it was equally applicable to the Citigroup Settlement and Moulton failed to raise the argument in that context and, thus, waived her right to assert it now. *See* cases cited in Section II, above. Fourth, the objection ignores this Court's consistent rulings, in certifying a single Class with representatives that included the Lead Plaintiff, whose losses stemmed primarily from its stock transactions, and the Named Plaintiffs, whose losses stemmed primarily from their bond transactions, and in approving the Citigroup Settlement and the Plan of Allocation associated with that Settlement. *See In re WorldCom Securities Litig.,* 219 F.R.D. 267 (S.D.N.Y. 2003); Judgment entered November 12, 2004 (approving the Citigroup Settlement). Such decisions made clear that there are no "conflicts" that render either the present Settlements or the Plans of Allocation associated with them deficient.

Finally, there is simply no requirement that, in class actions, all class members must maintain similar claims and receive identical recoveries. Moulton is wrong in her apparent assertion that terms of the plans of allocation create conflicts between Class members that would justify rejection of the Settlements. There is simply no requirement that all plaintiffs and members of a class have identical claims and recover identical amounts. As the Court stated in *Petrovic v. Amoco Oil Corp.*, 200 F.3d 1140, 1148 (8th Cir. 1999), unless a court reviewing a settlement finds "stark conflicts of interest," a settlement which contains class members who may recover different amounts is acceptable. *See also In re Prudential Insurance Co. of America Sales Practices Litig*., 148 F.3d 283, 311 (3d Cir. 1998) (finding overarching scheme perpetrated by Prudential to be linchpin of the claims, "regardless whether each class member alleges a churning claim, a vanishing premium claim, an investment plan claim, or some other injury"). Here, all Class members are seeking the same thing: compensation under the federal securities laws for the Defendants' material misrepresentations and omissions. Although the Complaint

asserts different claims (all of which arise out of the same factual predicate) relating to different WorldCom Securities, and Class members will receive varying recoveries, the type of conflicts that would justify rejection of the Settlements do not exist here.

Thus, Moulton's objection as to intra-class conflicts is without merit and should fail.

C. The Fee and Expense Requests Are Fair and Reasonable

As demonstrated in Lead Counsel's Initial Mem., the fee and expense applications are fair and reasonable to the Class, and should be approved.[25] The applications submitted on July 29, 2005, are in strict conformity with the Retainer Agreement, which was entered into by Lead Plaintiff and Lead Counsel on July 30, 2003 following lengthy negotiations between the parties. The Retainer Agreement has been posted on the website since August 2003, and was specifically referred to in the Notice of Class Action that was mailed to Class members and also posted on the website in December 2003. Furthermore, the fee and expense applications – which were also within the limits set out in the Notice – were submitted only after Lead Plaintiff examined the itemized daily time and expense records and provided its approval and endorsement of the request. *See* Notice at 3; Lead Plaintiff Decl. (Ex. 1 to Joint Decl.) ¶ 14.

The criticisms of Objector Moulton center on her assertions that: (1) the fee should reflect a decreasing percentage as the amount of recovery increases (Moulton Mem. at 4); (2) plaintiffs' counsel should be required to produce detailed time and expense records for Class members to

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[25] On November 12, 2004, the Court awarded attorney's fees of $141,500,000 and reimbursement of expenses of $13,505,969.99 (for Plaintiffs' counsels' expenses, Administrator expenses and Lead Plaintiff expenses) in connection with the Citigroup Settlement. The present fee and expense applications were submitted in three parts, with separate proposed Orders, as follows: (1) based on the settlements reached with the Underwriter Defendants - which total $3,427,306,840 - Lead Counsel requests fees of $187,720,000 (just under 5.5% of the Settlement Fund attributable to these settlements), plus interest at the same rate earned by the Fund; (2) based on the settlements with the Director Defendants and Arthur Andersen, Lead Counsel requests fees of $6,880,000 (just under 5.5% of these settlements, which total $125,750,000), plus interest; and (3) Lead Counsel requests reimbursement of expenses (including expenses incurred by Lead Plaintiff, Lead Counsel, and the Assisting Firms) in the amount of $7,752,355.63, plus interest. In addition, Lead Counsel is seeking herein the Court's approval of payments, which have been reviewed and approved by Lead Plaintiff, of: (a) administrative expenses to The Garden City Group in the amount of $2,970,589.17; and (b) further litigation expenses to Lead Counsel in the amount of $14,003.45. *See* pages 54-55, below; Supp. Decl. ¶¶ 17-18 and Exhibit E.

review because, in the absence of such records, a lodestar cross-check can not be adequately performed (*id.* at 3-4); (3) the fee request is "excessive" (*id.* at 4-5); and (4) insufficient evidence has been provided to support an award of $12.5 million in out-of-pocket expenses (*id.* at 5). Each of these arguments is without merit.

1. Lead Counsel's Fee and Expense Application

The fee portions of the application were based on the amount achieved in the non-Executive Defendant Settlements from March 3, 2005 to April 22, 2005 – $3.55 billion – and the declining percentages set out in the Retainer Agreement's fee grid. *See* Joint Decl. ¶¶ 2, 96; Lead Plaintiff Decl. ¶¶ 14, 15. The fee requests are for $194.6 million (just under 5.5% of the Settlement Amounts).[26] The Retainer Agreement provides that fees are to be established through a two-step process: first, the fee grid in the Retainer Agreement sets the presumptive fee that may be requested based on the amount of the recovery and the stage of litigation at which the recovery is achieved; and second, there is a cap of a five-times multiple of counsel's lodestar on the fee request and, in its discretion based on factors generally considered by courts in setting fees, Lead Plaintiff need not approve a fee request that constitutes more than a four-times multiple of lodestar. Here, as of June 30, 2005, Plaintiffs' counsel expended almost 278,000 hours in the litigation of this case, and incurred a total lodestar of $83,183,238.70 as of that time. *See* Lead Counsel's Initial Mem. at 15; WorldCom Securities Litigation, Summary of Time and Expenses, attached as Exhibit 5 to the Joint Decl. Based on this, the present requests (plus the

[26] As noted in Lead Plaintiff's Initial Memorandum and the Joint Declaration, Lead Counsel agreed with Lead Plaintiff not to seek any fees from the recoveries obtained from the Executive Defendant Settlements.

amount earlier awarded in connection with the Citigroup Settlement) equate to a 4.0 lodestar multiple, and therefore comply precisely with the fee provisions in the Retainer Agreement.[27]

Lead Counsel's request for reimbursement of expenses is also being submitted with the approval of Lead Plaintiff, which completed its audit of the expenses incurred by plaintiffs' counsel. On the basis of that audit, Lead Plaintiff determined the expenses it approved for reimbursement, and those it did not. As earlier submitted, Lead Plaintiff approved the following request for reimbursement of expenses:

$ 5,389,994.17	For payment of expenses by Class Counsel as listed on counsel's fee and expense summaries (*see* Joint Decl. ¶ 97 and Ex. 5);
$ 2,351,297.92	Owing from Lead Counsel's Litigation Fund (*see* Joint Decl. ¶ 97); and
$ 11,063.54	For payment to Lead Plaintiff as reimbursement of expenses incurred in serving as Lead Plaintiff (other than those compensated in the Citigroup Settlement Opinion) (*see* Lead Counsel's Initial Mem. at 17; Joint Decl. ¶¶ 97& 98; Lead Plaintiff Decl. ¶¶ 6, 15 & 16).

As stated in the Joint Declaration, each of these expenses was incurred in the course of preparing the case for trial, responding to Class member inquiries or requests for information, and taking the case to trial. Lead Plaintiff and Lead Counsel further made extensive efforts to ensure that the expense application did not duplicate any expenses for which Lead Counsel sought reimbursement in connection with the Citigroup Settlement. *See* Joint Decl. ¶ 98; Lead Plaintiff Decl. ¶¶ 6, 15, 16; Lead Counsel's Initial Mem. at 17. As such, for the reasons stated in

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[27] Of course, as set forth in Lead Counsel's Initial Mem., the multiple is 4.0 only because Lead Counsel agreed to utilize the firms' 2004 rates, rather than current rates, even though much of the litigation, including the trial against Andersen, occurred in 2005. Assuming a 5% increase in rates for 2005 had been utilized, the lodestar multiple would be approximately 3.8. In addition, Lead Counsel has continued to expend a significant amount of time since June 30, 2005 (preparing, among other things, the motions papers for the Settlements and this response, the brief filed with the Court of Appeals for the appeals stemming from the Citigroup Settlement, and finalizing the Executive Defendant Settlements). Just in the last two months, Lead Counsel has expended over 1,800 hours, and incurred more than $650,000 in lodestar. Supp. Decl. ¶ 16. It is virtually certain that with the amount of time required to be expended by Lead Counsel in September 2005 and thereafter, the fees being requested will be below the floor of a 4 times multiple provided in the Retainer Agreement.

Lead Counsel's Initial Memorandum, the expenses are appropriate and proper for reimbursement from the Settlement Funds.

Lead Counsel, with the approval of Lead Plaintiff, is further seeking an award in the amount of $2,970,589.17 for payment of Administrative Expenses to The Garden City Group ("GCG"), which has served as the Notice and Claims Administrator for the case, and approval of the prior expenditure from the Notice and Administration Fund established in the Settlements that was advanced to GCG to do the mailings and publications required by the Court's orders. *See* Supp. Decl. ¶ 17 and Exhibit E. The Notice advised Class members that such expenses would be sought, and Lead Plaintiff has reviewed and approved the payment of the requested expenses. Supp. Decl. ¶ 17. The types of services provided by GCG, and the expenses they incurred, are detailed in the Invoices attached as Exhibit E to the Supp. Decl. (none of which duplicate the services and expenses that were applied for, and awarded, in connection with the Citigroup Settlement).

Lead Counsel, with the approval of Lead Plaintiff, is further seeking reimbursement of additional litigation expenses that have been billed by litigation support vendors in the amount of $14,003.45, which were also incurred in the regular course of the litigation. *See* Supp. Decl. ¶ 18.

According, Lead Counsel respectfully submits, with the approval of Lead Plaintiff, that the above-identified four categories of expenses be approved, as follows:

$ 5,389,994.17 For payment of expenses by Class Counsel;

$ 2,365,301.37 Owing from Lead Counsel's Litigation Fund;

$ 11,063.54 For payment to Lead Plaintiff; and

$ 2,970,589.17 For payment to The Garden City Group.

2. The Fee Requests Are Based on a Decreasing Sliding Scale in Accordance with the Retainer Agreement and Should Be Approved

Objector Moulton erroneously asserts that the request for attorneys' fees in connection with the present Settlements should be rejected because it is excessive and does not follow a declining percentage recovery as is common in "mega-fund cases." *See* Moulton Mem. at 4. She argues that the percentage of recovery that was used to calculate attorneys' fees in connection with the Citigroup Settlement should not be used in connection with the additional Settlements, which have increased the total settlement amount by over $3.5 billion. However, as disclosed in Lead Counsel's Initial Memorandum (which was posted on the website on July 29, 2005) and in the Retainer Agreement (which has been posted on the website since the Fall of 2003, and that was referred to specifically in paragraph 48 of the Notice):

(a) The Retainer Agreement is predicated on the precise type of declining percentage formulation that Moulton claims should have been used to determine an appropriate fee (*see* Retainer Agreement at 2); and

(b) The Retainer Agreement also includes a lodestar cross-check (*id.* at 2-3), which Lead Counsel and Assisting Counsel easily satisfied by incurring almost 278,000 hours, and a lodestar in excess of $83 million, through June 30, 2005 (Lead Counsel's Initial Mem. at 15; Ex. 5 to Joint Decl.).

A review of "mega-fund" cases demonstrates that a 5.5% fee request is clearly not excessive in relation to the amount achieved through the Settlements and is actually at the low end of fees awarded in similar cases. Especially significant in this regard are the Second Circuit's recent decision in *Visa*, 296 F.3d 96, in which the district court awarded, and the Court of Appeals affirmed, a percentage-based fee award of $220 million, which constituted 6.5% of the overall $3.4 billion achieved in two settlements; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 485-88 (S.D.N.Y. 1998) (Judge Sweet awarded a fee of $143 million, constituting 14% of the $1.027 billion recovery); *Shaw v. Toshiba America Information Systems,*

Inc., 91 F. Supp.2d 942, 981 (E.D. Tex. 2000) (the court approved a fee of $147.5 million, constituting over 14% of the value of a $1 billion settlement).[28]

In support of her argument that the percentage recovery figure used in connection with the present Settlements should not parallel the percentage recovery which this Court has already approved in connection with the Citigroup Settlements, Moulton cites *In re Independent Energy Holdings PLC*, 2003 WL 22244676, at *6 (S.D.N.Y. Sept. 29, 2003), a securities case in which Judge Scheindlin suggested that the percentage used in calculating attorneys' fees should bear an inverse relationship to the total recovery amount. However, in that case, the requested fee award, which equaled a percentage recovery of 25% of the total settlement amount of $48 million, was reduced to 20% because, among other reasons, that case resembled a "run-of-the mill commercial litigation" and did not involve "ordinary public investors nor market-side malfeasance and thus, no public policy reasons existed in favor of a large risk multiplier."[29] *See id.* at *9. In stark contrast to the facts of that case, the WorldCom Securities Litigation involved hundreds of thousands of public investors, as evidenced by the more than 800,000 proof of claim forms that were filed as of July 29, 2005, and the tremendous complexities and risks of recovery that have been previously detailed in Lead Plaintiff's submissions and in this Court's opinions.

Judge Scheindlin further noted in *Independent Energy* that, when determining the reasonableness of fee awards in class actions, "case citations are of limited usefulness as a 'fee

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[28] *See also In re Lucent Technologies, Inc. Sec. Litig.*, 327 F. Supp.2d 426 (D.N.J. July 19, 2004) (17% award with $517 million recovery); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ) (D. Del. Feb. 5, 2004) (22.5% award with $300 million recovery); and *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL 1222 (S.D.N.Y. June 2003) (28% award with $300 million recovery). Moreover, the only decision cited by Objector Selfe, *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297 (N.D. Ga. 1993), confirms that the present fee requests are reasonable. In that case, the court noted that while the benchmark for a percentage award in a normal common fund case falls between 20-30%, percentage awards tend to decline as the size of the recovery increases, and that fees in the range of 6-10% had been awarded in the "mega-fund" category of cases. *Id.* at 350-51 (footnotes and citations omitted).

[29] The majority of the class members in *Independent Energy* either purchased Depository Shares in a secondary offering or purchased ordinary shares on the London Stock Exchange while residing in the United States. *See Independent Energy, id.* at *1 n.1.

award should be based on scrutiny of the unique circumstances of each case.'" *Id.* at *7 (citing *Goldberger*, 209 F.3d at 53). Although Moulton ignores the circumstance of this case, courts typically consider the traditional factors that the Second Circuit set forth in *City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974), and as further restated in *Goldberger*, to determine the reasonableness of a fee request. As summarized by the court in *Goldberger*, those factors include:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation …; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

209 F.3d at 50.

As described at length in Lead Counsel's Initial Mem., and further discussed in the Joint Declaration, the requests for attorneys' fees submitted by Lead Counsel are fair and reasonable in light of the *Goldberger* factors. *See* Lead Counsel's Initial Mem. at 27-41 (discussing the application of each of the *Goldberger* factors to the Settlements). Because Moulton makes no claims adverse to the facts stated in Lead Counsel's prior submissions, no further discussion is required. *See also* Citigroup Settlement Opinion, 2004 WL 2591402, at *11, *18. The many risks associated with the Settlements have been briefed previously, and were also the subject of the Citigroup Settlement Opinion. *See id.* at 2004 WL 2591402, at *11, *18. Additionally, the quality of representation and the results that Lead Counsel were able to achieve – a $3.55 billion all-cash recovery, on top of the $2.575 billion already received from Citigroup –further support the fee requests. *See* Lead Counsel's Initial Mem. at 37-39.

Finally, public policy considerations strongly militate in favor of approval of the requested fee. In reiterating this Court's statements in *In re Union Carbide*, Judge Scheindlin stated that multipliers in complex securities class actions are justified because "[a] large segment

of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken." *Independent Energy*, 2003 WL 22244676, at *9 (quoting *In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 724 F.Supp. 160, 169 (S.D.N.Y. 1989)). As set out in greater detail in Lead Counsel's Initial Mem., Lead Plaintiff, on behalf of all Class members, has diligently supervised the prosecution of this case by Lead Counsel, which, for the majority of Class members, was their only hope of obtaining compensation for the losses suffered as a result of the WorldCom fraud. *See* Lead Counsel's Initial Mem. at 39-41.

For the foregoing reasons, as well as those stated in Lead Counsel's Initial Mem., the fee requests should be approved.

3. Lead Counsel Is Not Required to Produce Detailed Time and Expense Records to All Class Members, and Is Entitled to Reimbursement of All Requested Expenses

Objector Moulton also argues that this Court should require plaintiffs' counsel to produce to Class members and the Court the itemized daily time and expense records that Lead Counsel submitted to Lead Plaintiff in connection with the Settlements, as well as those in connection with the Citigroup Settlement, including detailed information with regard to all expenses incurred by the expert witnesses retained by Lead Counsel.[30] She argues that it is only by reviewing such detailed time and expense reports that this Court (i) can adequately perform a

[30] Moulton has served on Lead Counsel a "document request," and requested that Lead Counsel respond to the document request by Monday, September 12, 2005 (which is after the settlement hearing set in the Notices of the present settlements). Lead Counsel is preparing a response to the document request, which will demonstrate that it is improper and objectionable in its entirety, and will be prepared to serve it timely, should the Court deem it appropriate to do so. In Moulton's objection and document request, Moulton also seeks production of a list of all cases in which the experts retained by Lead Plaintiff in this case were retained by Lead Counsel within the last 10 years, including cases that did not settle or are still pending. Moulton has presented no basis for this request. Moreover, as previously discussed, in this case Lead Plaintiff was instrumental in overseeing the litigation and the expenses incurred therewith at each and every stage of the case, including the retention of expert witnesses. Lead Plaintiff approved the expert witnesses that were hired to work on this case, and also thoroughly examined and approved the time and expense reports submitted in connection therewith. Thus, there is absolutely no basis for Moulton's request that Lead Counsel should now be required to submit detailed information as to each expert retained in this litigation.

lodestar cross-check, and (ii) determine the validity of any Class member objections to the fee and expense requests.

Contrary to Moulton's assertions, however, Lead Plaintiff has already extensively reviewed the detailed daily time and expense records of Plaintiffs' counsel, which are voluminous, and has approved the filing of the fee and expense applications, which reflect Lead Plaintiff's analysis. Respectfully, that is the Lead Plaintiff's job, and Lead Plaintiff submits that, although the Court is always entitled to review these kinds of records, this Court need not be burdened with the task of re-reviewing the same voluminous materials. As Lead Counsel has already provided such reports to Lead Plaintiff, which has carefully reviewed the materials and which was duly appointed under the PSLRA as the designated guardian for the Class, Lead Counsel is not required to produce the itemized daily time and expense reports to all Class members. Lead Counsel has appropriately made available to the Court and Class members comprehensive summaries of these reports. Accordingly, Moulton's objections and related requests should fail.

Lead Plaintiff was selected to represent the Class because, compared to other lead plaintiff applicants, it had by far the largest financial interest in this litigation (with more than $300 million in losses from transactions in WorldCom Securities), and because it is a sophisticated institutional investor and precisely the type of plaintiff contemplated by the Private Securities Litigation Reform Act to serve as lead plaintiff in securities class actions. [We note, in comparison, that Moulton's entire claimed interest in the case is $404.02, and that Moulton has not even filed a claim to seek a distribution from the Settlement Funds.] As the Statement of Managers noted, the Reform Act was intended "to increase the likelihood that institutional investors will serve as lead plaintiffs," because, among other reasons, institutional investors and

other class members with large amounts at stake "will represent the interests of the plaintiff class more efficiently than class members with small amounts at stake." House Conference Report No. 104-369, 104th Cong. 1st Sess. At 34 (1995), reprinted at 1995 USCC&AN 730, 733. Lead Plaintiff, the NYSCRF, was selected by the Court to serve as the representative for the Class throughout this litigation and, in furtherance of its duties, Lead Plaintiff negotiated a Retainer Agreement that set strict standards for any fee and expense applications to be submitted in the case, and thereafter reviewed, considered and approved – to the extent Lead Plaintiff concluded it was appropriate to do so – the fees and expenses applications that Lead Counsel submitted.

Although it is appropriate that Lead Plaintiff was provided with detailed time and expense records as part of its consideration of the fee and expense applications, courts in this Circuit do not require such records to be produced either to absent Class members or to Judges making such fee and expense awards. Judge Sweet denied a similar request by an objector in *In re NASDAQ Market-Makers Antitrust Litig.,* 187 F.R.D. 465, 480 (S.D.N.Y. 1998), in connection with the class member's objection to the proposed settlement, holding that Class counsel was not required to provide a detailed budget setting forth all fees and expenses to the members of the class. Similarly, the Court of Appeals in this Circuit has held that courts need not undertake a detailed review of underlying records in conducting their lodestar cross-checks. *See Goldberger*, 209 F.3d at 50 (when the lodestar method is used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court"); *accord In re Rite Aid Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records"). Indeed, in *Goldberger*, the Court of Appeals held that a district court is not required to undertake a

thorough analysis of detailed time records, particularly if it is familiar with the specifics of the case. As long as the goal of avoiding impermissible windfalls to attorneys is achieved, it is not necessary to "compel district courts to undertake the 'cumbersome, enervating, and often surrealistic process of lodestar computation." *Id.* (quoting *Savoie v. Merchants Bank*, 166 F.3d 456, 461 n.4 (2d Cir. 1999)).

Moulton is also incorrect in her assertion that compliance with Rule 23 of the Federal Rules of Civil Procedure would require the production of Class Counsel's itemized time and expense records to all Class members for review and potential objection. Rules 23(h)(1) and 23(h)(2) provide, in relevant part, that "a claim for an award for attorneys' fees and nontaxable costs must be made by motion under Rule 54(d)(2)" and further, that "[a] class member, or a party from whom payment is sought, may object to the motion." Rule 54(d)(2) sets out the procedure for making such a motion and provides that a court shall afford a class member the opportunity to make an adversary submission if it so requests. The relevant rules do not require, however, that petitioning counsel produce to all Class members its detailed and itemized time and expense reports.

All Class members had the opportunity to examine Exhibit 5 to the Joint Declaration, which summarizes the number of hours expended by attorneys and paralegals at Lead Counsels' firms and the Assisting Firms (through June 30, 2005), the lodestar calculations (through the same date), and the expenses incurred by the firms after the time period covered by Lead Counsel's expense reimbursement request submitted in connection with the Citigroup Settlement. This information was submitted in connection with Lead Plaintiff's Initial Memorandum and has been posted on the website for viewing by all Class members since July

29, 2005. Under Rule 23, that is certainly sufficient information to present an opportunity for Class members to object to the fee requests; under the governing case law, no more is required.

For the foregoing reasons, Moulton's objection should be rejected in its entirety.

V. Response to Objection to Claim Form of Charles Lee Thomason

There is one remaining objection. Thomason objects to the proof of claim form on the ground that it fails to include a place for Class members to identify WorldCom stock purchased for their benefit through a Unit Investment Trust sold by Salomon Smith Barney, and therefore, that there is a risk that the Administrator might reject a claim for such securities that were "otherwise acquired" for his benefit.

This concern is misplaced. First, as stated in the Supplemental Declaration, Lead Counsel responded to Thomason's objection by informing him, and the very few other Class members who have inquired about this same topic, that they may include the WorldCom stock purchased for their benefit, as part of a Salomon Unit Investment Trust, in the same place in the proof of claim form, i.e., where a claimant identifies all WorldCom stock transactions, and include with their claim form the back-up documentation in the form attached to Thomason's objection. *See* Supp. Decl. ¶ 3, and Exhibit B.

Second, Lead Counsel has confirmed with the Administrator that such claims will be treated in the same manner as if such stock had been purchased directly by the claimant, *id.*, and has further confirmed with counsel for the Citigroup Defendants that claims on behalf of Salomon Unit Investment Trust clients are not being submitted separately by Salomon – thereby eliminating any chance of duplicative claims being filed. *Id.*

This treatment is consistent both with the proof of claim form, and with the Citigroup Notice, dated August 2, 2004, that was sent to potential Class members along with the proof of claim form. Thus, there is no basis for the concern raised by Thomason.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court enter orders: (a) approving the Settlements; (b) approving the Plans of Allocation; (c) approving the Supplemental Plan of Allocation; and (d) granting Lead Counsel's fee and expense applications.

Dated: New York, New York
September 2, 2005

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Certificate of Service

I Jeffrey W. Golan, hereby certify that true and correct copies of the Reply Memorandum of Law in Further Support of Final Approval of Settlements, Lead Plaintiff's Plans of Allocation and Supplemental Plan of Allocation, and an Award to Lead Counsel of Attorney's Fees and Reimbursement of Expenses, along with a Supplemental Declaration of Jeffrey W. Golan and John P. Coffey in support thereof, were served this 2nd day of September, 2005 via email or Federal Express, on counsel for all parties in the litigation, and on the objectors and/or their counsel on the attached service list.

/s/

Jeffrey W. Golan

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