

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE WORLDCOM, INC.	:	No. 05-2620-CV
ERISA LITIGATION	:	
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Gail M. Grenier, John T. Alexander, and	:	
Steven Vivien, on behalf of a class of all others	:	
similarly situated,	:	
	:	
Plaintiffs-Appellants,	:	
	:	
v.	:	
	:	
MERRILL LYNCH TRUST COMPANY,	:	
FSB,	:	
	:	
	:	
	:	
	:	
Defendant-Appellee.	:	

STIPULATION AND AGREEMENT

This Stipulation and Agreement (hereinafter "Agreement") is entered into between (i) the ERISA Named Plaintiffs Steven Vivien, Gail Grenier and Scott Alexander, and the ERISA Class (as certified by the District Court in its order described in Paragraph E below) (collectively, "ERISA Plaintiffs"), and (ii) Merrill Lynch Trust Company, F.S.B. ("MLTC"), by and through their undersigned attorneys. ERISA Plaintiffs and MLTC are referred to herein collectively as the "Parties."

WHEREAS:

A. On and after March 18, 2002, the ERISA Named Plaintiffs and other parties filed complaints in various federal district courts asserting claims under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), arising out of losses suffered by the

WorldCom, Inc. 401(k) Salary Savings Plan (the "Plan") in connection with its investment in the stock of WorldCom, Inc. All such actions were transferred by the Judicial Panel on Multidistrict Litigation to the United States District Court for the Southern District of New York (the "District Court").

B. On November 18, 2002, the District Court entered its order consolidating the ERISA actions transferred to it under the caption *In re WorldCom, Inc. ERISA Litigation*, No. 02 Civ. 4816 (DLC) (the "Action"), and appointing the ERISA Named Plaintiffs as lead plaintiffs in the Action and Keller Rohrback, LLP, as lead plaintiffs' counsel in the Action.

C. On January 24, 2003, ERISA Named Plaintiffs filed an Amended and Restated Consolidated Master Class Action Complaint (the "Amended Complaint"), which asserted, among other things, certain claims against MLTC as the trustee of the Plan.

D. On October 4, 2004, the District Court entered its order certifying a class under Fed. R. Civ. Pro. 23(b)(1) (the "ERISA Class").

E. On July 8, 2004, ERISA Plaintiffs filed a motion for approval of a settlement of the Action as against various defendants not including MLTC. This partial settlement provided for, among other things, the payment of \$47,150,000 in cash by the settling defendants, the entry of a bar order barring certain claims against the settling parties by the non-settling parties, including MLTC, and the reduction of any judgments entered in the Action against the non-settling parties on certain terms and conditions. MLTC objected to certain aspects of the judgment reduction formulation provided for in the proposed partial settlement.

F. The District Court overruled MLTC's objection and approved the partial settlement after a fairness hearing conducted on October 15, 2004. MLTC filed a notice of appeal of the District Court's order on October 27, 2004. MLTC's appeal is styled Merrill Lynch Trust

Company, FSB v. Gail Grenier, et al., 04-6111 CV) (the “MLTC Appeal”) and is currently pending.

G. On February 1, 2005, the District Court granted summary judgment in favor of MLTC on all claims pending against it under the Amended Complaint.

H. On March 9, 2005, MLTC moved the District Court for certification of its order granting summary judgment under Fed. R. Civ. Pro. 54(b), and moved the United States Court of Appeals for the Second Circuit (the “Appeals Court”) for an order staying proceedings in the MLTC Appeal until the District Court’s summary judgment order was final and any appeal relating thereto was resolved. On March 25, 2005, ERISA Plaintiffs objected to MLTC’s motion for Fed. R. Civ. Pro. 54(b) certification and opposed MLTC’s request for a stay.

I. On April 8, 2005, the Appeals Court granted MLTC’s motion for a stay. ERISA Plaintiffs thereupon withdrew their objection to Rule 54(b) certification of the grant of summary judgment. On April 27, 2005, the District Court entered final judgment in favor of MLTC under Rule 54(b).

J. On May 26, 2005, ERISA Plaintiffs filed a notice of appeal with respect to the District Court’s grant of summary judgment. This appeal (the “Plaintiffs’ Appeal”) is encaptioned above and is currently pending.

K. At the request of the Plan’s sponsor, MLTC has performed certain administrative services for the Plan in connection with the 2004 settlement of the Action and in connection with certain settlements reached in the WorldCom, Inc. securities litigation. These services (referred to herein as the “Settlement Services”) consist of various activities relating to the distribution of the proceeds of the respective settlements to plan participants, including preparing the necessary computer programs and allocation formulas. MLTC currently estimates that its bill for the

Settlement Services performed will be \$200,000. The Plan's sponsor has informed the Parties that payment for the Settlement Services would be made from the proceeds to be received by the Plan from the subject settlements.

L. ERISA Plaintiffs and MLTC have reached agreement (the "Settlement") under which both the MLTC Appeal and the Plaintiffs' Appeal will be dismissed and MLTC will agree to forego payment for the Settlement Services, up to a maximum of \$200,000.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, as follows:

1. Immediately upon execution of this Agreement, the Parties will file a joint motion with the Appeals Court for an order (i) remanding the Action as against MLTC to the District Court solely for consideration of whether the proposed Settlement is fair and reasonable to the ERISA Class; (ii) otherwise retaining jurisdiction over the MLTC Appeal and the Plaintiffs' Appeal for all purposes; and (iii) staying further proceedings in the MLTC Appeal and the Plaintiffs' Appeal pending further proceedings in the District Court on remand.

2. Promptly upon such remand, the Plaintiffs shall file with the District Court a motion seeking a finding (the "Finding") that the proposed Settlement is a fair and reasonable settlement to the ERISA Class.

3. The Parties shall promptly notify the Appeals Court of any Finding made by the District Court as to whether the proposed settlement was fair and reasonable to the ERISA Class, and shall also advise the Appeals Court of the course of proceedings before the District Court, including a description of the notice of the proposed Settlement provided to the ERISA class and whether any class member objected to the proposed Settlement.

4. At any time after the District Court has entered a Finding, if no class member has filed a timely objection in the District Court, but no sooner than thirty-days after the entry of a Finding if a class member has filed a timely objection, the Parties will file a joint motion with the Appeals Court seeking dismissal of the MLTC Appeal and the Plaintiffs Appeal, with the Parties to each bear their respective costs for each appeal. In that regard, neither Party will seek an order from the Appeals Court, pursuant to *United States v. Munsingwear*, 340 U.S. 36 (1950), for vacatur of the respective District Court judgments from which the appeals were taken. The Parties expressly acknowledge that neither Party is entitled to such a vacatur order under the authority of *U.S. Bancorp Mfg. Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994).

5. Upon the entry of an order(s) dismissing with prejudice the MLTC Appeal and the Plaintiffs' Appeal, MLTC agrees that it will irrevocably forego payment for the Settlement Services, up to a maximum of \$200,000, and will not seek payment from the Plan for that amount for such Settlement Services.

6. This Agreement may be amended or modified only by a written instrument signed by counsel for all parties hereto or their successors-in-interest.

7. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the parties to this Agreement shall exchange among themselves original signed counterparts.

8. The parties hereto and their respective counsel of record agree that they will use their best efforts to obtain all necessary court approvals and actions required by this Agreement.

9. Each counsel signing this Agreement represents that such counsel has authority to sign this Agreement on behalf of his clients.

10. Notices required by this Agreement shall be submitted either by any form of overnight mail or in person to:

Lynn Lincoln Sarko, Esq.
Gary A. Gotto, Esq.
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COUNSEL FOR MLTC

11. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles, to the extent that federal law does not apply. Any action based on this Agreement or to enforce any of its terms may only be brought in the United States District Court for the Southern District of New York. All parties to this Agreement consent to the jurisdiction of the United States District Court for the Southern District of New York for all purposes related to this Agreement.

Dated: July 5, 2005

Dated: July 5, 2005

By: 

Lynn Lincoln Sarko, Esq.
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Dated: July 5, 2005

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Counsel for MLTC

CERTIFICATE OF SERVICE

I, Joshua D. Hess, hereby certify that on this 6th day of July 2005, I caused to be served via U.S. Mail, postage prepaid and facsimile, a true and correct copy of the following:

- Joint Motion to Stay Proceedings and for Limited Remand to the District Court;
- Stipulation and Agreement;
- Declaration of Gary A. Gotto in Support of Joint Motion to Stay Proceedings and for Limited Remand to the District Court.

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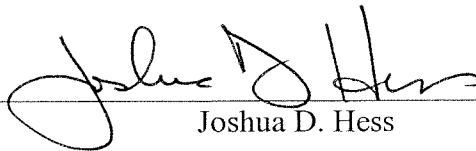
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