

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK


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IN RE WORLDCOM, INC. SECURITIES : 02 Civ. 3288 (DLC)
LITIGATION :
 : ORDER
This Opinion Relates To: :
 :
ALL ACTIONS :
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DENISE COTE, District Judge:

The attached document consists of revised draft preliminary jury instructions for the March 23 class action trial, as well as a revised document to be used on Monday, March 28, during voir dire. If the Lead Plaintiff and Arthur Andersen wish to comment on this revised draft, they must do so by Friday, March 25, at 10:00 a.m.

SO ORDERED:

Dated: New York, New York
March 24, 2005



DENISE COTE
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3/24/05 DRAFT

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NEW YORK STATE COMMON RETIREMENT FUND, : 02 Civ. 3288 (DLC)
et al., on behalf of purchasers and :
acquirers of all WorldCom, Inc. :
publicly traded securities during the :
period beginning April 29, 1999 through :
and including June 25, 2002, :
: :
Plaintiffs. :
: :
-v- :
: :
ARTHUR ANDERSEN LLP, :
: :
Defendant. :
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DENISE COTE, District Judge:

Preliminary Jury Instructions

This is a brief description of some but not all of the legal principles that will govern your decisions in this trial. You may keep your copy of these preliminary instructions with you during the trial and you may refer to it as the trial proceeds. At the end of the trial I will give you a complete charge on the law. I will also give each of you a written copy of that complete charge at the end of the trial and it is that complete charge on the law -- not these brief, preliminary instructions, which are necessarily incomplete -- that must govern your deliberations and verdict.

This lawsuit is a class action brought on behalf of investors who purchased the stock and bonds of a company named WorldCom. Stock and bonds are two different kinds of securities that companies issue to raise money. Once a company has issued

these securities, the securities can be bought and sold between investors -- that is, traded -- on the securities markets. When a person sells stock or bonds, the purchaser of the security becomes an investor in the company. WorldCom stock was traded on the NASDAQ exchange.

A bond represents a loan from an investor to the company and the company's resulting debt to the investor. It gives the purchaser a right to receive interest payments from the company and a right to receive the face amount or principal of the bond from the company at the end of the term of life of the bond. The bonds that are at issue in this case had lives ranging from three years to thirty years. Before the expiration of a bond, an investor can also receive money by selling the bonds to another investor on securities markets.

When an investor buys the stock of a company, the investor becomes a shareholder in the company and is entitled to receive any dividend payments that the company makes to its shareholders. An investor can also receive money by selling the stock through a stock exchange to another investor.

The class that brings this lawsuit is composed of investors who bought WorldCom stock and bonds between April 29, 1999 and June 25, 2002. Four members of the class who purchased either WorldCom stock or bonds or both types of securities are representing the class in this lawsuit. The four class representatives are the New York State Common Retirement Fund, the Fresno County Employees Retirement Association, the County of Fresno, California, and HGK Asset Management, Inc.

SECURITIES ACT CLAIMS

The class brings claims under two different federal laws that were passed in the aftermath of the stock market crash of 1929. The first statute, which is called the Securities Act of 1933, or the Securities Act for short, includes laws that govern the issuance of securities, both stock and bonds, by companies. It requires a company to make a disclosure of material facts regarding the company when the company sells its securities. These laws are designed to enable the investing public to make an informed decision as to whether or not to buy a company's securities.

A company that wants to sell securities to the public must file a document called a registration statement with the SEC. The registration statement includes a document called a prospectus. A prospectus is a formal written offer to sell securities. The SEC has detailed rules about what information must be contained in a prospectus and in a registration statement. Among other things, WorldCom was required to include as part of any prospectus its most recent annual audited financial statements.

The Securities Act claims in this lawsuit concern two public offerings of WorldCom bonds: a \$5 billion offering in May of 2000 and a \$12 billion offering one year later, in May of 2001. The class claims that the annual audited financial statements that were included in the registration statements for both the May 2000 and May 2001 bond offerings contained material false statements. The class contends that because of these false

statements, investors who purchased WorldCom bonds in these two public offerings suffered billions of dollars in damages.

The class has the burden of proving to you that the registration statements for the May 2000 and May 2001 offerings contained material misstatements. You will need to make one determination for the registration statement WorldCom filed in connection with its 2000 bond offering and a separate determination for the registration statement WorldCom filed in connection with the 2001 bond offering.

As you will learn, WorldCom entered bankruptcy in 2002. Because of that bankruptcy, it is not a defendant in this lawsuit. In addition to imposing legal obligations on the company that issues or sells securities, the Securities Act also imposes legal obligations in connection with the sale of a company's securities on certain other participants in the sale. These include the company's auditor, since the auditor conducts an annual audit of the company's financial statements and its certification of that annual audit is required to be included in the prospectus.

The defendant at this trial is WorldCom's former outside auditor, Arthur Andersen. The class contends that Arthur Andersen violated the Securities Act. The class has brought Securities Act claims against Arthur Andersen based solely on its certification of its audit of the 1999 annual financial statements that was incorporated into the registration statement for the 2000 bond offering and its two certifications of its audits for the 1999 and 2000 annual financial statements that

were incorporated into the registration statement for the 2001 bond offering. Arthur Andersen certified that, in its opinion, the annual financial statements of WorldCom presented fairly, in all material respects, the financial position and results of operations of WorldCom in conformity with Generally Accepted Accounting Principles, or GAAP, as of December 31, 1999 and December 31, 2000. The class contends that these financial statements and Arthur Andersen's certification of its audit of these financial statements contained material false statements.

Arthur Andersen denies that it violated the Securities Act or that it is liable for the losses suffered by class members from their purchase of WorldCom bonds. First, it disputes that WorldCom's annual financial statements for 1999 or 2000, which it certified, were materially false.

The Securities Act also allows Arthur Andersen to present affirmative defenses. The burden of proving its affirmative defenses is on Arthur Andersen. If it succeeds in proving an affirmative defense, then it is not liable under the Securities Act. If you find that the class has shown that WorldCom's audited financial statement for 1999, which was included in the registration statements for the 2000 bond offering, contained material misstatements, or that WorldCom's audited financial statements for 1999 and 2000, both of which were included in the registration statement of the 2001 bond offering, contained material misstatements, then you will also have to consider whether Arthur Andersen has proven its affirmative defenses.

The first affirmative defense that I will describe is the defense of due diligence. Arthur Andersen must show that it conducted a reasonable investigation in connection with the audits of WorldCom's year-end financial statements for 1999 or 2000 that you have found contained material false statements, and that it had reasonable grounds to believe and did believe at the time the registration statements that contained those financial statements became effective that those financial statements presented fairly, in all material respects, the financial position and results of operations of WorldCom in conformity with GAAP. To succeed on this defense, Arthur Andersen must show that it conducted its audits of those financial statements in accordance with Generally Accepted Auditing Standards or GAAS.

The second affirmative defense that I will describe to you deals with the cause of the plaintiffs' losses. Andersen maintains that plaintiffs' losses were not caused by the misstatements the class alleges. If Andersen shows you that all or some of the losses claimed by the class are attributable to something other than any material misstatements that you find were contained in the 1999 or 2000 WorldCom financial statements, then Andersen cannot be held liable under the Securities Act for those losses.

EXCHANGE ACT CLAIMS

The class has also brought claims in this lawsuit under a second federal statute. It is the Securities Exchange Act of

1934, or Exchange Act for short, which created the Securities and Exchange Commission. The Exchange Act protects investors in stock and bonds through laws that outlaw deceptive practices in connection with the purchase and sale of securities. The class is pursuing an Exchange Act claim called a Section 10(b) claim against Andersen.

The class claims that WorldCom's annual financial statements for the years 1999, 2000, and 2001 contained materially false statements, and that when Arthur Andersen issued its audit opinions regarding these annual financial statements, it acted with an intent to deceive, manipulate or defraud. If the class shows that these financial statements were materially false, and that in conducting its audits, Arthur Andersen acted with reckless disregard of whether WorldCom was engaged in fraudulent accounting practices and materially misstating its financial position in these annual financial statements, then you may find that the class has carried its burden of showing that Arthur Andersen acted with an intent to deceive, manipulate or defraud. The class must show that Arthur Andersen's conduct of its audits was highly unreasonable and represented such an extreme departure from GAAS that the danger that WorldCom was engaged in fraud was either known to Arthur Andersen or so obvious that Arthur Andersen must have been aware of the fraud.

Arthur Andersen denies that it violated the Exchange Act. Arthur Andersen denies that WorldCom's audited annual financial statements for 1999 and 2000 were materially misstated. It has withdrawn its audit opinion for the audited annual financial

statements for 2001, but maintains that it did not know at the time that it issued its audit opinion that WorldCom's 2001 financial statements contained material misstatements, and was not reckless when it issued its audit opinion concerning those financial statements. Arthur Andersen maintains that each of its audit opinions for 1999, 2000, and 2001 was generated in good faith and without an intent to deceive, manipulate, or defraud.

PROPORTIONATE LIABILITY

There is one more issue that the parties will be asking you to decide at the end of the trial. You will be asked to determine the percentage of responsibility of each person, whether or not such person is a defendant at this trial, for any loss that the class has shown was caused by a violation of the Securities Act or Exchange Act, measured as a percentage of the total fault of all persons, including persons who are not defendants at this trial, who caused or contributed to the loss suffered by the class.

At the end the trial, I will give you a complete charge on the law. Remember, this preliminary instruction is a brief overview and does not cover every issue of law that will be important to you when you deliberate. At the end of the trial you will be required to accept my final charge on the law as I give it to you. It will be your job to determine each of the facts of the case fairly and impartially, without sympathy to any party, under my explanation of the law.

You may not show these preliminary instructions to anyone or discuss them with anyone, including your fellow jurors. You are not to discuss this case with each other at any time until the end of the trial when the case is given to you for deliberations.

2. Do you have any hesitation or unwillingness to accept the rules of law that I have stated?

3. Do you have any ideas or prejudices that would prevent or hinder you from following the instructions that I will give as to the law?

4. Do you have any doubt that you will be able to apply the law as I explain it even if you disagree with it?

5. Do you have any religious or ethical beliefs that would prevent you from passing judgment on another person?

6. Do you have any personal knowledge of the claims in this case as I have described them?

7. Have you ever studied or practiced law or worked in any capacity for a law office?

8. Have you or has any member of your immediate family ever been employed by the U.S. Treasury Department, the Federal Reserve Board, the Securities and Exchange Commission, the National Association of Securities Dealers or NASD, the NASDAQ stock market, or the Securities Investor Protection Corporation?

9. Have you or has any member of your immediate family ever worked for WorldCom or MCI?

10. Have you or has any member of your immediate family ever worked for an accounting firm?

11. Have you or has any member of your immediate family ever been employed by or done business with a telecommunications company?

12. Have you ever been a customer of WorldCom or MCI? Would anything about that experience make it difficult for you to be a fair and impartial juror in this case?

13. Have you ever had a business relationship with

WorldCom or MCI?

14. To your knowledge, have you, any member of your family, or a person to whom you are close ever owned WorldCom stock or bonds, or held any kind of investment in WorldCom securities?

15. Did you or any member of your immediate family ever file a claim in connection with the bankruptcy of WorldCom?

16. The claims in this case include events connected to the issuance of bonds by WorldCom. Have you ever prepared or participated in the preparation of documents in connection with a sale of securities, such as a prospectus or a registration statement?

17. Do you have a pension plan or an investment account administered by the New York State Common Retirement Fund, HGK Asset Management, or the Fresno County Employees Retirement Association?

18. Do you believe that you, or any member of your immediate family has been the victim of a financial fraud or has put money into an investment you later understood to be fraudulent?

19. Have you ever participated in a class action or been invited to join a class action?

20. Will the fact that this action is brought as a class action make it difficult for you to be a fair and impartial juror in this case?

21. Have you had any experience with, or do you have any opinion about, accountants or auditors that would make it difficult for you to be a fair and impartial juror in this case?

22. Have you or a member of your immediate family ever

been in a serious dispute in which you or they were accused of being negligent or committing fraud?

23. Have you ever worked for a company that was investigated by the government for misconduct?

24. Do you believe that the fact that the plaintiff class claims that the defendant violated the federal securities laws will interfere with your ability to give either the plaintiff class or the defendant a fair trial?

25. Have you seen, read or heard something about this case or the events at WorldCom? If yes, is there any reason why you believe that you could not be a fair and impartial jury in this case?

26. Do you feel that, for any reason, you could not sit fairly and impartially as a juror in a case involving charges like those in this case?

B. Knowledge of Parties, Attorneys, Witnesses

27. Do you know, or have you had any dealings with any of the following organizations or individuals?

The plaintiff class of investors is represented by four named plaintiffs. They are the New York State Common Retirement Fund, the Fresno County Employees Retirement Association, the County of Fresno, California, and HGK Asset Management, Inc. Alan G. Hevesi, the Comptroller of the State of New York and sole trustee and administrator of the New York State Common Retirement Fund, will be attending the trial, along with Diane Foody, on behalf of the New York State Common Retirement Fund.

The four named plaintiffs are represented by the law firms Bernstein Litowitz Berger & Grossmann LLP and Barrack Rodos

& Bacine. The attorneys from those law firms who will be participating in this trial are John P. Coffey, Steven B. Singer, J. Erik Sandstedt, Beata Gocyk-Farber, John C. Browne, Jeffrey W. Golan, Mark R. Rosen, Jeffrey A. Barrack, and Regina M. Calcaterra. They will be assisted by paralegal Eileen McNerney.

The defendant Arthur Andersen LLP is represented by the law firm Curtis, Mallet-Prevost, Colt & Mosle LLP. The attorneys from that law firm who will be participating in this trial are Elliot Lauer, Michael Moscato, Gary L. Cutler, and Jonathan Walsh. These attorneys will be assisted by paralegals Ashley Becker, Dina Bernardelli, and Khorshid Rahmaninejad, and by Joseph Chan, Christopher Redlich, and Robert Tishouer. Richard Dieter will attend the trial on Arthur Andersen's behalf.

28. Do you have any relatives, friends, associates or employers who know or who have had any dealings with the named plaintiffs who will be representing the class, the defendant, any of the law firms representing these parties, or the individual attorneys and others who will be participating in the trial?

29. Do you know any of the following people or institutions whose names appear on the document attached to the end of this form? This list includes the names of those who may testify or who may be mentioned during the course of the trial.

C. Experience as a Party, Witness, Defendant

30. Have you or a member of your immediate family ever brought a lawsuit against anyone?

31. Have you or has a member of your immediate family ever been sued?

32. Do you believe that there is anything wrong in

bringing a claim for money damages if you believe that you are injured through the fault of another person or organization?

33. Do you believe that simply because a person brings a lawsuit claiming that they have been injured that that person deserves to recover money?

34. Have you or has any member of your immediate family ever been a witness in any investigation or case involving a claimed violation of the federal securities laws?

35. Have you or has any member of your immediate family ever been a defendant in any criminal case?

D. Difficulties in Understanding or Serving

36. Do you have a problem with your hearing or vision that would prevent you from giving attention to all of the evidence at this trial?

37. Do you have any difficulty in understanding or reading English?

38. Do you have any special medical problems that might interfere with your service as a juror in this case?

39. As a juror, you will not be permitted to read, watch or listen to any media accounts about WorldCom, this case or the trial throughout the duration of this trial. Will you have difficulty complying with that order?

QUESTIONS FOR INDIVIDUAL JUROR

1. Please state your name and county of residence. Please list each county of residence during the past 5 years.
2. How old are you?
3. How far did you go in school?
4. Who is your employer? (If retired or unemployed, describe your last employment.)
5. What do you do?
6. How long have you been employed in your current position?
8. Who are the members of your household and for whom do they work?
9. Do you have grown children? For whom do they work?
10. Have you served as a juror? If so, when did you serve and was it a civil or criminal case? Did you reach a verdict? (Do not tell us what the verdict was.)