

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ALBERT FADEM TRUST AND
BRUCE A. FADEM, As Trustee,
On Behalf of Themselves and
All Others Similarly
Situating,

Plaintiff,

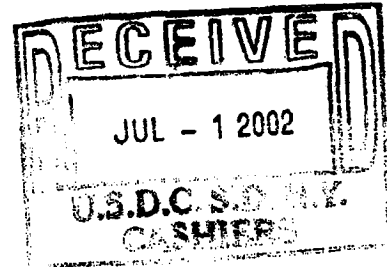
vs.

WORLDCOM, INC.; BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESI,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3288
Judge Denise L. Cote

SECURITIES CLASS ACTION



[additional captions on subsequent pages]

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF H. CARL MCCALL,
COMPTROLLER OF THE STATE OF NEW YORK, AS ADMINISTRATIVE HEAD OF
THE NEW YORK STATE AND LOCAL RETIREMENT SYSTEMS AND AS TRUSTEE
OF THE NEW YORK STATE COMMON RETIREMENT FUND (1) TO CONSOLIDATE
RELATED ACTIONS, (2) FOR APPOINTMENT AS LEAD PLAINTIFF AND (3)
FOR APPROVAL OF ITS SELECTION OF LEAD COUNSEL, PURSUANT TO
SECTION 21D(a)(3)(B) OF THE SECURITIES EXCHANGE ACT OF 1934 AND
SECTION 27(a)(3)(B) OF THE SECURITIES ACT OF 1933

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MICHAEL BAMDIS, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESÌ,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3416 (DLC)

BRIAN BARRY, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESÌ,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3419 (DLC)

BEVERLY SCHRECK AND SEYMOUR
SCHRECK, Trustees On Behalf
of Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3508 (DLC)

DAVID CRUM, Individually And
On Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3537 (DLC)

DAVID KRAMER, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3647 (JSR)

STEVEN BRAKL, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3750 (DLC)

DAVON GROUP, LTD., On Behalf
of Itself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-3771 (DLC)

ROBIN HODES JACOBS, On Behalf
of Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4719 (RMB)

GAIL M. GRENIER AND WORLDCOM
401(K) SAVINGS PLAN, Appearing
Derivatively Through Gail M.
Grenier, A Participant In The
Plan, On Behalf of Themselves
and All Others Similarly
Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4816 (JES)

ERIC EDWARDS AND FORREST
STEPHENS, On Behalf of
Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESI,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4946
(unassigned)

MAURICE BRODSKY, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESI,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4958
(unassigned)

NICHOLAS FEDERICKA AND BRUCE
FISCHER, On Behalf of
Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4973
(unassigned)

SHEREEN BEYDOUN, On Behalf of
Herself and All Others
Similarly Situated,

Plaintiff,

vs.

WORLDCOM, INC., BERNARD J.
EBBERS, JAMES C. ALLEN, MAX
E. BOBBITT, FRANCESCO GALESII,
AND ARTHUR ANDERSEN, LLP,

Defendants.

Case No. 02-CV-4945
(unassigned)

THOMAS SINGLETON AND ALAN
SMITH, On Behalf of
Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-3687 (LAK)

STEVEN BRAKL, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-3817 (LAK)

PAUL BERGER, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-3819 (LAK)

DAVID A. RIPPLE, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-3914 (LAK)

TOM ROLSETH, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-3985 (GBD)

JAMES R. GARNER, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-4038 (LAK)

MARJORIE SPANGLER, On Behalf
of Herself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-4087 (LAK)

JOSHUA ACKERMAN, Individually
And On Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-4197 (LAK)

JON R. MOWER, On Behalf of
Himself and All Others
Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-4277 (LAK)

DEBORAH S. OVETSKY-WEISS, On
Behalf of Herself and All
Others Similarly Situated,

Plaintiff,

vs.

SALOMON SMITH BARNEY, INC.
AND JACK GRUBMAN,

Defendants.

Case No. 02-CV-4394 (SAS)

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PRELIMINARY STATEMENT

Pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), and Section 27(a)(3)(B) of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(3)(B), as amended by Section 101(a) of the Private Securities Litigation Reform Act of 1995, P.L. 104-67, 109 Stat. 737 (the "Reform Act"), H. Carl McCall, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement Systems and as Trustee of the New York State Common Retirement Fund (the "NYSCRF") respectfully submits this memorandum in support of its motion for an Order: (1) consolidating the above-captioned actions, as well as any other related actions pending in this Court and any subsequently filed or transferred actions, (2) appointing the NYSCRF as Lead Plaintiff in the consolidated actions pursuant to § 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), and § 27(a)(3)(B) of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(3)(B), as amended by the Reform Act, and (3) approving the NYSCRF's choice of counsel, the law firms of Bernstein Litowitz Berger & Grossmann LLP and Barrack Rodos & Bacine, as Lead Counsel in the consolidated actions.

The above-captioned cases were filed against WorldCom Inc. ("WorldCom" or the "Company") and various of its affiliates, its outside auditor and its investment banks following the initial disclosure of the Company's write-off of goodwill in late April

2002. Because all of these actions are related, the NYSCRF hereby moves to consolidate them and for its appointment as lead plaintiff to prosecute the consolidated action.

The present motion is precisely what the framers of the Reform Act hoped to accomplish. The legislative history of the Reform Act demonstrates that it was intended to encourage institutional investors, such as the NYSCRF, to serve as lead plaintiffs. 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 effectively 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.

The NYSCRF manages over \$100 billion in assets on behalf of hundreds of thousands of governmental employees and retirees. It has a huge financial stake in this litigation, having suffered losses of approximately \$306 million as a result of the securities law violations alleged in this and the other cases against WorldCom. Thus, the NYSCRF is precisely the type of investor that should be appointed as Lead Plaintiff in the consolidated actions.

A. The New York State Common Retirement Fund

The NYSCRF, as established by Article 9 of the New York Retirement and Social Security Law, holds and invests the assets of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (the "Systems"). The NYSCRF is the second largest public pension fund in the nation. The Systems have approximately 950,000 active members, retirees and other beneficiaries and as of March 31, 2002, held approximately \$112 billion in assets. H. Carl McCall, the Comptroller of the State of New York, is the sole trustee of the NYSCRF.

As more fully described below, the financial loss suffered by the NYSCRF due to the wrongful conduct of defendants is approximately \$306 million.

B. WorldCom, Inc.

WorldCom is the second-largest long-distance telephone company in the United States. Over the past three years, WorldCom has grown tremendously through acquisitions - using billions of dollars of its stock as the currency for those acquisitions.

C. The Claims Against WorldCom and Others

All of the above-captioned actions - as well as a number of actions that were more recently filed in the Southern District of Mississippi - allege that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings

and financial condition in violation of the federal securities laws. Specifically, the above-captioned complaints filed against Worldcom, et al., allege that WorldCom misstated its earnings by overvaluing the goodwill of its acquired businesses and failing to write down its goodwill. They also allege that WorldCom had inflated its income by failing to record write-downs of goodwill and other intangible assets associated with its purchases of MCI Communications Corp., Compuserve Corp., Wireless One Inc., MFS Communications Inc., Brooks Fiber Properties, ANS Communications Network, UU Net SA Ltd., Intermedia Communications Inc, CAI Wireless Systems Inc., Skytel Communications Inc., Brooks Fiber Properties, Ozemail Ltd., Equifax Inc, Prime One Tele-TV and Active Net Inc. Finally, they allege that the defendants misstated the value of goodwill and other intangible assets associated with WorldCom's acquisition of numerous telecommunications companies at premium prices, and carried such assets on WorldCom's balance sheet at the cost of acquiring them long after it had become apparent that WorldCom had overpaid to acquire such assets.

The above-captioned complaints against Salomon Smith Barney, et al., allege that analysts at Salomon Smith Barney promoted WorldCom stock, giving it a "buy" rating and remaining bullish on the stock, despite the fact that they were aware of the problems at WorldCom. They further allege that in return for the positive ratings, WorldCom used Salomon Smith Barney for the underwriting of its

securities during the class period, financial advising and to oversee its employee stock option program.

The more recent allegations center around WorldCom's disclosure on June 25, 2002, that it concealed \$3.9 billion of expenses in capital spending accounts rather than record them as operating expenses, in violation of generally accepted accounting principles ("GAAP"). Indeed, the Company's disclosure that it will be restating its financial statements for the past five quarters is tantamount to an admission that its reported revenues were substantially overstated.

ARGUMENT

POINT ONE

THE ABOVE-CAPTIONED ACTIONS SHOULD BE CONSOLIDATED

The PSLRA provides that "[I]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this Act has been filed," the Court shall not make the determination of the most adequate plaintiff until "after the decision on the motion to consolidate is rendered." 15 U.S.C. §78u-4(a) (3) (B) (ii); §78u 15 U.S.C. 77z-1(a) (3) (B) (ii). Thereafter, the Court "shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions." Id.

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, when actions involving common questions of law or fact are pending, the district court is vested with broad powers to consolidate such

actions if the Court, in its discretion, determines that consolidation would facilitate the administration of justice.

Werner v. Satterlee, Stephens, Burke & Burke, 797 F. Supp. 1196, 1211 (S.D.N.Y. 1992). Rule 42(a) states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a).

Consolidation is particularly appropriate in securities class action litigation. Primavera Familienstiftung v. Askin, 173 F.R.D. 115, 129 (S.D.N.Y. 1997). Indeed, "[i]n securities actions where the complaints are based on the same 'public statements and reports' consolidation is appropriate if there are common questions of law and fact and the parties will not be prejudiced." In re Olsten Corp. Sec. Litig., 3 F. Supp.2d 286, 292 (E.D.N.Y. 1998) (quoting Werner v. Satterlee, Stephens, Burke & Burke, 797 F. Supp. at 1211). In sum, consolidation is generally ordered "so long as any confusion or prejudice does not outweigh efficiency concerns." Askin, 173 F.R.D. at 129. See also Mitchell v. Complete Mgmt., Inc., No. 99 Civ. 1454 (DAB), 1999 WL 728678, at *1-2 (S.D.N.Y. Sept. 17, 1999).

Here, all of the above-captioned actions relate to essentially the same series of allegedly false and misleading statements made by the same defendants and contained in the same press releases and SEC

filings adopted or approved by these defendants. All of the actions concern transactions in WorldCom securities, which were traded on the NASDAQ during the Class Period. All of the documents to be reviewed and testimony to be taken relate to these allegedly false and misleading statements and are identical as to all the actions. The witnesses, except for plaintiffs for class certification purposes, are all the same. In view of these facts, consolidation is appropriate and in the interest of judicial economy. See Aronson v. McKesson HBOC, Inc., 79 F. Supp. 2d 1146, 1151 (N.D. Cal. 1999).

POINT TWO

**THE NYSCRF SHOULD BE APPOINTED AS LEAD PLAINTIFF FOR THE
CONSOLIDATED ACTIONS**

**A. The Procedure Required By the Private
Securities Litigation Reform Act of 1995**

The Private Securities Litigation Reform Act of 1995, P.L. 104-67, 109 Stat. 737 ("Reform Act"), which became law on December 22, 1995, applies to this case. The Reform Act, inter alia, amended the Securities Exchange Act of 1934 and the Securities Act of 1933 by adding new sections specifically addressing various matters relating to private lawsuits brought thereunder. More specifically, the Reform Act added a new Section 21D to the Exchange Act, which is codified as 15 U.S.C. § 78u-4, and a new Section 27 to the Securities Act, which is codified as 15 U.S.C. § 77z-1. These sections establish a procedure for the appointment of a "Lead Plaintiff" in "each private action arising under the [Exchange Act

or Securities Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." § 21D(a)(1), § 27(a)(1).

First, the plaintiff who files the initial action must publish a notice to the class, within 20 days of filing the action, informing class members of their right to file a motion for appointment as lead plaintiff. §§ 21D(a)(3)(A)(I), 27(a)(3)(A)(I). The first such notice was published on April 30, 2002, a copy of which is attached as Exhibit A to the Declaration of Daniel L. Berger ("Berger Decl."), submitted herewith. Within 60 days after publication of the notice, any person or group of persons who are members of the proposed class may apply to the Court to be appointed Lead Plaintiff, pursuant to § 21D(a)(3)(A)(i)(II).

The Act further provides that within 90 days after publication of the notice, or as soon as practicable after the consolidation of multiple related cases if consolidation occurs after expiration of the 90-day period, the Court shall consider any motion made by a class member and "shall appoint as lead plaintiff the member or members of the purported plaintiff class that the Court determines to be most capable of adequately representing the interests of class members." § 21D(a)(3)(B)(i).

In determining who is the "most adequate plaintiff," the Act provides that:

the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that...

(aa) has either filed a complaint or made a motion in response to a notice...

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

§ 21D(a)(3)(B)(iii).

As set forth below, the NYSCRF is the "most adequate plaintiff" and should be appointed lead plaintiff for the consolidated actions.

B. The NYSCRF Satisfies the "Most Adequate Plaintiff" Requirements of the Reform Act

1. The NYSCRF Has Complied with the Reform Act and Is Entitled To Be Appointed Lead Plaintiff

The NYSCRF moves the Court to be appointed Lead Plaintiff in the consolidated actions. It has met the 60-day time period requirements of § 21D(a)(3)(B)(iii), which in this case provides that Lead Plaintiff motions must be filed by July 1, 2002, and is further qualified to represent the proposed class. The NYSCRF has signified its willingness to serve as a representative of the class and has set forth its purchase and sale information regarding WorldCom securities during the relevant period. See Berger Decl., Ex B.^{1/}

¹ Since the NYSCRF did not file a complaint but is, instead, proceeding by motion, no certification mandated by § 21D(a)(2) for parties filing a lawsuit is required. Greebel v. FTP Software, Inc., 939 F. Supp. 57, 61-62 (D. Mass. 1996); Blaich v. Employee Solutions, Inc., 97 WL 842417, *2 (D. Ariz., Nov. 2, 1997).

In addition, the NYSCRF has selected and retained highly competent counsel to represent the Class. The firm biographies of Bernstein Litowitz Berger & Grossmann LLP and Barrack, Rodos & Bacine, the NYSCRF's chosen counsel, are attached as Exhibits C and D to the Berger Decl. These are the same firms that represented NYSCRF in the landmark Cendant case, which resulted in a \$3.2 billion settlement.

2. **The NYSCRF Has the Largest Financial Interest in the Relief Sought by the Putative Class**

During the relevant period, the NYSCRF purchased shares of WorldCom stock at prices artificially inflated by defendants' false and misleading statements and omissions and was injured thereby. The NYSCRF has a very significant financial interest in this case, having suffered estimated recoverable losses of approximately \$306 million.^{2/}

Nonetheless, the NYSCRF has submitted a Certification to underscore its commitment to serve as Lead Plaintiff in this case, and to provide the information called for in certifications filed pursuant to the PSLRA.

² 15 U.S.C. 78u-4(e) provides a formula for computing a Class member's damages for violations of Section 10(b), which includes separate calculations as to securities that have been sold and securities that are still held. For purchasers who hold their securities, damages are measured by comparing the purchase price of the security with its mean trading price during the 90 day period following the corrective disclosure by the Company. Here, the NYSCRF continues to hold a portion of its stock. Because 90 days have not passed since the April 30, 2002, announcement concerning the write-downs, the NYSCRF has utilized a computed retention price of \$1.4694 for the period April 30, 2002, through July 1, 2002 (the date this motion was filed), to compute the losses suffered on purchases of common stock. This price is the mean closing price of WorldCom common stock for that period, utilizing a price of \$.09 per

As of this filing, the NYSCRF has not been served with any papers on behalf of any other applicant or applicant group for appointment as Lead Plaintiff in this case. Nor has the NYSCRF received any notice that any other potential applicant has sustained a greater financial loss in connection with the purchase and sale of WorldCom securities during the Class Period. Consequently, NYSCRF believes that it has the largest financial interest in the relief sought by the class and, therefore, satisfies the second prong of the most adequate plaintiff test.

3. The NYSCRF "Otherwise Satisfies the Requirements of Rule 23"

In addition to satisfying the requirements set forth above, Lead Plaintiffs must also fulfill the requirements of Rule 23 of the Federal Rules of Civil Procedure. Rule 23(a) provides that a party may serve as a class representative only if the following four prerequisites are met:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties

share for the period from June 26, 2002, when trading was halted, through July 1, 2002, when trading resumed at \$.09 per share. In addition, because the class period will undoubtedly be extended, NYSCRF used the actual sales price for shares that were purchased during the class period and then sold prior to the announcements of June 25, 2002. See Berger Decl., Ex. 5. While a number of different class periods are alleged in the various complaints, the NYSCRF is including its transactions between April 30, 1999, and April 29, 2002, the class period alleged in the first filed notice.

will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Only two of the four prerequisites to class certification, typicality and adequacy, directly address individual characteristics of class representatives. Consequently, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining requirements until the lead plaintiff moves for class certification. Lax, 1997 U.S. Dist. LEXIS 11866 at *20; Fischler v. Amsouth Bancorporation, 1997 U.S. Dist. LEXIS 2875, *7-8 (M.D. Fla., Feb. 6, 1997).

Here, the NYSCRF satisfies the typicality and adequacy requirements of Rule 23. Like all other class members, it purchased WorldCom securities during the relevant period at prices artificially inflated by the false and misleading statements disseminated by defendants, and was damaged by defendants' alleged misconduct. Thus, its claims are typical of those of other class members. See, e.g., Hassine v. Jeffes, 846 F.2d 169, 177 (3d Cir. 1988) (typicality satisfied if representative party's individual circumstances are not markedly different or if the legal theories upon which its claims are based do not differ from the claims of other class members); In re Electro-Catheter Securities Litigation, [1987-88 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,643 at 97,931 (D.N.J. 1987) (typicality met if representative party can "point to

the same broad course of alleged fraudulent conduct" to support a claim for relief).

The NYSCRF is also an adequate representative of the Class within the meaning of Rule 23(a)(4) because it has no fundamental conflicts with other class members and has retained highly competent and experienced counsel in this action. Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 562 (2d Cir. 1968); In re the Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992).

Thus, in addition to having the largest financial interest and having a compelling incentive to achieve a truly significant recovery for class members, the NYSCRF prima facie satisfies the typicality and adequacy requirements of Rule 23 of the Federal Rules of Civil Procedure.

4. The Appointment of NYSCRF is Consistent with the Purposes of the Reform Act

The legislative history of the Reform Act demonstrates that it was intended to encourage institutional investors, such as the NYSCRF, to serve as Lead Plaintiff. As the Statement of Managers for the Reform Act noted:

The Conference Committee seeks to increase the likelihood that institutional investors will serve as lead plaintiffs by requiring courts to presume that the member of the purported class with the largest financial stake in the relief sought is the "most adequate plaintiff." ...

The Conference Committee believes that ... in many cases the beneficiaries of pension funds -- small investors -- ultimately have the greatest stake in the outcome of the lawsuit. Cumulatively, these small investors represent a single large investor interest. Institutional investors

and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.

House Conference Report No. 104-369, 104th Cong. 1st Sess. at 34 (1995), reprinted in 1995 USCC&AN 730, 733. Similarly, the Senate Report on the Reform Act states in pertinent part:

The Committee believes that increasing the role of institutional investors in class actions will ultimately benefit the class and assist the courts. ...

Institutions with large stakes in class actions have much the same interests as the plaintiff class generally.

Senate Report No. 104-98 at 11, reprinted at 1995 USCC&AN 679, 690. See also Greebel v. FTP Software, 939 F. Supp. at 63 (provisions of Act "suggest a presumption that institutional investors be appointed lead plaintiff"); Gluck v. CellStar Corp., 976 F. Supp. 542, 548 (N.D. Tex. 1997) ("through the PSLRA, Congress has unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors").

Thus, the instant motion satisfies not only the statutory requirements of the Reform Act, but also its underlying purposes. In view of these facts, the Court should appoint NYSCRF to lead this action pursuant to §§ 21D(a)(3)(B)(iii) and 27(a)(3)(B)(iii).

POINT THREE

THE COURT SHOULD APPROVE THE NYSCRF'S CHOICE OF COUNSEL

Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the proposed Lead Plaintiff shall, subject to Court approval, select and retain counsel to represent the Class. In that regard, the NYSCRF has selected Bernstein Litowitz Berger & Grossmann LLP and Barrack, Rodos & Bacine to serve as Lead Counsel in this case.

Both of these firms have extensive experience in successfully prosecuting securities fraud actions and have frequently appeared in major actions before this and other Courts. See Firm Biographies, Berger Decl., Exs. C and D. Both firms have been recognized on numerous occasions as appropriate lead counsel in cases brought since the passage of the Reform Act, including, but not limited to, the Cendant and McKesson securities litigations.

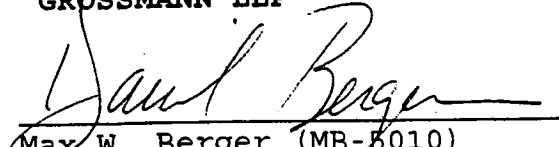
CONCLUSION

For all of the foregoing reasons, the New York State Common Retirement Fund respectfully requests that the Court: (1) consolidate the above-captioned actions, as well as any other related actions pending in this Court and any subsequently filed or transferred actions, (2) appoint it as the Lead Plaintiff for the consolidated actions, and (3) approve its selection of Lead Counsel.

Dated: July 1, 2002

Respectfully submitted,

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