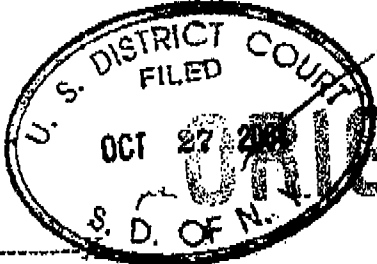


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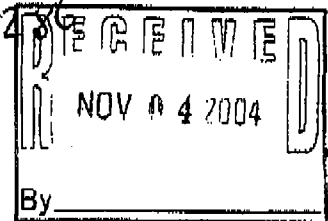
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLDCOM, INC. ERISA LITIGATION

MASTER FILE  
02 Civ. 4816 (DLC)

This Document Relates to: All Actions

D-175



ORDER AND FINAL JUDGMENT

This Action came on for a final hearing on a proposed settlement (the "*Settlement*") of the above-referenced litigation with respect to the following defendants: WorldCom, Inc. (the "*Company*"), Bernard J. Ebberts ("*Ebberts*"), Bert C. Roberts, Jr. ("*Roberts*"), the Estate of John W. Sidgmore ("*Sidgmore*"), Dennis W. Sickle ("*Sickle*"), James C. Allen ("*Allen*"), Judith Areen ("*Areen*"), Carl J. Aycock ("*Aycock*"), Max E. Bobbitt ("*Bobbitt*"), Francesco Galesi ("*Galesi*"), Stiles A. Kellett, Jr. ("*Kellett*"), Gordon S. Macklin ("*Macklin*"), Clifford L. Alexander ("*Alexander*"), John A. Porter ("*Porter*"), Lawrence W. Tucker ("*Tucker*"), Dona Miller ("*Miller*"), Pamela Titus ("*Titus*"), Ray Helms ("*Helms*"), Stephanie Scott ("*Scott*"), and Sandra Faircloth ("*Faircloth*"). The issues having been duly heard and a decision having been duly reached, as set out in the Court's Opinion and Order dated October 18, 2004,

**IT IS HEREBY ORDERED AND ADJUDGED:**

1. Except as otherwise defined herein, all capitalized and italicized terms used herein shall have the same meanings as are ascribed to them in the Class Action Settlement Agreement between Plaintiffs and Settling Defendants dated July 2, 2004 (the "*Settlement Agreement*"), a true and correct copy of which is attached hereto as Exhibit 1.

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2. The *Court* has jurisdiction over the subject matter of the *ERISA Action* and over all parties to the *ERISA Action*, including all members of the *Settlement Class*.

3. Pursuant to Fed. R. Civ. P. 23, the *Court* hereby approves and confirms the settlement embodied in the *Settlement Agreement* as being a fair, reasonable and adequate settlement and compromise of the claims asserted in the *ERISA Action* against the *Settling Defendants*.

4. The *Court* hereby adopts the *Settlement Agreement*, which is approved but not merged herein, and orders that the *Settlement Agreement* shall be consummated and implemented in accordance with its terms and conditions.

5. The *Court* finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the "*Settlement Class*" defined below, in that:

- a. The *Settlement Class* is ascertainable from records kept with respect to the *Plan* and from other objective criteria, and the members of the *Settlement Class* are so numerous that their joinder before the *Court* would be impracticable.
- b. Based on allegations in the Third Amended Consolidated Master Class Action Complaint, there are one or more questions of fact and/or law common to the *Settlement Class*.
- c. Based on allegations in the Third Amended Consolidated Master Class Action Complaint that the *Settling Defendants* engaged in uniform misconduct affecting members of the proposed *Settlement Class*, the

claims of the *Named Plaintiffs* are typical of the claims of the *Settlement Class*.

- d. The *Named Plaintiffs* will fairly and adequately protect the interest of the *Settlement Class* in that (i) the interests of *Named Plaintiffs* and the nature of their alleged claims are consistent with those of the members of the *Settlement Class*, (ii) there appear to be no conflicts between or among the *Named Plaintiffs* and the *Settlement Class*, and (iii) the *Named Plaintiffs* and the members of the *Settlement Class* are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated *ERISA* class actions.
- e. The prosecution of separate actions by individual members of the *Settlement Class* would create a risk of (i) inconsistent or varying ~~adjudications as to individual class members, that would establish incompatible standards of conduct for the parties opposing the claims asserted in the *ERISA* Action or~~ (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. *dlc*
- f. Based on allegations in the Third Amended Consolidated Master Class Action Complaint, the *Defendants* have acted or refused to act on grounds generally applicable to the *Settlement Class*, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the *Settlement Class* as a whole.

6. The Court finds as follows, for purposes of the Settlement:
  - a. the *Settlement Agreement* was negotiated vigorously and at arm's-length by the *Named Plaintiffs* and their experienced counsel on behalf of the *Settlement Class* seeking plan-wide relief for the Plan pursuant to ERISA §§ 409 and 502(a)(2) and (3);
  - b. at all times, the *Named Plaintiffs* have acted independently;
  - c. the interests of *Named Plaintiffs* are identical to the interests of the *Settlement Class* and the *Plan*;
  - d. the negotiation and consummation of the *Settlement Agreement*, including the granting of releases as contemplated thereby, do not constitute "prohibited transactions" as defined in ERISA §§ 406(a) or (b).
  
7. The giving of the *Class Notice* and the *Bar Order Notice* having been carried out in accordance with the *Preliminary Approval Order*, the Court finds as follows:
  - a. such notices were the best notices practicable under the circumstances;
  - b. such notices included individual notice to all members of the *Settlement Class* who could be identified through reasonable efforts;
  - c. such notices provided valid, due and sufficient notice of these proceedings and of the matters set forth therein, including the settlement described in the *Settlement Agreement*, and including information regarding the procedure for the making of objections by all persons to whom such notices were directed, to all person entitled to notice thereof; and
  - d. such notices fully satisfied the requirements of Fed. R. Civ. P. 23 and the requirements of due process.

8. As set forth in the *Court's Preliminary Approval Order*, the *Settlement Class* is defined as follows

“All Persons who were at any time participants in the Plan (including predecessors to the Plan) during the period starting on September 14, 1998 through and including July 21, 2002; and as to each such Person, his, her or its beneficiaries, alternate payees (including spouses of deceased persons who were Plan participants), Representatives and Successors-In-Interest, provided, however, that the *Settlement Class* shall not include any Defendant or any of their Immediate Families, beneficiaries, alternate payees (including spouses of deceased persons who were Plan participants), Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves are or were Participants in the Plan, who shall be considered members of the *Settlement Class* with respect to their own Plan accounts.”

The *Court* finds that the *Settlement Class* is sufficiently well-defined and cohesive. The *Court* hereby certifies the *Settlement Class* for settlement purposes under Fed. R. Civ. P. 23(b)(1) and (2) in this litigation

9. The *ERISA Action* is hereby dismissed as against *Settling Defendants*, with prejudice, each party to bear his, her or its own costs, except as provided herein.

10. By operation of this judgment, the members of the *Settlement Class*, on their own behalves and on behalf of their respective heirs, executors, administrators, past and present partners, officers, directors, agents, attorneys, predecessors, and assigns, and the Plan and its current and former fiduciaries, finally and forever release the *Releasees* from all *Released Claims*.

11. By operation of this judgment, the members of the *Settlement Class*, and the *Plan* are permanently barred and enjoined from the institution and prosecution, either directly or indirectly, of any other actions in any court asserting any and all *Released Claims* against any *Releasee*.

12. Effective at the *Effective Date*, by operation of this judgment, each "*Barred Person*" (as defined below), is permanently barred and enjoined from instituting any action or otherwise asserting any *Claim*, either derivatively or on behalf of themselves, or through any *Person* purporting to act on their behalf or purporting to assert a claim under or through them, in any forum, (i) against any *Releasee*, for indemnity and/or contribution arising out of the *ERISA Action* and for any other *Claims* arising out of the *Released Claims*, including without limitation *Claims* arising out of or relating to the payment of the *Class Settlement Amount*, and (ii) against any *Underwriter* (a) under, or in any way involving the *Insurance Policies*, or (b) upon any *Released Claim* or for coverage for any *Released Claim*. The actions and claims described in the immediately preceding sentence are referred to herein as "*Barred Claims*." As used herein, "*Barred Person*" means each *Person*, including the *Settling Parties*, who received the *Class Notice* or the *Bar Order Notice*, or who had actual knowledge of the *Class Notice* or the *Bar Order Notice*, or who had actual knowledge of sufficient facts that would cause such *Person* to be charged with constructive notice of the *Class Notice* or the *Bar Order Notice*.

13. Because of the bar and injunction provided for in the foregoing paragraph 12, any judgment entered against any of the *Non-Settling Defendants* with respect to claims asserted in the *ERISA Action* will be reduced by the *Judgment Reduction Amount*, calculated as set forth in Section 1.41 of the *Settlement Agreement* and as modified by the stipulation attached hereto as Exhibit 2. Nothing contained in this judgment shall in any manner limit any joint and several liability applicable to any *Non-Settling Defendant* under *ERISA* as to the portion of any judgment remaining after application of the *Judgment Reduction Amount*.

14. By operation of this judgment, each *Settling Defendant* is barred and permanently enjoined from bringing against the *Barred Persons*, either derivatively or on behalf of

themselves, or through any *Person* purporting to act on their behalf or purporting to assert a claim under or through them, any of the *Barred Claims* in any forum, provided that a *Settling Defendant* shall not be enjoined from bringing *Barred Claims* against a *Barred Person* if for any reason such *Barred Person* asserts, or is legally not barred by this judgment from bringing, *Barred Claims* against such *Settling Defendant*.

15. The entry of the bars, injunctions and related provisions set forth in paragraphs 11 through 14 above are fair to the *Settling Parties*, the *Settlement Class* and the *Non-Settling Parties*.

16. By operation of this judgment and for a period of five years from the date hereof, each of *Ebbers* and *Sickle* is enjoined from:

- a. Serving or acting, for compensation or otherwise, as a trustee of an *ERISA*-covered plan, or as a named fiduciary of an *ERISA*-covered plan;
- b. Serving on any board, committee, office, or position that is expressly assigned fiduciary responsibilities with respect to an *ERISA*-covered plan under the terms of the governing plan documents, instruments, or other written agreements including, but not limited to, the responsibility to appoint, monitor, or remove plan fiduciaries;
- c. Entering into or acting pursuant to any contract, agreement, or understanding for the provision of fiduciary services to an *ERISA*-covered plan;
- d. Knowingly assuming decision-making or discretionary authority with respect to, or custody or control of, the assets or administration of any *ERISA*-covered plan (other than an *ERISA* plan exempt from Title I, Part 4 of *ERISA*); and

- e. Participating in any fiduciary breach under Title I of *ERISA* or any transaction prohibited under Title I of *ERISA*.

No person shall be deemed to have violated the provisions of this Paragraph 16 by (i) sitting on the board of directors of a corporation, provided that in such capacity such person does not (1) engage in conduct specifically described in the foregoing paragraphs (a) through (e), or (2) participate in any decision to appoint or remove a person to act as a fiduciary of an *ERISA* covered plan or (ii) exercising discretionary authority or control over the assets of such person's own individual account within a participant-directed, individual account, employee benefit plan regulated by *ERISA*.

17. Twenty percent of the cash component of the Settlement Fund shall be reserved for potential distribution to counsel. From that reserved amount, the following sums are awarded now: attorneys' fees in the amount of \$5,000,000 are awarded to Appointed Counsel for post-appointment work. Costs and expenses are also awarded to Appointed Counsel. Appointed Counsel may renew their application for a further award of attorney's fees from the reserved amount at the conclusion of the litigation against Merrill Lynch. The requests by Vivien Counsel and Emanuele Counsel for reimbursement of expenses for pre-appointment work is granted. Vivien Counsel and Emanuele Counsel are entitled to an award of attorney's fees for pre-appointment work. Vivien Counsel and Emanuele Counsel may submit their time records in further support of an award of attorney's fees to them from the reserved amount for their pre-appointment work. Local Counsel's request for pre-appointment attorney's fees and expenses is denied.

18. An award is also made from the cash settlement fund of \$80,327.47 for past notice costs. Lead Counsel is permitted to maintain a fund of an additional \$50,000 to pay future notice costs. The three named plaintiffs in the *ERISA Litigation* are awarded \$5,000.00 each.

19. The Court shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the *Settlement Agreement* or any challenges as to the performance, validity, interpretation, administration, enforcement or enforceability of the *Class Notice*, this judgment, or the *Settlement Agreement* or the termination of the *Settlement Agreement*, except to the extent that any such matters are referred under the *Settlement Agreement*, or pursuant to a subsequent separate agreement, to the *Mediator*, or are within the exclusive jurisdiction of the *Bankruptcy Court*. The Court shall also retain exclusive jurisdiction over and rule as set forth in Paragraph 17 above and otherwise by separate order with respect to (i) the *Plan of Allocation* that has been proposed by *Named Plaintiffs*, and (ii) all applications for awards of attorneys' fees and reimbursements of expenses made pursuant to Section 10.1 of the *Settlement Agreement*.

20. In the event that the *Settlement Agreement* is terminated in accordance with its terms, this judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, and the *ERISA Action* shall proceed in the manner provided in the *Settlement Agreement*.

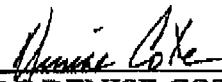
21. The Court further finds as follows:

- a. The *Settlement* settles all claims asserted in the *ERISA Action* against the *Settling Defendants*;
- b. Entry of final judgment with respect to the *Settlement* will not impede the continuation of the claims in the *ERISA Action* with respect to the *Non-Settling Defendants*;

- c. The legal and factual issues pertinent to the fairness of the *Settlement* are generally separate and distinct from the legal and factual issues pertinent to the continuing claims in the ERISA Action with respect to the *Non-Settling Defendants*.
- d. Entry of final judgment with respect to the *Settlement* will facilitate the *Settlement* becoming *Final* and the expeditious payment of the proceeds of the *Settlement* for the benefit of the *Settlement Class*.

22. By reason of the foregoing, this *Court* hereby finds that, pursuant to Fed. R. Civ. P. 54(b), there is no just reason for delay of entry of this final judgment and hereby directs its entry.

SO ORDERED this 26<sup>th</sup> day of October, 2004.

  
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HONORABLE DENISE COTE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK



**THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 10/27/04**