UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLDCOM, INC. SECURITIES LITIGATION	MASTER FILE 02 Civ. 3288 (DLC)
This Document Relates to:	
ALL ACTIONS	OPINION AND ORDER

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DENISE COTE, District Judge:

Lead Plaintiff in the consolidated securities class action arising out of the collapse of WorldCom, Inc. ("WorldCom") petitions for final approval of a partial settlement of the class action. It seeks approval of a $2.575 billion settlement with Citigroup, Inc., Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc. ("SSB"), Citigroup Global Markets Limited f/k/a Salomon Brothers International Limited, and Jack B. Grubman ("Grubman"), a former telecommunications analyst for SSB (collectively "Citigroup Defendants"). It also seeks approval of a proposed plan of allocation of the settlement fund, and an award of attorney's fees, reimbursement of expenses, and creation of a $5 million fund for the continuation of the litigation against the non-settling defendants.

For the reasons discussed below, the petition is approved. A separate Opinion issued today will address the application by Liaison Counsel for the WorldCom related securities actions filed

by individual plaintiffs as opposed to a class ("Individual Actions"). Liaison Counsel seeks to be partially paid for its time and expenses as Liaison Counsel from the Citigroup Defendants' settlement fund and for a set-off order to be imposed against any recovery in any Individual Action to complete reimbursement of its fees and expenses.

Background

The WorldCom consolidated class action and the Individual Actions have been consolidated for pre-trial purposes in the Securities Litigation. The nature of the claims in the Securities Litigation and the course of the litigation have been the subject of many prior Opinions.[1] Only those events necessary to place in context the requests arising from the Citigroup Defendants' class action settlement are described here.

On June 25, 2002, WorldCom announced a massive restatement of its financial statements. Government investigations and

[1] See, e.g., In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 392 (S.D.N.Y. 2003)(deciding motions to dismiss the consolidated class action complaint); In re WorldCom, Inc. Sec. Litig., 219 F.R.D. 267 (S.D.N.Y. 2003) (certifying the consolidated class action); In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 431 (S.D.N.Y. 2003)(deciding a motion to dismiss claims in an Individual Action).

criminal indictments quickly followed.[2] On July 21, WorldCom declared bankruptcy.

The first of many class action lawsuits arising from WorldCom's alleged massive manipulation of its financial reports was filed in this district on April 30, 2002, approximately two months before the dramatic June 25 announcement. The class actions alleged violations of federal securities laws in connection with the trading of WorldCom stock as well as the sale of WorldCom debt securities, including two massive WorldCom bond offerings: its sale of $5 billion of Notes in May 2000 ("2000 Offering"), and its sale of $11.8 billion of Notes in May 2001 ("2001 Offering"). The latter was the largest public debt offering in the nation's history.

On August 15, 2002, the class actions were consolidated and the New York State Common Retirement Fund ("NYSCRF") was selected as Lead Plaintiff.[3] During the class period, NYSCRF lost over $300 million from its WorldCom investments. Lead Plaintiff is represented by Bernstein Litowitz Berger & Grossman LLP and

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[2] Five former WorldCom executives and employees have pleaded guilty to criminal charges: David F. Myers ("Myers"), Troy Normand, Buford Yates, Jr. ("Yates"), Betty L. Vinson, and Scott Sullivan ("Sullivan"), WorldCom's former CFO. A stay and discovery bar have been in place since December 2002 as to each of these five individuals. In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2002 WL 31729501 (S.D.N.Y. Dec. 5, 2002). Bernard J. Ebbers ("Ebbers"), WorldCom's former CEO, is scheduled to go to trial on criminal charges in January 2005 for his role in the WorldCom collapse. An Order of April 27, 2004 stayed all WorldCom civil litigation against Ebbers until the final resolution of his criminal trial.

[3] Approximately thirty-six class actions have been consolidated through the August 15 Order.

Barrack, Rodos & Bacine (collectively "Lead Counsel"). Three named plaintiffs join NYSCRF in alleging claims on behalf the class. Fresno County Employees Retirement Association ("FCERA") purchased $3.5 million of Notes in the 2001 Offering, and lost over $11 million as a result of its investment in WorldCom securities; the County of Fresno, California ("Fresno") lost over $5.5 million as a result of its investment in the 2000 Offering; and HGK Asset Management, Inc. ("HGK"), a registered investment advisor and fiduciary to its union-sponsored pension and benefit plan clients, lost over $29 million as a result of purchases made in the 2000 and 2001 Offerings. Collectively, FCERA, Fresno, and HGK are referred to as the "Additional Named Plaintiffs."

Lead Plaintiff filed a Consolidated Class Action Complaint (the "Complaint") on October 11. On May 19, 2003, the motions to dismiss made by most of the defendants named in that pleading were largely denied.[4] In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 431.

Meanwhile, scores of Individual Actions had been filed in venues across the country. Individual Actions and class actions pending in other federal courts were transferred here by the Judicial Panel on Multi-District Litigation ("MDL Panel"), and consolidated with the WorldCom class actions for pre-trial

[4] Opinions of June 25 and December 3, 2003 addressed motions to dismiss brought by Arthur Andersen LLP ("Andersen"), the WorldCom auditor, and its affiliates and partners, and the Audit Committee of WorldCom's Board of Directors. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 21488087 (S.D.N.Y. June 25, 2003); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 23174761 (S.D.N.Y. Dec. 3, 2003).

purposes through an Order of December 23, 2002. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2002 WL 31867720 (S.D.N.Y. Dec. 23, 2002).

The Amended Complaint

On August 1, 2003, Lead Plaintiff filed the First Amended Class Action Complaint. On December 1, 2003, Lead Plaintiff filed a Corrected First Amended Class Action Complaint (the "Amended Complaint").[5] The defendants named in the Amended Complaint are WorldCom directors;[6] executives,[7] including Ebbers; WorldCom's outside auditor and accountant, Andersen; the underwriters for the 2000 and 2001 Offerings (the "Underwriter Defendants");[8] and the Citigroup Defendants. SSB is listed here

[5] The Amended Complaint added six foreign subsidiaries or affiliates of the underwriters for the 2000 and 2001 Offerings. They are J.P. Morgan Securities Ltd., Salomon Brothers International Ltd. (now known as Citigroup Global Markets Ltd.), Banc of America Securities Ltd., ABN AMRO Bank M.V., Deutsche Bank AG London, and BNP Paribas. An Opinion of March 19, 2004 granted defendants' motion to dismiss the claims against four of these defendants on the ground that they were time barred. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 540450, at *7 (S.D.N.Y. Mar. 19, 2004). The Securities Act claims against Salomon Brothers International Ltd. and J.P. Morgan Securities Ltd. were not dismissed. Id.

[6] Clifford Alexander, Jr., James C. Allen, Judith Areen, Carl J. Aycock, Max E. Bobbitt, Francesco Galesi, Stiles A. Kellett, Jr. ("Kellett"), Gordon S. Macklin, John A. Porter, Bert C. Roberts, Jr., John W. Sidgmore, and Lawrence C. Tucker ("Director Defendants").

[7] Ebbers, Sullivan, Myers, and Yates (the "Officer Defendants").

[8] The Underwriter Defendants consist of SSB, Salomon Brothers International Ltd., JPMorgan Chase & Co. ("J.P. Morgan"), J.P. Morgan Securities Ltd., Banc of America Securities

as both an Underwriter Defendant and one of the Citigroup Defendants. SSB was the co-lead underwriter with J.P. Morgan for the 2000 and 2001 Offerings. SSB was the book running manager for the 2000 Offering and the joint book runner with J.P. Morgan for the 2001 Offering.

A summary of allegations in the Amended Complaint relevant to this motion follows. The Lead Plaintiff alleges that WorldCom and those affiliated with it misled investors by engaging in a host of illegitimate accounting strategies that obscured losses and inflated the company's earnings. Lead Plaintiff alleges that investors were misled by false information regarding WorldCom's financial state that appeared in analyst reports, press releases, public statements, and filings with the Securities and Exchange Commission ("SEC") during the Class Period, including the registration statements and prospectus statements issued in connection with the 2000 and 2001 Offerings ("Registration Statements").

WorldCom has admitted that its financial statements were overstated by more than $9 billion from 1999 through the first quarter of 2002. WorldCom's disclosures in 2002 had a disastrous effect on the price of its shares and the value of its Notes.

LLC, Deutsche Bank Securities Inc., now known as Deutsche Bank Alex. Brown Inc., Chase Securities Inc., Lehman Brothers Inc., Blaylock & Partners L.P., Credit Suisse First Boston Corp., Goldman, Sachs & Co., UBS Warburg LLC, ABN/AMNRO Inc., Utendahl Capital, Tokyo-Mitsubishi International plc, Westdeutsche Landesbank Girozentrale, BNP Paribas Securities Corp., Caboto Holding SIM S.p.A., Fleet Securities, Inc., and Mizuho International plc.

_____The Lead Plaintiff alleges that Underwriter Defendants failed to conduct proper due diligence in connection with the 2000 and 2001 Offerings. It also alleges that the Citigroup Defendants engaged in securities fraud. The center of its allegations against the Citigroup Defendants is that SSB and Grubman on one hand, and WorldCom and Ebbers on the other, had a close and self-serving relationship from which both sides derived substantial benefit. Lead Plaintiff alleges that WorldCom's securities prices were artificially inflated by Grubman's analyst reports. He was SSB's most prominent telecommunications analyst and consistently encouraged investors to acquire WorldCom securities. The Lead Plaintiff asserts that SSB and Grubman issued the aggressively positive analyst reports despite SSB's knowledge that the integrity and objectivity of its research department was compromised by the department's drive to serve the needs of the firm's investment banking division, despite Grubman's knowledge or reckless disregard of the substantial financial problems at WorldCom, and despite the material misstatements or omissions contained in the reports. The Lead Plaintiff has asserted that Grubman modified his valuation model in order to obscure WorldCom's deteriorating finances. The Lead Plaintiff alleges that in exchange for WorldCom's lucrative investment banking business, SSB provided Ebbers and other WorldCom senior executives with valuable IPO shares, and an SSB corporate sibling secretly loaned Ebbers hundreds of millions of

dollars, which were secured at least in part by Ebbers's WorldCom stockholdings.[9]

The Amended Complaint asserts claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act"), and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"). The Securities Act claims address the 2000 and 2001 Offerings and their Registration Statements. The Lead Plaintiff pleads Securities Act claims against the Officer Defendants, the Director Defendants, Andersen, and the Underwriter Defendants.

The Exchange Act claims arise from alleged misrepresentations and omissions in WorldCom's filings with the SEC, press releases, and Registration Statements for the 2000 and 2001 Offerings, and the SSB analyst reports. The defendants named in the Exchange Act claims include Ebbers, Sullivan, Myers, Yates, Kellett, the Director Defendants who were members of WorldCom's Board of Directors Audit Committee, Andersen, Citigroup, SSB, and Grubman.

Class Certification

A class was certified under Rule 23(b)(3), Fed. R. Civ. P., on October 24, 2003. See In re WorldCom, Inc. Sec. Litig., 219

[9] The interconnections between the various counts, allegations, and defendants in this action have been addressed in prior Opinions. See, e.g., In re WorldCom, Inc. Sec. Litig., 219 F.R.D. at 276-78 (class certification); In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d at 423-31 (motion to dismiss); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 1563412, at *3 (S.D.N.Y. Mar. 25, 2003) (Citigroup Defendants' motion to sever).

F.R.D. 267. The opt out period for the class was set to close on February 20, 2004.[10] The certified class consists of all persons and entities who purchased or otherwise acquired publicly traded securities of WorldCom during the period beginning April 29, 1999 through and including June 25, 2002, and who were injured thereby. This includes all persons or entities who acquired shares of WorldCom common stock in the secondary market or in exchange for shares of companies acquired by WorldCom pursuant to a registration statement, and all persons or entities who acquired debt securities of WorldCom in the secondary market or pursuant to a registration statement.[11] See id. at 274-75.

On December 31, 2003, the Court of Appeals for the Second Circuit permitted the Citigroup Defendants to bring an interlocutory appeal of the certification of the class to address the applicability of the fraud-on-the-market doctrine to analysts' opinions. Hevesi v. Citigroup Inc., 366 F.3d 70, 79 (2d Cir. 2004). The Court of Appeals rejected the other requests by defendants for interlocutory review of the class certification decision.

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[10] Because of misleading communications with clients and class members by counsel for plaintiffs in certain Individual Actions, in addition to a class notice, a curative notice was sent to all plaintiffs who had filed Individual Actions. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 22701242 (S.D.N.Y. Nov. 17, 2003).

[11] The class excludes the defendants; members of the families of the individual defendants; any entity in which any defendant has a controlling interest; officers and directors of WorldCom and its subsidiaries and affiliates; and the legal representatives, heirs, successors, or assigns of any such excluded party.

Discovery

With the decision on the first tranche of the motions to dismiss, see In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 431, the discovery stay imposed pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") was lifted and Lead Plaintiff began its discovery efforts in earnest.[12] Document discovery in the class action was substantially complete by October 10, 2003. Lead Counsel reviewed over ten million pages of documents.

A scheduling order of November 14, 2003 ("November 14 Order") set deadlines for the remainder of the consolidated class action. The November 14 Order provided that the plaintiffs and defendants in the Securities Litigation were each limited to sixty, eight-hour deposition days, excluding the time given to defendants for discovery of the plaintiffs in the Individual Actions. A deposition day could be split into two, four-hour depositions. Substantive depositions of the defendants were scheduled to begin by January 15, 2004, and fact discovery in the Securities Litigation, excluding again the discovery of plaintiffs in the Individual Actions, was scheduled to conclude on June 18, 2004. An Order of May 12, 2004 ("May 12 Order") extended fact discovery until July 9. The schedule for expert

[12] Months earlier, the Lead Plaintiff had obtained an order to partially lift the PSLRA stay, and received copies of documents that WorldCom had already produced in connection with various governmental and other investigations of the company. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 22953645, at *2 (S.D.N.Y. Dec. 16, 2003); In re WorldCom, Inc. Sec. Litig., 234 F. Supp. 2d 301 (S.D.N.Y. 2002).

discovery and summary judgment practice in the class action, as modified by the May 12 Order, provided that experts would be identified on July 16, and that expert discovery was to conclude on October 22. Summary judgment motions were fully submitted on October 1. The November 14 Order scheduled the consolidated class action trial to begin on January 10, 2005, with the pretrial order due November 12, 2004.

In the Fall of 2003, the United States Attorney's Office for the Southern District of New York (the "Government"), which was conducting the criminal investigations and prosecutions of former WorldCom officers and employees, objected to discovery being taken in the Securities Litigation of certain witnesses the Government planned to call at the then-scheduled criminal trial of Sullivan. The parties were permitted to take the depositions of these Government witnesses following the conclusion of the Sullivan trial, then scheduled to begin February 2, 2004. See In re Worldcom, Inc. Sec. Litig., 2003 WL 22953645, at *3.

As Sullivan pled guilty, Ebbers was indicted on March 2, 2004. The Government promptly sought to "embargo" the depositions and interrogatories of thirteen witnesses it expected to be critical witnesses at Ebbers' trial. Ebbers' trial was scheduled to begin on November 9, 2004, long after the close of the fact discovery period for the class action. An April 27, 2004 Order stayed all WorldCom civil litigation against Ebbers until the final resolution of his criminal trial. An Opinion of April 15 and an Order of May 7, 2004, granted the Government's request to embargo thirteen witnesses. The April 15 Opinion

determined that the parties would be permitted to save some of their allotted time for deposition discovery for possible depositions of embargoed witnesses in the interval between the Ebbers trial and the commencement of the class action trial, which was to begin on January 10, 2005. In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 802414, at *7 (S.D.N.Y. Apr. 15, 2004). Another in a series of motions by the defendants to extend the discovery period and class action trial date was also denied. Id. at *8. The April 15 Opinion recognized that should the date of Ebbers' criminal trial shift, it would be necessary to revisit the embargoed witness issue. Id. at *7 n.24. A June 7 Order permitted the defendants and plaintiffs in the Securities Litigation to reserve up to twelve and eight days respectively to depose thirteen embargoed witnesses.[13]

During the deposition period, defendants took a total of 37 depositions, of which 20 were WorldCom witnesses, seven were plaintiff witnesses,[14] and six were third party witnesses who testified about the recent restatement of WorldCom's financial statements. With few exceptions, the defendants noticed and took

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[13] An Order of October 7 permitted the Underwriter Defendants and others to begin to notice the depositions of eleven of the thirteen embargoed witnesses. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 2254954 (S.D.N.Y. Oct. 7, 2004). The depositions were to commence "on a rolling basis as they become available, three days after the time they have testified in the U.S. v. Ebbers trial and have been excused" by the trial judge. Id. at *1.

[14] The defendants had also taken discovery of plaintiffs during the litigation of the class certification decision.

these depositions at the very end of the period allotted for fact discovery. Prior to March 2004, defendants had noticed only one deposition, and before May 2004, defendants took only one deposition. For their part, plaintiffs conducted 77 depositions, of which 70 were noticed by Lead Plaintiff. Lead Counsel was lead examiner on the 70 depositions that it noticed. Plaintiffs noticed 71 and conducted 23 depositions before May 2004. Plaintiffs deposed 25 Citigroup Defendants, of which 18 were noticed by Lead Plaintiff.[15] Prior to reaching the settlement with the Citigroup Defendants, Lead Plaintiff had deposed fifteen witnesses associated with the Citigroup Defendants. Plaintiffs also took ten depositions of J.P. Morgan and five of WorldCom witnesses.

On October 19, the judge presiding over the Ebbers' trial granted Ebbers' request for an adjournment of the trial, and moved it to January 17, 2005. In light of the delay in the start of Ebbers' trial, an October 25 Order adjourned the date of the consolidated class action trial in the Securities Litigation to February 28, 2005.

Opt-Out Period

On December 16, 2003, this Court certified an interlocutory appeal from a denial of remand motions made in certain of the Individual Actions. In re WorldCom, Inc. Sec. Litig., 2003 WL 22953644. The United States Court of Appeals for the Second

[15] With the settlement with the Citigroup Defendants, responsibility for further discovery of those defendants was shifted to Individual Action plaintiffs.

Circuit accepted the appeal and issued an Order of February 3, 2004 ("February 3 Order") extending the opt out period for the class action to no earlier than thirty days after its mandate issued. Class members originally had until February 20, 2004 to mail their requests for exclusion from the class.

On May 11, 2004, the Second Circuit affirmed this Court's remand decision, finding that individual state court lawsuits, brought against WorldCom's officers and directors under the Securities Act, were properly removed to federal court on the ground that they were "related to" the WorldCom bankruptcy estate. See California Public Employees' Retirement System v. WorldCom, Inc., 368 F.3d 86 (2d Cir. 2004). By Order of June 15, 2004, the Court of Appeals vacated the February 3 Order and an Order of this Court dated July 16, 2004 ("July 16 Order"), extended the deadline for a class member to request exclusion from the class to September 1, 2004.

Because the affirmance of the remand decision and the settlement with the Citigroup Defendants were important new events in the history of the Securities Litigation, those who had already opted out of the class were given an opportunity to rejoin the class. The July 16 Order established September 1 as the deadline for persons to revoke a prior request to be excluded from the class and as the deadline for Individual Action plaintiffs to seek to voluntarily withdraw their cases and to remain as members of the class.[16]

[16] Many of the Individual Actions that were filed had time-barred claims or claims that were otherwise flawed. See In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d 392; In re WorldCom,

Settlement Negotiations

On November 7, 2002, the Court ordered the parties in the Securities Litigation to participate in settlement negotiations under the supervision of the Honorable Michael H. Dolinger, United States Magistrate Judge of the Southern District of New York. The initial discussions with the Citigroup Defendants, as with all other defendants, were not fruitful. On September 22, 2003, the Court ordered the parties to engage in further settlement negotiations under the joint supervision of the Honorable Robert W. Sweet, United States District Judge for the Southern District of New York, and Magistrate Judge Dolinger. These two judicial officers and the parties in the Securities Litigation have invested a significant amount of time over the intervening months in settlement negotiations. In May 2004, on the eve of the argument before the Court of Appeals on the Citigroup Defendants' challenge to class certification[17] and with the substantial assistance of the two judicial officers

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Inc. Sec. Litig., 308 F. Supp. 2d 214 (S.D.N.Y. 2004); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 692746 (S.D.N.Y. Apr. 2, 2004). Through Opinions and Orders of January 26 and April 12, 2004, these plaintiffs were given the opportunity to dismiss their actions with prejudice voluntarily in order to remain members of the class. In the event that they choose not to do so, they were barred from all recovery on their previously dismissed claims. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 768561 (S.D.N.Y. Apr. 12, 2004); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 169343 (S.D.N.Y. Jan. 26, 2004); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 113484 (S.D.N.Y. Jan. 26, 2004).

[17] The SEC had filed an amicus brief in the appeal before the Second Circuit that argued for affirmance of the class certification decision.

supervising settlement discussions, the Lead Plaintiff and the Citigroup Defendants reached a settlement. Face-to-face negotiations before Judge Sweet by Alan C. Hevesi, Comptroller of the State of New York ("Comptroller Hevesi") and Charles Prince, CEO of Citigroup, in the latter stages of the settlement process greatly facilitated the settlement. The two judicial officers each signed a statement released on May 10, 2004 with the memorandum of understanding between the Lead Plaintiff and the Citigroup Defendants endorsing the settlement. It reads:

> Pursuant to appointment by the Honorable Denise L. Cote, United States District Judge, we have presided over the extensive negotiations between the Parties that led to this Agreement. We can state based on our discussions with the Parties and the information made available to us, that this Settlement was negotiated in good faith and the Settlement and the allocation between the Securities Act and Exchange Act claims are in the public interest.

(Emphasis supplied.)

Settlement Terms

On July 1, Lead Plaintiff and the Additional Named Plaintiffs entered into a stipulation of settlement (the "Agreement") with the Citigroup Defendants. The Agreement created a maximum settlement fund of $2,650,000,000 in cash, plus interest. Under the terms of the Agreement, the settlement fund would be reduced in the event that more than 1.5% of class members recovering from any one of three allocation classes opt out of the settlement.[18] For purposes of these calculations, the

[18] The formula for measuring the number of opt outs that triggers a reduction in the amount of the settlement fund is expressed as follows:

WorldCom security holdings of certain investors that had filed Individual Actions as of the date of the Stipulation are excluded.

The entire settlement amount (after deduction of Court-approved costs, expenses and attorney's fees), plus interest, will be distributed to class members who timely submit valid

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(i) that portion of the settlement fund allocated to members of the Class who purchased shares of WorldCom stock will be reduced by X% -- with "X" equal to the sum total of the number of shares of common stock held by class members who opt out of the class (the "Stock Opt-Outs"), expressed as a percentage of the number of shares of all publicly held common stock of WorldCom outstanding net of shares held by WorldCom insiders as of June 25, 2002, as reported on WorldCom's most recent report to the SEC as of June 25, 2002, minus one and one-half (1½%) percent; provided that, in the foregoing equation, if "X" is a negative number, "X" shall be deemed to be zero (0); (ii) that portion of the settlement fund allocated to members of the class who purchased May 2000 WorldCom notes will be reduced by Y% -- with "Y" equal to the sum total of the face value of all May 2000 notes held by class members who opt out of the class (the "May 2000 Debt Opt-Outs"), expressed as a percentage of the total face value of all May 2000 notes issued pursuant to the May 2000 offering and not redeemed, minus an amount equal to one and one-half (1½%) percent of the total face value of all May 2000 notes issued by WorldCom pursuant to the May 2000 Offering; provided that in the foregoing equation, if "Y" is a negative number, "Y" shall be deemed to be zero (0); and (iii) that portion of the Settlement Amount allocated to members of the class who purchased May 2001 WorldCom notes will be reduced by Z% -- with "Z" equal to the sum total of the face value of all May 2001 notes held by class members who opt out of the Class (the "May 2001 Debt Opt-Outs"), expressed as a percentage of the total face value of all May 2001 notes issued pursuant to the May 2001 Offering, minus an amount equal to one and one-half (1½%) percent of the total face value of all May 2001 notes issued by WorldCom pursuant to the 2001 Offering; provided that, in the foregoing equation, if "Z" is a negative number, "Z" shall be deemed to be zero (0).

proofs of claim. Proofs of claim are to be postmarked by March 4, 2005. There will be no reversion to the Citigroup Defendants of any portion of the settlement amount.

The Agreement is conditioned on the entry of a bar order against any claims by non-settling parties, including any of the foreign affiliates of the Underwriter Defendants through which May 2001 Notes were distributed. The bar order in the proposed judgment states that the non-settling persons

> are hereby permanently BARRED, ENJOINED and RESTRAINED from commencing, prosecuting, or asserting any claim for indemnity or contribution against the Citigroup Releasees (or any other claim against the Citigroup Releasees where the injury to the Non-Settling Entity/Individual is the Non-Settling Entity's/Individual's liability to the Lead Plaintiff, Named Plaintiffs and other Class Members), arising out of or related to the claims or allegations asserted by Lead Plaintiff and the Named Plaintiffs in the Complaint. . . . Provided, however, that the Bar Order stated in this paragraph shall not apply to claims that may be asserted by Non-Settling Entities/Individuals in cases of persons who timely opted out of the Class and did not revoke their request for exclusion by September 1, 2004. The Non-Settling Entities/Individuals will be entitled to judgment credit in the amount that is the greater of the amount allocated in the Settlement to claims for which a Non-Settling Entity/Individual may be found liable for common damages or, for each such claim, the proportionate share of the Citigroup Defendants' fault as proven at trial.

(Emphasis supplied.) In addition to dismissing with prejudice all of the class members' claims against the Citigroup Defendants asserted in the Amended Complaint, the Agreement also bars class members from pursuing any other claims against the Citigroup Defendants relating to investments in WorldCom securities. It grants

> the release by Lead Plaintiff, the Named Plaintiffs and all Class Members of all claims of every nature and description, known and unknown, arising out of or

> relating to investments (including, but not limited to, purchases, sales, exercises, and decisions to hold) in securities issued by WorldCom, and/or in options or derivative instruments based in whole or in part on the value of securities issued by WorldCom (including Targeted Growth Enhanced Terms Securities ("TARGETS") with respect to MCI WorldCom, Inc. issued by an SSB affiliate and GOALs issued by UBS AG),[19] including without limitation all claims arising out of or relating to any analyst research reports or other statements made or issued by the Citigroup Defendants concerning WorldCom, any disclosures, registration statements or other statements by WorldCom, as well as all claims asserted by or that could have been asserted by any member of the class in the action against the Citigroup releasees.[20]

(Emphasis supplied.)

Plan of Allocation

The Agreement provides for an allocation of the settlement fund (the "Plan of Allocation") among class members. The Plan of Allocation provides that funds will be taken from the settlement fund to pay the costs of, among other things, providing notice to class members, administering the settlement, reimbursing Lead Plaintiff and Lead Counsel as well as other counsel for expenses

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[19] TARGETS are the subject of another class action arising out of the WorldCom collapse -- In re TARGETS Securities Litigation, 03 Civ. 9490 (DLC). See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 1435356 (S.D.N.Y. June 28, 2004); In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 344023 (S.D.N.Y. Feb. 25, 2004). The parties to the TARGETS action represent that they have reached an agreement to settle. GOALs, which are also securities linked to the performance of WorldCom stock, are the subject of a class action lawsuit as well -- In re Painewebber Goals Securities Litigation, 03 Civ. 1052 (DLC). See In re WorldCom, Inc. Sec. Litig., 303 F. Supp. 2d 385 (S.D.N.Y. 2004).

[20] The Agreement represents that it does not preclude any class member from making a claim for funds that are available from the WorldCom bankruptcy, WorldCom's settlement with the SEC, or any other regulatory agency fund.

incurred in connection with the class action, and paying Lead Counsel's fees. The Plan of Allocation gives 13.02% of the net settlement fund to claims asserted under the Securities Act by purchasers of the May 2000 Notes; 41.33% to claims asserted under the Securities Act by purchasers of the May 2001 Notes; and the remainder, or 45.65%, to claims asserted under the Exchange Act. This last category includes class members who purchased during the class period WorldCom common stock and publicly-traded WorldCom debt securities that had been issued prior to the beginning of the class period. In arriving at the allocation among those with Exchange Act claims and claims arising from the 2000 and 2001 Offerings, Lead Plaintiff and the Additional Named Plaintiffs considered their damage analyses, and the probability of success on each claim.

The recovery of individual class members will depend on when class members purchased and sold WorldCom securities. The Lead Plaintiff calculates that, of the 2.96 billion shares outstanding, approximately 2.49 billion shares of WorldCom common stock were capable of being traded during the class period. As calculated as of the date of the fairness hearing, under the Plan of Allocation approximately $1.18 billion will go to class members with Exchange Act claims, and the average recovery per share from the settlement is anticipated to be approximately $0.52. There were approximately $15.3 billion worth of bonds issued by WorldCom in the 2000 and 2001 Offerings that were outstanding at the end of the class period. Approximately $1.45 billion of the settlement fund will be for the Securities Act

claims for these bondholders resulting in an average recovery of approximately $123.16 per $1000 face amount of these bonds.

Notice to the Class

On July 16, the Court preliminarily approved the settlement. The notice of settlement ("Notice") thereafter provided to the class described the history of the litigation, the terms of the settlement, the risks of going forward with the action against the Citigroup Defendants, the Plan of Allocation, and the attorney's fees and expenses for which Lead Counsel would be seeking payment. In connection with this last issue, the Notice explained that Lead Counsel will be applying for fees not in excess of $144.5 million, which constituted 5.45% of the projected $2.65 billion settlement fund. The Notice also informed the class that Lead Counsel would apply for payment of expenses not to exceed $16 million, or $0.003 per share and $0.57 per $1000 face amount of each bond, and a payment for anticipated expenses in further prosecution of the case against the non-settling defendants in the amount of $10 million.

The Notice explained that there would be a fairness hearing on November 5, 2004.[21] Objections to the settlement, Plan of Allocation, as well as to attorney's fees and expenses were due October 8.[22]

[21] Papers in support of the settlement, Plan of Allocation, and attorney's fees and expenses were submitted on September 24.

[22] Lead Counsel and the Citigroup Defendants submitted reply papers in support of the settlement, Plan of Allocation, and attorney's fees on October 22 and 25, respectively.

As of September 8, the claims administrator had mailed out over 4,100,000 packets containing the Notice and proof of claim form to class members. A summary notice ("Summary Notice") was published on August 10 in the Wall Street Journal, on August 11 in the New York Times, and distributed over PR Newswire on August 12 and the Bloomberg News Service on August 16.[23] The Notice and proof of claim were placed on the websites maintained by Lead Counsel and the claims administrator.

During this time, other mailings were also made in connection with the class action. On July 30, over 12,000 packets were mailed to those who had previously requested exclusion from the class. These mailings included a special notice ("Special Notice") and a form to permit recipients to revoke their previous request for exclusion. In addition, Liaison Counsel has mailed 267 packets to plaintiffs and certain counsel who had filed an Individual Action that was still pending. The packets contained a second notice ("Second Individual Action Notice") tailored to the issues that those parties needed to consider.

Close of Opt-Out Period: Reduction of Settlement Fund

As noted, the opt-out period for the class action closed on September 1, 2004. As of September 13, the claims administrator

[23] The efforts made to have the Dow Jones Newswire publish the Summary Notice were unavailing.

had received 14,978 timely requests for exclusion from the consolidated class action.[24]

The settling parties have agreed that pursuant to the settlement reduction formula in the Agreement, the settlement fund should be reduced by $75 million to $2.575 billion.[25] This represents a reduction of 2.8% of $2.65 billion settlement fund. Judges Sweet and Dolinger signed a statement approving this reduction that reads as follows: "the Parties have negotiated this reduction to the Settlement Amount in good faith and . . . this reduction in the Settlement Amount is reasonable and consistent with the terms" of the Agreement.

The Reaction of the Class to the Notice

Of the millions of WorldCom class members, there were only six timely objections by putative members of the class. The objectors are Rinis Travel Service, Inc. Profit Sharing Trust ("Rinis Travel"), Maitri Banerjee ("Banerjee"), James J. Savage ("Savage"), John Marshall Lusk ("Lusk"),[26] Steven Helfand

[24] According to the claims administrator, 579 of these requests for exclusion do not contain corresponding signatures. In addition, 406 of those requesting exclusion filed proofs of claim without revoking their exclusion request.

[25] The $75 million reduction is composed of $58 million in the amount paid to settle the Securities Act claim brought with respect to the 2001 Offering, and $17 million in the amount paid to settle the Exchange Act claims.

[26] Savage and Lusk, whose counsel appeared at the fairness hearing, also seek to intervene in the consolidated class action pursuant to Rule 24, Fed. R. Civ. P. A class member does not need to intervene in order to have his objections addressed.

("Helfand"),[27] and W. Caffey Norman III ("Norman").[28] Their objections can be summarized as follows. They object to the size of the settlement and that the Plan of Allocation favors bondholders. They contend that the Notice was not sufficiently clear, and in particular that it did not explain the precise benefit to be received by each shareholder and bondholder.[29] They disagree with the amount of attorney's fees and expenses requested, as well as with the request by Lead Counsel for $10 million for costs of the litigation going forward. One objector asserts that the proof of claim form is overly burdensome.

Norman has filed a class action lawsuit that is pending in this district. See Norman v. Salomon Smith Barney, Inc., No. 03 Civ. 4391 (GEL) (the "Norman Action"). Norman objects to the scope of the release in the Agreement and proposed judgment, and the impact it will have on his lawsuit.

A co-defendant, J.P. Morgan, has objected to certain provisions in the proposed judgment. Its objections relate to

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[27] Helfland filed a notice of intent to appear at the fairness hearing.

[28] Rinis Travel, Savage, and Lusk have not provided proof of membership in the class.

[29] Savage claims that he did not receive a Notice. The claims administrator, however, states that a Notice and proof of claim form was mailed to Savage between August 2 and August 12, 2004, and was not returned to the claims administrator as undeliverable. In any event, the failure of some class members to receive a Notice does not necessarily mean that notice of the settlement was inadequate or not in compliance with Rule 23, Fed. R. Civ. P. See In re Agent Orange Prod. Liab. Litig., 818 F.2d 145, 169 (2d Cir. 1987); Weinberger v. Kendrick, 698 F.2d 61, 71-72 (2d Cir. 1982). The notice given here was fully in compliance with Rule 23, Fed. R. Civ. P.

the Plan of Allocation, its right to obtain reimbursement of defense costs from the Citigroup Defendants, and the extent to which the Citigroup Defendants will be required to cooperate in the class action trial against the non-settling Underwriter Defendants.[30]

Untimely objections were submitted by Babson Capital Management LLC ("Babson"), and jointly by Richard Entenmann ("Entenmann") and Shari Galitzer ("Galitzer"). The Babson objection, dated November 2, requests that the definition of the Class be expanded to include sellers of credit default swaps ("CDS's"). The Entenmann and Galitzer objection, dated November 1, objects that the release is too broad, and that the Notice should have been sent to their attorneys as well as to them.

Fairness Hearing

A fairness hearing was held on November 5. The following counsel addressed the Court: Lead Counsel; Liaison Counsel for the Individual Actions; counsel for the Citigroup Defendants; counsel for the Individual Actions brought by the law firm Lerach Coughlin Stoia Geller Rudman & Robbins; counsel for Individual Action plaintiffs in Public Employees Retirement System of Ohio v. Ebbers, No. 03 Civ. 338 (DLC); counsel for plaintiff in Miller v. Salomon Smith Barney Inc., No. 02 Civ. 7018 (DLC); counsel for J.P. Morgan; and counsel for objectors Lusk, Savage, Entenmann, Galitzer, and Norman. In addition, objector Helfand appeared pro

[30] An objection filed by Ina Rosenblum on behalf of a putative class in In re TARGETS Securities Litigation, No. 03 Civ. 9490 (DLC), was withdrawn on October 20.

se and addressed the Court. Counsel for the non-settling defendants and plaintiffs in various other Individual Actions made appearances and were given the opportunity to be heard. Comptroller Hevesi attended the fairness hearing in support of the Agreement.

Discussion

Judicial Approval of Class Action Settlements Under Rule 23(e)

Rule 23(e), Fed. R. Civ. P., mandates court approval of any settlement of a class action. The standard to be applied in determining whether to approve a class action settlement is well established and has recently been described by this Court in an Opinion issued in connection with the approval of a settlement reached in the related WorldCom ERISA Litigation. See In re WorldCom ERISA Litig., No. 02 Civ. 4816 (DLC), 2004 WL 2338151, at *5-6 (S.D.N.Y. Oct. 18, 2004). That discussion of the standard is incorporated herein. In brief, the district court must "carefully scrutinize the settlement to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion," D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001) (citation omitted), and yet "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974).

A district court determines a settlement's fairness "by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms." D'Amato, 236 F.3d

at 85. In evaluating the substantive fairness of a settlement, a district court must consider factors enumerated initially in Grinnell:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

D'Amato, 236 F.3d at 86 (citation omitted). Finally, public policy favors settlement, especially in the case of class actions.

The settlement was the result of extensive arm's-length negotiations, supervised at critical junctures by two experienced judicial officers. The litigation is complex and, despite extensive court-supervision, expensive. Although a trial date has been set, and is readily approaching, it is reasonable to expect that there will be appeals from any verdict, and that the litigation will continue beyond the trial itself. The class has reacted favorably to the settlement. The number of objections, given the size of the class, is de minimis. The dearth of objections is itself evidence of the fairness of the settlement. See Grinnell, 495 F.2d at 462. The settlement was reached months after document discovery had been exchanged and in the midst of depositions. All parties were in an excellent position to evaluate the strength and weaknesses of their cases.

The Citigroup Defendants have articulated numerous defenses to both the Securities Act and Exchange Act claims against them, including whether they acted with scienter, whether they conducted reasonable due diligence in connection with the 2000 and 2001 Offerings, whether the alleged omissions are actionable under the federal securities laws, and whether the alleged misrepresentations and omissions caused the losses of which Lead Plaintiff complains. The parties dispute vigorously the appropriate economic models for determining the amounts by which WorldCom common stock and bonds were allegedly artificially inflated (if at all) during the Class Period and the effect of various market forces influencing the trading prices of WorldCom common stock and bonds. At any trial the Citigroup Defendants would also have the right, under the proportionate fault doctrine, to shift responsibility for Exchange Act damages through evidence that others were more responsible for the class' damages.[31]

This settlement recognizes that there were significant risks on the part of both the class and the Citigroup Defendants with respect to both liability and damages. There was also some risk that the Court of Appeals would have remanded the interlocutory appeal on the class certification decision for further fact finding to the extent that class certification was based on

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[31] The Citigroup Defendants only have proportional liability on the claims brought against them under Section 10(b) of the Exchange Act unless it is determined that they "knowingly" violated the statute. See 15 U.S.C. § 78u-4(f); In re WorldCom, Inc. Sec. Litig., 2004 WL 802414, at *7; In re WorldCom, Inc. Sec. Litig., 308 F. Supp. 2d at 228.

liability for the Grubman analyst reports. The Citigroup Defendants could theoretically pay a larger amount in settlement, but the settlement amount to which they have agreed is so large that it is of historic proportions. It is the second largest securities class action settlement in United States history, and the largest by far with respect to an entity that was not the issuer of the securities.

Considering each of the Grinnell factors, the Court has no hesitation in finding that this is a favorable settlement for the class and falls well within the range of reasonableness when considered in light of the best possible recovery for the class and the risks of litigation. The settlement for $2.575 billion is approved as fair, adequate and reasonable.

Objections by Class Members

Banerjee in particular objects that the recovery per share, minus attorney's fees and costs, is too small a recovery for WorldCom shareholders. While the recovery is only a fraction of shareholders' losses, for the reasons already explained, it is fair and reasonable in the circumstances. In fact, following the $75 million reduction of the settlement fund as a result of opt-outs, the recovery per share for WorldCom shareholders rose from 48 cents to 52 cents. Neither Banerjee nor any of the other objectors address the substantial legal obstacles to recovery by shareholders in this action and the magnitude of this settlement in light of those obstacles.

Some objectors complain that the Notice did not adequately explain the benefits of the settlement to the class members. The Court and the parties expended substantial effort to make the Notice comprehensive and yet comprehensible. The benefits to the class are described in significant detail. There is no basis to find a flaw in this regard.

Some of the objections appear to address the formula for reducing the maximum settlement fund through a calculation of the number of opt-outs. The reduction formula was described in the Notice. The settling parties had good reason to include this provision in the Agreement. In return for this protection for the Citigroup Defendants in the event many class members filed requests to be excluded from the class, the Citigroup Defendants gave up all right to escape from the settlement. The reduction formula also set a threshold of 1.5% for exclusions from each portion of the allocated funds. Until that threshold was passed, there was no reduction in the settlement fund. As it has turned out, the overall reduction is not substantial and has no effect whatsoever on the recovery of those class members who purchased the Notes in the 2000 Offering.

To the extent that the objectors argue that the Agreement should not be approved without a more detailed plan for the distribution of the settlement fund, this contention is without merit.[32] The Plan of Allocation was sufficiently developed for

[32] Savage and Lusk contend that $335 million of the settlement fund is "unallocated". This objection appears to reflect confusion about the impact of the Court's dismissal with prejudice of certain Individual Actions that had filed time-barred claims. See In re WorldCom, Inc. Sec. Litig., 294 F.

there to be fair notice of the division of proceeds between those with Securities Act and those with Exchange Act claims.

The objection to the length and complexity of the proof of claim form is also meritless. Over 170,000 class members have already filed proof of claim forms seeking a distribution from the settlement. The information that claimants are required to submit is necessary in order for a fair distribution of the settlement proceeds. For example, merely holding securities is not actionable under federal securities law. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 749 (1975); In re WorldCom Inc., Sec. Litig., 366 F. Supp. 2d 310, 319 (S.D.N.Y. 2004). Asking class members to provide only the amounts and type of WorldCom securities they held would be insufficient to establish a right to recover from the settlement fund.

Lusk asserts that class members should not be required to document their trading losses and to sign the proof of claim form under penalty of perjury. Both of these provisions are important in helping to insure that the settlement fund is distributed to class members who deserve to recover from the fund.

Norman's objection to the settlement -- that it would release a portion of the claims Norman brings in his putative class action lawsuit -- must also be rejected. In his lawsuit, Norman alleges that in administering the Global Portfolio Management ("GPM") Accounts program, SSB did not provide the GPM

Supp. 2d 392; In re WorldCom, Inc. Sec. Litig., 308 F. Supp. 2d 214; In re WorldCom, Inc. Sec. Litig., 2004 WL 692746. There is no portion of the settlement fund that is "unallocated." The entire amount allocated to the May 2000 bond purchasers will be paid to purchasers of the May 2000 bonds.

account holders with the candor that SSB owed to them.[33] Norman asserts that he acquired 200 shares of WorldCom stock in 1999 through his GPM account. Norman objects to the scope of the release in the Agreement and proposed judgment at least to the extent that it would bar claims for restitution of fees paid by account holders to SSB or for punitive damages relating to the WorldCom investments in GPM accounts. At the fairness hearing, Norman's counsel asserted that he had not yet decided on his theory of damages and may also pursue recovery for losses sustained in trading in WorldCom securities. What he asks, therefore, is that the release carve out the entirety of the Norman litigation.

"[I]n order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action." TBK Partners, Ltd. v. Western Union Corp., 675 F.2d 456, 460 (2d Cir. 1982) (emphasis supplied); see also In re Baldwin United Corp., 770 F.2d 328, 336-37 (2d Cir. 1985); Weinberger, 698 F.2d at 77. Thus, a settlement may "prevent class members from subsequently asserting claims relying on a legal theory different from that

[33] In the Norman Action, Norman purports to represent a class of persons who maintained GPM accounts with SSB during the period of January 3, 1998 through August 15, 2002. Norman invested in WorldCom securities through his GPM accounts. The GPM program was designed to give SSB discretion to invest for GPM account holders in securities that were followed and rated a "one" or "two" by SSB research analysts.

relied upon in the class action complaint but depending upon the very same set of facts." Nat'l Super Spuds, Inc. v. New York Mercantile Exch., 660 F.2d 9, 18 n.7 (2d Cir. 1981); see also Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516 U.S. 367, 382 (1996). It is essential, however, that there be adequate notice of the effect of the release and compensation for released claims. Super Spuds, 660 F.2d at 16, 18. See also TBK Partners, 675 F.2d at 460-62; Weinberger, 698 F.2d at 77; In re Action Houses Antitrust Litig., No. 00 Civ. 648 (LAK), 2001 WL 170792, at *13 (S.D.N.Y. Feb. 22, 2001).

Even though Norman asserts common law and statutory theories of liability that have not been raised as part of the class action, see Norman v. Salomon Smith Barney Inc., No. 03 Civ. 4391 (GEL), 2004 WL 1287310, at *1 (S.D.N.Y. June 9, 2004), the Agreement may be approved as fair. Norman relies upon the same underlying factual allegations against SSB that are at the heart of the Amended Complaint, Norman has had adequate notice of this litigation and the effect of the release, and those GPM account holders who suffered losses from trading in WorldCom securities will be compensated for those losses from this settlement. As Norman admits, the alleged bias and bad faith in SSB's research reports form the "core" of his pleading.[34] The release is also

[34] The Norman class action complaint alleges that:

> Salomon's analysts provided biased and tainted favorable research reports and gave favorable ratings to the stocks of companies in which managed account assets were invested, including numerous telecommunication stocks, as part of an effort to obtain huge investment banking fees. Salomon managed its clients' GPM accounts by investing in the

fair in that it does not purport to bar any claims asserted in the Norman Action that are based on purchases of securities other than WorldCom. Nor does it completely bar the Norman plaintiffs from seeking recovery of management fees paid to SSB as part of the GPM program. It appears that the WorldCom settlement release would only prevent a putative Norman class member from seeking rescission of fees, punitive damages, or any other relief based upon their WorldCom losses. As a member of the WorldCom class who did not elect to opt out, the Agreement compensates Norman for his WorldCom securities trading losses. It would be patently unfair to permit Norman and the putative Norman class to receive compensation for the same losses arising from the same underlying conduct twice -- once in the class action and again in the Norman Action.

Norman's objection that the Notice did not fairly and adequately disclose these issues to the class is also without merit. The Notice informed class members that in order to

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> securities of these companies based on recommendations by analysts whose independence had been compromised. Thus, Salomon's biased and self-serving research and recommendations determined the investment choices made in managing GPM accounts. . . . Salomon never disclosed to plaintiff or the members of the Class that the research and ratings on which its account management was based were not independent but rather were motivated by Salomon's economic interests.

In addition, the Norman complaint makes substantial allegations with respect to Grubman's conduct, the provision of IPO shares to corporate executives in return for investment banking business, and the knowledge and role that SSB and its executives and officers had regarding the corrupt research practices. The complaint seeks actual damages and full restitution for trading losses.

participate in the WorldCom settlement, they would have to release "all claims of every nature and description, known and unknown, arising out of or relating to investments . . . in securities issued by WorldCom." 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.[35]

J.P. Morgan Objections

J.P. Morgan has made three objections. They are each rejected.

1. Plan of Allocation

J.P. Morgan questions whether the Plan of Allocation has correctly divided the settlement fund between the Securities Act and Exchange Act claims. As already noted, the Plan of Allocation divides the settlement fund between the losses suffered under the Securities Act from purchases of WorldCom bonds in the 2000 and 2001 Offerings, and the losses suffered under the Exchange Act from trading either stock or bonds in the

[35] Norman initially disclaimed any desire to address his concerns through an amendment to the Plan of Allocation. In a reply memorandum dated November 4, Norman seeks to reserve his right to press, either now or in connection with the issuance of a more detailed allocation plan, for a set-aside for those shareholders who participated in the GPM program. This request does not affect the Plan of Allocation. Norman may renew this request when Lead Counsel submits a more detailed plan of allocation.

secondary market. The former receive approximately 55% of the fund; the latter receive approximately 45%. The Citigroup Defendants are paying over $1.4 billion toward the Securities Act claims. J.P. Morgan and the remainder of the non-settling Underwriter Defendants are defendants solely in the Securities Act claims as a result of their work on the two Offerings. They have an interest in as large an allocation as possible from the settlement to the Securities Act claims since one measurement of their judgment credit is affected by that allocation amount. The judgment reduction formula that accompanies the order barring them from suing the Citigroup Defendants for contribution and indemnification gives them a credit against any judgment entered against them at the class action trial of the greater of (a) the amount from the settlement fund that is allocated to the Securities Act claims for which the non-settling underwriters may be found liable, or (b) the proportionate share of the Citigroup Defendants' fault, as found at trial.

The Plan of Allocation is entitled to approval. The Plan of Allocation has the explicit endorsement of the two federal judges who have supervised the extensive settlement discussions in this action. Two of the Additional Named Plaintiffs are pension funds that suffered extensive losses from their holdings in the 2000 and 2001 Offerings, and they have approved the allocation. Many members of the class are substantial public and private pension funds who also suffered mammoth losses from their investments in these two offerings. None of these class members, despite being directly affected by the allocation of 45% of the settlement fund

to those class members with Exchange Act claims, have objected. Indeed, as already noted, some WorldCom shareholders have objected that bondholders have received too much from the settlement. There is a wealth of information in the hands of all participants in the Securities Litigation from which to assess the allocation. No one has presented any proposal for a better allocation. All of this history supports the conclusion that the Plan of Allocation is entitled to approval.

J.P. Morgan asks only that the Lead Plaintiff be required to present "extensive evidentiary support" of the plan. The submissions of the Lead Plaintiff, given the history recited above, have been more than sufficient to support the Plan of Allocation.[36] The judgment reduction formula will fully protect J.P. Morgan. It gives J.P. Morgan a judgment credit for the amount paid by the Citigroup Defendants to class members on their Securities Act claims.

2. Citigroup Defendants' Duty to Pay Attorney's Fees

J.P. Morgan does not dispute that the proposed bar order properly addresses claims for contribution and indemnification that it may have against the Citigroup Defendants. J.P. Morgan asserts instead that it has an independent contractual claim that

[36] The Lead Plaintiff argues that J.P. Morgan cannot take the position that the Citigroup Defendants' payment of $1.45 billion to settle the Citigroup Defendants Securities Act claims in the class action is inadequate since J.P. Morgan (a) contends in its summary judgment motion that those claims should be dismissed as a matter of law, and (b) refused to settle during the summer of 2004 on the same terms that were accepted by the Citigroup Defendants.

cannot be extinguished by the bar order. This claim arises from certain master agreements among the underwriters that are alleged to require the Citigroup Defendants to pay their underwriting percentage of any legal or other expenses incurred in connection with the defense of any claim arising out of the claims in the Securities Litigation.

J.P. Morgan has not shown that approval of the bar order should be withheld or delayed. Since J.P. Morgan has not provided any of the master agreements that are supposedly implicated by the bar order, it is impossible to determine their terms and the extent to which the bar order impacts them. The bar order formula at issue here is consistent with the formula approved recently by the Second Circuit in Gerber v. MTC Elec. Tech. Co., 329 F.3d 297, 307 (2d Cir. 2003). When J.P. Morgan made requests to the Citigroup Defendants for revisions to the bar order in July 2004 it did not make any reference to the contractual obligation in the master agreements regarding attorney's fees and expenses. The first notice it provided of any complaint in this regard was in its October 8 objection.

While it is important that the Court consider the fairness of any settlement agreement to non-settling parties, J.P. Morgan has not shown that the proposed bar order is unfair to them. See See In re WorldCom ERISA Litig., -- F. Supp. 2d --, No. 02 Civ. 4816 (DLC), 2004 WL 2292362, at *5 (S.D.N.Y. Oct. 13, 2004) (collecting authority). To the extent that it believes in the future that the Citigroup Defendants have breached master agreements, and that it is necessary to litigate the breach, the

parties will have an opportunity to address the interplay between the bar order language and such a claim.[37]

3. Cooperation at Trial

J.P. Morgan requests that the proposed judgment be modified to impose the obligation on the Citigroup Defendants to produce witnesses and documents during discovery[38] and trial on the Lead Plaintiffs' claims to the extent that the Citigroup Defendants would have had this obligation "if they remained a party" to the litigation. There is no need to include this provision in the judgment.

The obligation of the Citigroup Defendants to cooperate in the class action trial shall be governed by the Federal Rules of Civil Procedure and applicable law. Imposing any further obligation on the Citigroup Defendants would be inconsistent with the strong federal policy encouraging settlement. J.P. Morgan had a full and complete opportunity to take discovery of the Citigroup Defendants. More than twenty-five witnesses from Citigroup, SSB, and related entities were deposed during the period set aside for fact discovery. J.P. Morgan has not made

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[37] Lead Plaintiff argues that, since J.P. Morgan and the other non-settling Underwriter Defendants were given an opportunity in the summer of 2004 to settle on the same percentage terms as the Citigroup Defendants and declined to do so, it would not be appropriate for the Citigroup Defendants to pay defense costs incurred since that time. The Citigroup Defendants have not commented on this analysis since they take the position that it is premature to address the merits of any hypothetical dispute over the master agreements.

[38] Fact discovery in the class action ended on July 9, 2004.

any showing that the Citigroup Defendants did not cooperate fully during the discovery period.

Untimely Objections

Babson seeks to alter the class definition to include sellers of CDS's, instruments bought by WorldCom creditors to hedge their Worldcom debt. Several Underwriter Defendants who had provided WorldCom with a credit facility protected against this risk by purchasing CDS's.

The consolidated class action is not brought on behalf of issuers of CDS's. As noted above, the WorldCom class was certified on October 24, 2003. A December 15, 2003, notice was sent to all class members advising them of the litigation and their right to opt out of the WorldCom securities class action. The notice was also published in several forums and posted on the internet. See In re WorldCom, Inc. Sec. Litig., 2004 WL 113484. Issuers of CDS's, such as Babson, are not members of the class, and prior to their late-filed objection, never petitioned to be included in the class. The class definition will not be amended to include them.

Entenmann and Galitzer have an arbitration pending against SSB. They concede that they received the notice of class action issued in December 2003 and the Notice issued in August 2004. They did not opt out of the class.[39] They now contend that the

[39] On October 25, 2004, Entenmann and Galitzer sought to extend the period for them to opt out of the class. This was weeks after the September 1 deadline for class members to request exclusion. At an October 29 hearing on the matter, and as reflected in an Order of November 1, Entenmann's and Galitzer's

notices should have been sent as well to the attorneys representing them in the arbitration.

Rules 23(c)(2)(B) and (e)(1)(B), Fed. R. Civ. P., state that notice is to be sent to class members.[40] "Rule 23 does not contemplate giving notice to alleged agents or to any persons other than the members of the class." In re Franklin Nat'l Bank Sec. Litig., 574 F.2d 662, 672 (2d Cir. 1978); see also In re PaineWebber Ltd. P'ships Litig., 147 F.3d 132, 136 (2d Cir. 1998) (adequate notice "did not require the services of a lawyer to permit a lay person to comprehend it"); Weinberger, 698 F.2d at 71. The notice of the class action provided to and received by Entenmann and Galitzer satisfied the requirements of Rule 23, Fed. R. Civ. P.

Entenmann and Galitzer next argue that the release is too broad since it prevents them from pursuing their arbitration against SSB. Entenmann's and Galitzer's filings in their arbitration proceeding, however, establish that the underlying factual predicate of their action is the conflict of interest allegations that underlie the Exchange Act claims against the

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request was denied.

[40] Rule 23(c)(2)(B) states: "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified by reasonable effort." Rule 23(c)(2)(B), Fed. R. Civ. P. (emphasis supplied). Rule 23(e)(1)(B), which governs how notice is to be provided prior to the approval of a proposed class action settlement, provides "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." Rule 23(e)(1)(B), Fed. R. Civ. P. (emphasis supplied).

Citigroup Defendants in the class action.[41] They even submitted excerpts from the Amended Complaint to the arbitration panel.

For the reasons already discussed above in connection with the Norman objection, there is no reason to find that the release in unfair to Entenmann and Galitzer. They have been given notice, their claims against SSB for their WorldCom losses are being compensated, and their arbitration asserts the same conflict of interest claim that permeates the Amended Complaint.

Attorney's Fees and Expenses

The legal standard for reviewing an application for an award of attorney's fees is well established in this Circuit, and has recently been described by this Court in connection with the approval of a settlement in the related WorldCom ERISA Litigation. See In re WorldCom ERISA Litig., 2004 WL 2338151, at *10. That description of the standard is incorporated here.

In brief, when an attorney creates a common fund from which members of a class are compensated for a common injury, the

[41] Entenmann and Galitzer allege that: SSB was "in a conflict of interest with claimants in that WorldCom was a huge client of respondents;" SSB "failed to tell the claimants that they owed financial allegiance to WorldCom;" and that they "were never made aware of the extent and nature of respondents' continuing conflict of interest in connection with WorldCom and were never made aware that this conflict caused respondents to advise claimants to take actions with respect to their WorldCom stock that they should not, as reasonable and prudent investors, have taken." Similarly, in an effort to obtain discovery from SSB for the arbitration, Entenmann and Galitzer stated that their claims were based on their "rel[iance] on the research of Salomon's Research Analyst, Jack Grubman and that this research was tainted because Grubman was more concerned about writing upbeat research to keep his firm's investment banking clients happy than fairly evaluating these companies for retail clients such as Claimants."

attorneys who created the fund are entitled to a reasonable fee. There are two methods by which a district court may calculate reasonable attorney's fees in a class action, the lodestar or percentage method. Under either method, attention should be paid to the following factors: (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.

In June of 2002, NYSCRF asked the two firms ultimately selected as Lead Counsel to represent it in this litigation. With the appointement of NYSCRF as Lead Plaintiff on August 15, 2002, their selection of counsel was also approved. Since that time, NYSCRF has diligently supervised the work of Lead Counsel. The General Counsel to the Comptroller of the State of New York, and a staff of four of his attorneys, have been in constant contact with Lead Counsel, have reviewed all significant expenditures, and have received and analyzed quarterly reports on attorney time and expenses.

In the summer of 2003, after the principal motions to dismiss had been decided, Lead Plaintiff and Lead Counsel negotiated a retainer agreement that adopted a fee grid.[42] The grid allows a higher attorney's fee for recoveries achieved in later stages of the litigation, but at the same time, a lower

[42] The retainer agreement was described in the December 11, 2003 notice to the class of the pendency of the class action as well as in the Notice, and is posted on the website maintained for the class action by Lead Counsel.

percentage of recovery as the amount of recovery for the class increases. The retainer agreement also adopted a lodestar ceiling for attorney's fees. For any recovery for the class that exceeds $500 million, the attorney's fee will not exceed the lesser of the grid amount or five times the lodestar. At the conclusion of the litigation, the NYSCR may under certain circumstances adjust the fee so that it does not exceed four times the lodestar figure. The retainer agreement also imposes caps on certain expenses.

Adopting the formula contained in the retainer agreement's grid, and with the full approval of Lead Plaintiff, Lead Counsel has applied for attorney's fees of $141.5 million, which constitutes 5.5% of the settlement fund.[43] This is equivalent to approximately $0.028 per share and $8.30 per $1000 face amount of each bond covered by the Agreement. As of August 31, 2004, Lead Counsel and the firms approved by Lead Plaintiff and the Court to provide assistance in the prosecution of the case, had expended more than 195,000 hours litigating the action.[44] The lodestar

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[43] Lead Counsel originally applied for fees of $144.5 million. After the reduction of the settlement fund by $75 million to reflect those class members opting out, Lead Counsel reduced its fee request by $3 million. Following the grid in the retainer agreement, the requested fee is 4% of that portion of the class recovery that exceeds $1 billion.

[44] The firms assisting Lead Counsel in prosecuting this action are: Berman DeValerio Pease Tabacco Burt & Pucillo; Schoengold & Sporn, P.C.; Lowenstein Sandler P.C.; Upshaw, Williams, Biggers, Beckham & Riddick, LLP; Law Offices of Bernard M. Gross, P.C.; Lockridge Grindal Nauen P.L.L.P.; Mager White & Goldstein, LLP; Law Office of Klari Neuwelt; Pomerantz Haudek Block Grossman Gross LLP; and Trujillo Rodriguez & Richards, LLC. Each of these firms has submitted a detailed breakdown of their expenses and attorney's fees. At an in camera conference with

figure for this work is over $57 million. Lead Counsel's own work accounts for approximately $43 million of the $57 million figure. A comparison of the fee request with the total lodestar yields a multiplier of approximately 2.46.

With the approval of Lead Plaintiff, who completed an audit of the expenses incurred by counsel as well as the claims administrator, Lead Counsel also petitions for payment of out-of-pocket costs and expenses in a total amount of $13,505,969.99.[45] This includes $7,056,023.58 for counsel's expenses, of which over $5 million were incurred by Lead Counsel; $6,428,331.70 for expenses incurred by the claims and notice administrator; and $21,615.01 for expenses incurred by Lead Plaintiff. The request for reimbursement of expenses constitutes $0.001 per share and $0.41 per $1000 face amount of each bond.

Lead Counsel also applies, with the approval of Lead Plaintiff, for $5 million to establish a litigation expense fund to finance the continued prosecution of the consolidated class action against the non-settling defendants. This number constitutes half of the amount that the class was advised in the Notice would be requested for this purpose.

Lead Counsel is entitled to a substantial legal fee for the work it has performed in the Securities Litigation. Lead Counsel

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the Court on September 22, 2003, attended by General Counsel for the Lead Plaintiff, the Court authorized Lead Counsel to use other firms to assist in the document review process so long as certain parameters for that work were respected.

[45] This request reflects expenses incurred through June or August 2004, depending on the firm submitting the request for reimbursement. The bulk of the request is for reimbursement of Lead Counsel, and reflects their expenses only through June 2004.

has performed its work at every juncture with integrity and competence. It has worked as hard as a litigation of this importance demands, which for some of the attorneys, including the senior attorneys from Lead Counsel on whose shoulders the principal responsibility for this litigation rests, has meant an onerous work schedule for over two years.

Counsel in this action refer to it as the most complex securities litigation ever brought. Whether that is true or not, there is no doubt that it is complex and challenging, and that it has required an enormous commitment from the attorneys for the parties in the class action. At virtually every turn there were unusual or even novel issues of law or procedure that had to be analyzed and briefed. A few examples will suffice. In 2002, not long after NYSCRF was appointed as Lead Plaintiff, Lead Counsel sought and obtained a lifting of the bankruptcy and PSLRA stays in order to obtain documents from WorldCom that it had already provided to governmental bodies and others. See In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 431. Later, Lead Counsel suggested a deposition program that allowed plaintiffs and defendants in the Securities Litigation each to take 60 days of deposition testimony (exclusive of discovery of plaintiffs in Individual Actions), divided into two four-hour components. This proposal was adopted and has worked extremely well. See In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 23456132 (S.D.N.Y. Nov. 14, 2003). In supporting certification of the class, Lead Counsel had to address in the context of the Exchange Act claims whether reliance on the SSB analyst reports

could be presumed based on the fraud-on-the-market theory. See In re WorldCom, Inc. Sec. Litig., 219 F.R.D. at 294-97. Lead Counsel has had to resist repeated requests and motions by the defendants to extend the discovery period and to postpone the trial date. When the criminal trial of former WorldCom executive Ebbers was scheduled for November 2004, months after the close of fact discovery, Lead Counsel had to address the Government's desire that certain of its trial witnesses not be deposed until after they testified at the criminal trial. This problem was addressed through Orders reaffirming the cut-off date for fact discovery, but reserving the right for counsel to request an opportunity to depose the "embargoed" witnesses after they testified in the criminal trial. In re WorldCom, Inc. Sec. Litig., 2004 WL 802414; see also In re WorldCom, Inc. Sec. Litig., 2004 WL 2254954.

The risks of litigation have already been discussed in connection with the approval of the settlement itself. As noted, there were significant risks associated with the claims brought against the Citigroup Defendants.

The quality of the representation given by Lead Counsel is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation. Lead Counsel has been energetic and creative. Its skill has matched that of able and well-funded defense counsel. It has behaved professionally and has taken care not to burden the Court or other parties with needless disputes. Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions. It has

cooperated with other counsel in ways that redound to the benefit of the class and those investors who have opted out of the class. The submissions of Lead Counsel to the Court have been written with care and have repeatedly been of great assistance. Again, a few examples help to illustrate these points.

Lead Counsel discovered that a corporate affiliate of SSB loaned several hundred million dollars to an Ebbers-controlled entity and that certain of Ebbers' loans from Citigroup were secured by his WorldCom shares. Its analysis of Grubman's research reports led it to allege that he had modified his model for evaluating WorldCom in order to mask WorldCom's financial condition. See In re WorldCom, Inc. Sec. Litig., 294 F. Supp. 2d at 404-406. Each of these were new allegations that had not been previously publicly disclosed despite the intense scrutiny of WorldCom following the June 25, 2002 announcement.

Lead Counsel has cooperated with government agencies from the beginning of this litigation, and that cooperation has helped to keep this civil litigation on track despite the parallel criminal proceedings. Lead Counsel negotiated an agreement with the Government and the SEC that gave it immediate access to most of the WorldCom documents that had been produced to government agencies and delayed its access to only those relatively few documents that the Government deemed critical to its criminal prosecutions. Lead Counsel invited the SEC to submit an amicus brief in support of class certification of the Exchange Act claims arising from SSB's analyst reports when that issue was before the Court of Appeals for the Second Circuit. The SEC

brief strongly supported the certification, and would no doubt have been of great assistance to the Court of Appeals had the Citigroup Defendants not settled with Lead Plaintiff and had the appeal gone forward.

The existence of over seventy Individual Actions filed by over twenty-two law firms has presented particular challenges to Lead Counsel and illustrated its success in cooperating with others for the good of the litigation as a whole. Pursuant to the May 28, 2003 Consolidation Order, Lead Counsel was placed in charge of all discovery of the defendants in the Securities Litigation, but required to coordinate the discovery efforts of all plaintiffs. In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2003 WL 21242882 (S.D.N.Y. May 29, 2003). It set up a website that has been of great assistance not just to class members, but also to plaintiffs' counsel in the Individual Actions. It developed and presented to plaintiffs' counsel in the Individual Actions a proposed deposition plan that was the basis for their ultimate agreement on the depositions that were taken by plaintiffs in the Securities Litigation. It hosted strategy conferences and weekly telephone calls to facilitate communication and decision-making among plaintiffs' counsel. Although Lead Counsel was lead examiner in each of the seventy depositions it scheduled, it shared the responsibility for taking these depositions with one attorney from the Individual Actions. The May 28 Order gave any attorney in an Individual Action the right to apply to the Court for relief in the event that she believed that Lead Counsel had taken a position in discovery with

which she disagreed. Because of the leadership shown by Lead Counsel and the structures it established, as well as the work done by Liaison Counsel for plaintiffs in the Individual Actions and the cooperative spirit displayed by almost all plaintiffs' counsel, this Court was presented with only one such appeal.[46]

Perhaps the most striking example of Lead Counsel's leadership on behalf of the class is its effort to resurrect an opportunity for certain pension funds to join the class and share in any recovery obtained by the class. Other counsel had filed Individual Actions on behalf of pension funds that contained time-barred Securities Act claims. Given prevailing law, approximately ten were destined to be dismissed in their entirety with prejudice because the actions were barred by the statute of limitations. In re Worldcom, Inc. Sec. Litig., 294 F. Supp. 2d 431. A dismissal with prejudice would have barred those pension funds from all recovery for their WorldCom losses, at least from the defendants in the Securities Litigation.[47] It was Lead Counsel who proposed that these pension fund plaintiffs be permitted to remain in the class if they voluntarily dismissed their cases and made the commitment that they would not later seek to opt out of the class. The Court adopted that proposal

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[46] Plaintiffs in Moxley v. Citigroup Global Markets Inc., No. 04 Civ. 232 (DLC), requested an opportunity after the close of fact discovery to take additional depositions of defendants. That request was denied. In re WorldCom, Inc. Sec. Litig., No. 02 Civ. 3288 (DLC), 2004 WL 1836999 (S.D.N.Y. Aug. 17, 2004).

[47] The filing of the time-barred claims, and the resulting loss of an opportunity to recover for substantial losses from WorldCom investments, could of course have resulted in claims against those who had counseled the funds to file their lawsuits.

over the objection of the defendants. In re WorldCom, Inc. Sec. Litig., 2004 WL 113484.

In sum, the quality of representation that Lead Counsel has provided to the class has been superb. The fee is entirely appropriate in the context of the settlement and under any of the standards by which fee requests are customarily measured.

Finally, there are substantial public policy reasons supporting approval of this award. The PSLRA has set up a mechanism which favors appointment of institutional investors as Lead Plaintiff. Here, the nation's second largest public pension fund was chosen as Lead Plaintiff. It is an experienced lead plaintiff in complex securities class actions and negotiated a detailed retainer agreement on behalf of the class. Lead Plaintiff has conscientiously supervised the work of Lead Counsel and gives its endorsement to the fee request, which adheres in all particulars to the retainer agreement. In these circumstances, the requested fee is entitled to a presumption of reasonableness. In addition, Lead Counsel has performed a valuable public service in prosecuting this action with vigor and skill. It undertook this service on a fully contingent basis. Its risk and effort deserve to be awarded appropriately.

The objections to the fee request center on assertions that: the fee should have reflected a decreasing percentage as the amount of the recovery increased; the fee should be reduced on account of the "uncertain" value of the settlement; Lead Counsel failed to provide lodestar information for a cross-check of the fee request; that the lodestar information it did provide

indicates that the correctly calculated multiplier for the fee award is 4.71 and not 2.46; and the Notice was misleading by referring to a 20-33% norm for fees in securities class actions. Each of these contentions are meritless.

The retainer agreement and the requested attorney's fee are predicated on a declining percentage formula. There is no uncertainty regarding the magnitude of the class recovery from the settlement fund. The retainer agreement requires a lodestar cross-check, which Lead Counsel easily satisfies. The 20-33% figure cited in the Notice is an accurate statement of fees awarded in many other securities law class action cases.

One objector's comments require more extended discussion. Helfand presented a detailed oral analysis at the fairness hearing to support his assertion that Lead Counsel's lodestar multiplier is 4.71, and that no multiplier is appropriate for certain work such as document review work done by contract attorneys or for work performed after the settlement with the Citigroup Defendants since no risk of recovery remained. He speculated that a close review of the time records would reveal duplicative work or padded hours. He criticized the use of contract paralegals and attorneys and questioned the hourly rate quoted by senior attorneys for Lead Counsel. He argued that the unprecedented size of the settlement was due to the size of damages and that an independent guardian should be appointed to scrutinize Lead Counsel's time records and to recalculate the lodestar figure.

Helfand's objections are not persuasive. As noted by Savoie v. Merchants Bank, 166 F.3d 456, 461 n.4 (2d Cir. 1999), one of the benefits of using the percentage-based method for assessing an award of attorney's fees is that it relieves a court of the need to undertake a mind-numbing detailed review of time records and removes some of the incentive to pad those records.[48] It is undisputed that the percentage of the settlement fund represented by this fee application -- 5.5% -- is well within the range of reasonable fee awards, even in megafund cases.[49] There is certainly no need to retain an independent guardian to undertake a further review of Lead Counsel's time records. Such an appointment would further reduce the amount of money available to distribute to the class, would be redundant of the work already performed by Lead Plaintiff, and is of little value in light of the fee grid in the retainer agreement which is the basis for calculating this award. Finally, the magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy.

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[48] The Court has reviewed the summary information from the time records, including the total hours worked by each attorney and their hourly rate. The extensive use of contract attorneys was justified by the need to review over ten million pages of documents and was a far more efficient way of proceeding than giving the task to more highly compensated counsel. There is little danger of padded hours in this case given the volume of work that has been done and the pace of the litigation.

[49] The law firm Lerach Coughlin Stoia Geller Rudman & Robbins, which has filed scores of Individual Actions on behalf of public pension funds, has negotiated a retainer agreement which appears to give them a larger fee award from any recovery their clients obtain in the Securities Litigation than Lead Counsel can obtain under the retainer agreement negotiated with NYSCRF.

Reimbursement of the expenses sought by Lead Counsel is also appropriate. See LeBlanc-Sternberg v. Fletcher, 143 F.3d 748, 763 (2d Cir. 1998). Lead Plaintiff has audited counsel's expenses and has determined that the amount sought is appropriate and is consistent with the expense caps described in the retainer agreement. The $7,056,023.28 in reimbursable expenses incurred by Lead Counsel and the law firms that assisted in this action are well within the $16 million maximum described in the Notice. The objection that the Notice failed to describe with sufficient particularity the expenses for which reimbursement is being sought is not well-founded. The categories of expenses were described generally, and the expenses incurred here are identical to those incurred in any complex securities litigation. There was no unusual expense that should have been described in more detail in the Notice. In support of this award, Lead Counsel has submitted documents which catalogue the expenses in substantial detail.

The objection that the reimbursement of expenses should only be permitted for those incurred in connection with the case against the Citigroup Defendants must also denied. The Citigroup Defendants play a central role in all of the allegations in the Amended Complaint. They are defendants in the Securities and Exchange Act claims. They were co-lead underwriter for the 2000 and 2001 Offerings and SSB's research reports are at the heart of the conflict of interest allegations. It would be virtually impossible to segregate the expenses incurred by Lead Plaintiff in prosecuting this action and to eliminate those unconnected to

its case against the Citigroup Defendants. In addition, it goes without saying that Lead Counsel will not be able to petition for the same expenses twice. Thus, any future recovery by the class against the non-settling defendants will not be reduced by any of the reimbursement now requested by Lead Counsel.

Lastly, Lead Counsel's request for a $5 million fund to finance the continued prosecution of the consolidated class action against the non-settling defendants is granted. It is appropriate to establish a litigation fund out of the proceeds of a partial settlement. See Teachers' Ret. Sys. of Louisiana v. A.C.L.N. Ltd., 01 Civ. 11814 (MP), 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004); In re Enron Corp. Inc., Derivative & "ERISA" Litig., Civ.A. H-01-3624 (Harmon, J.), 2004 WL 1900294 (S.D. Tex. Aug. 5, 2004).

Objections that this fund would destroy Lead Counsel's contingent-fee arrangement and that if there is no further recovery on behalf of the class, the class will have been improperly denied $5 million, are misplaced. Lead Counsel will still be prosecuting the case against the non-settling defendants on a contingent-fee basis. In addition, reimbursement from the $5 million fund will remain subject to approval by both the Lead Plaintiff and the Court.

There has been one objection that is well-founded. Objectors Lutz and Savage complain that the $5 million fund will principally assist those with Securities Act claims and not shareholders. They object to using this fund to reduce recovery to shareholders. While shareholders will receive approximately

45% of the settlement from the Citigroup Defendants, it is highly likely that, taken as a whole, the future recoveries in this litigation will benefit principally those with Securities Act claims. The non-settling defendants with the deepest pockets -- the Underwriter Defendants -- are only named in the Securities Act claims. Therefore, the $5 million fund will be taken exclusively from those settlement monies that would otherwise be distributed to the class members with Securities Act claims.

Miller Request for Attorney's Fees

Counsel for William H. Miller have submitted an application for attorney's fees and expenses -- $28,974.34 in fees and expenses in the amount of $689.22.[50] Miller filed a putative class action lawsuit against SSB and Grubman on September 4, 2003, which has been consolidated with the class action. Miller's action was the sixteenth of seventeen cases that were originally consolidated under the title Salomon Analyst WorldCom Litigation before another judge of this Court.

Miller's counsel's request for attorney's fees and expenses is denied. They have not shown that any work they performed benefitted the class.

Conclusion

The petition by Lead Plaintiff for approval of a $2.575 billion settlement with Citigroup, Inc., Citigroup Global Markets

[50] Counsel for Miller have withdrawn their petition for an incentive award to class plaintiff Miller in the amount of $1,500.

Inc. f/k/a Salomon Smith Barney Inc., Citigroup Global Markets Limited f/k/a Salomon Brothers International Limited, and Jack B. Grubman is approved. The Plan of Allocation is approved, except that a $5 million fund to support future litigation expenses shall be taken solely from that portion of the settlement fund that shall pay class members with Securities Act claims. Attorney's fees in the amount of $141.5 million and expenses in the amount of $13,505,969.99 are awarded. The request by counsel for William H. Miller for attorney's fees and expenses is denied.

SO ORDERED:

Dated: New York, New York
November 12, 2004

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DENISE COTE
United States District Judge