

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK CITY EMPLOYEES'		:
RETIREMENT SYSTEM, et al.,		:
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	Plaintiffs,	:
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		:
- against -		:
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		:
BERNARD J. EBBERS, et al.,		:
		:
	Defendants.	:
		:
		:
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**BRIEF *AMICUS CURIAE* OF
THE SECURITIES INDUSTRY ASSOCIATION**

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Amicus Curiae

The Securities Industry Association (“SIA” or the “Association”), as *amicus curiae*, respectfully submits this memorandum of law to present the Association’s views to the Court on the scope of federal jurisdiction over cases alleging violations of the federal securities law in connection with the sale of securities by bankrupt issuers, as presented in the pending Motion to Remand or to Abstain.¹

PRELIMINARY STATEMENT

Plaintiffs in this action seek damages for losses allegedly suffered in connection with their purchase of WorldCom securities. WorldCom, now a debtor under Chapter 11 of the U.S. Bankruptcy Code, is not named as a defendant in Movants’ suits. Instead, Plaintiffs have elected to sue various professionals (and others) who advised, assisted or otherwise participated in WorldCom’s issuance of public debt securities. WorldCom -- like any issuer of the securities at the core of a securities case -- is the central actor here. Proceeding without it is akin to staging Hamlet without the Prince. But, the federal courts have jurisdiction over Hamlet, as they do for all bankrupt corporate issuers. Similarly, the federal courts have jurisdiction over related cases where bankrupt issuers are the central actors.

Section 1334(b) of the Judicial Code broadly provides for federal jurisdiction over all civil proceedings that are “related to” a federal bankruptcy case. On its face, and as confirmed by settled law in this Circuit, “related to” jurisdiction exists where defendants have contribution or indemnity rights against a bankrupt issuer. Movants urge the Court to break from Circuit law and narrowly constrict the intentionally broad reach of “related to” jurisdiction. In their view, “related to” jurisdiction should exist only when a defendant’s indemnification or

¹ For the Court’s convenience, this memorandum will refer to Plaintiffs’ Memorandum of Law in Support of Motion to Remand or to Abstain as (“Pl. Br.”), and to the Interested Pension Funds’ Memorandum of Law in Support of New York City Funds’ Motion to Remand Action as (“Int. Br.”), and to both the Plaintiffs and the Interested Pension Funds as “Movants.”

contribution claims against a debtor are absolute and unassailable. This stance is indefensible. The prevailing test for “related to” jurisdiction in the Second Circuit (and elsewhere) is whether the outcome of a case “might have ‘any conceivable effect’” on a debtor’s estate. See In re Cuyahoga Equip. Corp., 980 F.2d 110, 114 (2d Cir. 1992) (citing In re Turner, 724 F.2d 338, 340-41 (2d Cir. 1983)). The effect need not be certain or immediate; indeed, defendants need only show that their indemnification or contribution claims have a “reasonable legal basis.” See In re Chateaugay Corp., 213 B.R. 633, 640 (S.D.N.Y. 1997).

Under the terms of their respective underwriting agreements, underwriters are entitled to seek indemnification from WorldCom for attorneys’ fees, litigation costs and liability incurred in connection with the WorldCom securities offerings they underwrite. This is typical throughout the capital formation market place. And apart from privately bargained for risk allocation protections, Congress also protects underwriters from disproportionate liability through a statutory right to contribution. See 15 U.S.C. § 77k(f). Separately, and together, these rights to contribution and indemnification have a “reasonable legal basis.” Indeed, the right to rely on these risk allocation measures is basic to, and universally accepted in, the underwriting process.

Apart from its rejection of settled law, Movants’ narrow view of “related to” jurisdiction is anathema to one of the primary goals of the federal bankruptcy scheme: providing federal courts with broad jurisdiction so that they might deal effectively with all matters affecting a debtor’s estate. This includes not only the fair and efficient resolution of disputes relating to bankruptcy proceedings, but consistency in result. Particularly where a bankrupt seeks to reorganize, its plan of reorganization must acknowledge and resolve all lawfully pending liabilities, and to do so must marshal and allocate all lawful assets. Neither is possible where

obligations as potentially broad as debts to bondholders (Movants here) or allocation rights among underwriters remain outstanding and, (absent federal jurisdiction), potentially subject to conflicting outcomes in multiple state courts.

The conflicting outcomes that inevitably would result from litigating this same matter in multiple courts across the country undermine not only the compelling federal bankruptcy interests, but also the strong federal interest in maintaining uniformity and integrity in the interpretation and application of the federal securities laws. Permitting Plaintiffs (and others like them) to pursue their claims in various state courts would create real potential for inconsistent rulings on law and fact, thereby undermining the statutory and contractual risk allocation mechanisms relied upon in the capital formation process. Furthermore, it would exponentially increase litigation costs, as securities industry participants would be forced to defend sprawling litigation in multiple state jurisdictions around the country. In sum, granting Plaintiffs' Motion to Remand or to Abstain would fundamentally alter the risks and costs associated with underwriting a national securities offering.

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS' CLAIMS ARE "RELATED TO" WORLDCOM'S BANKRUPTCY

Federal courts have original jurisdiction over civil claims that are "related to" a federal bankruptcy case. See 28 U.S.C. § 1334(b). In the Second Circuit "related to" jurisdiction exists if the outcome of a case "might have any 'conceivable effect' on the bankrupt estate." Cuyahoga, 980 F.2d at 114. The purposely expansive test for "related to" jurisdiction applicable in our Circuit was first set forth in Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984): "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts

upon the handling and administration of the bankrupt estate.” Pacor, 743 F.2d at 994. This broad view of “related to” jurisdiction is driven by Congress’ intent “to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.” Id.

This action (and the similar, related actions) share a common core: WorldCom’s sale of debt securities through nationwide offerings of its securities. But for the automatic stay of the Bankruptcy Code, 11 U.S.C. § 362(a) (the “Automatic Stay”), WorldCom would be the principal defendant in all these actions. Indeed, even under a cribbed view of Rule 19 of the Federal Rules of Civil Procedure, WorldCom is an otherwise indispensable party to these actions: Movants’ claims against the underwriters are of course inextricably linked to WorldCom, itself, the issuer of those debt securities.

There is also a close nexus between the rights of the WorldCom underwriters and WorldCom itself. Congress recognized that the liabilities it was imposing under the Securities Act of 1933 (the “Securities Act”) were, in some instances, far reaching. As a result, Congress also established floors protecting potential defendants from disproportionate exposure. Among these are a statutory right to contribution. See U.S.C. § 77k(f). Issuers and underwriters also bargain for additional risk allocation measures -- including, as here, indemnities for attorneys’ fees, costs and damages. But the for the Automatic Stay, these risk allocation mechanisms could be considered and resolved in the underlying action that gives rise to them.

While the Automatic Stay prevents both plaintiffs and underwriters from resolving their rights against the central actor when that actor is, like WorldCom here, bankrupt, Congress enabled the federal courts to assert jurisdiction over the entire case -- as “related to” the bankruptcy proceeding itself. It did so through the breadth it infused into Section 1334 --

embracing within it any case whose “outcome might have any ‘conceivable effect’ on the bankrupt estate.” Cuyahoga, 980 F.2d at 114. By definition, risk allocation mechanisms, like contractual indemnities and contribution rights, might have a “conceivable effect” on the WorldCom bankruptcy estate. Accordingly, there is “related to” jurisdiction over cases in which such allocation rights are present. This conclusion is both self-evident as a matter of logic, and accepted as a matter of law.

Under Cuyahoga’s “any conceivable effect” test, courts within the Second Circuit have repeatedly held that there is “related to” jurisdiction so long as indemnification or contribution claims against the bankrupt entity have a “reasonable legal basis.” See, e.g., Chateaugay, 213 B.R. at 640 (holding that the obligation to indemnify need not be absolute in order to establish “related to” jurisdiction); In re Masterwear Corp., 241 B.R. 511, 516-17 (Bankr. S.D.N.Y. 1999) (finding “related to” jurisdiction when defendant might be entitled to recover legal fees and expenses from debtor under debtor’s by-laws). Thus, a defendant’s right to indemnification or contribution from a bankrupt entity need not be absolute or immediate; defendants can invoke “related to” jurisdiction even if their indemnification claims against the debtor are contingent and unliquidated -- provided they have a reasonable legal basis.

The indemnification claims here are typical of those enjoyed by Association members generally when they participate in the capital formation process, and are obviously believed to have a “reasonable legal basis.” They arise from underwriting agreements in which issuers like WorldCom bargain to indemnify their underwriters for attorneys’ fees, litigation costs and liability incurred in connection with securities offerings. They are enforceable except where the underwriters have “actual knowledge” of a securities law violation. Globus v. Law Research Serv., Inc., 418 F.2d 1276, 1288 (2d Cir. 1969), cert. denied, 397 U.S. 913 (1970).

This exception is very narrow, given the circumstances in which underwriter indemnifications commonly arise. For example, the Globus exception does not extend to where an underwriter acted negligently -- yet negligence can suffice to state a claim under Section 11 of the Securities Act. See Globus, 418 F.2d at 1288. Additionally, indemnification is available for attorneys' fees and litigation costs in the event underwriters (who enjoy significant statutory defenses under Section 11) are exonerated. Thus, Movants' insistence that these rights are unenforceable as a matter of law is simply incorrect. Whether an indemnity will be enforced will obviously depend on the particular facts and circumstances ultimately developed. But, at minimum, there are no grounds for concluding at this stage that the underwriters' indemnification claims have no "reasonable legal basis."

The same is true for their contribution rights. Section 11(f) of the Securities Act provides that any person who becomes liable to make a payment under Section 11 "may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation." 15 U.S.C. § 77k(f). It is most unlikely that WorldCom's underwriters (or those of any issuer) would be found liable under Section 11 and not be able to invoke that Section's contribution provision. Indeed, Plaintiff-Intervenor's own brief points out that "WorldCom has admitted to engaging in one of the most massive financial falsifications in history and thus that its financial statements in the Registration Statements were false to the tune of billions of dollars." Int. Br. at 3, n.3.

Thus, at this stage of the proceedings, there clearly is a "reasonable legal basis" for the WorldCom underwriters' risk allocation claims.

Against this weight of authority, Movants advance two arguments. First, they contend that a determination of their claims against the underwriters will merely shift the relative rights of WorldCom's many creditors. But even this -- were it so -- is still an effect on the estate; indeed, Plaintiffs can cite no authority to the contrary.² And it is not so. However this action is resolved, the WorldCom bankruptcy estate will be affected. If the Plaintiffs are unsuccessful, the underwriters will have indemnity rights for their fees and costs that will have to be borne by the estate, and factored in any reorganization plan. Similarly, if Plaintiffs prevail, the underwriters will have contractual indemnity rights (limited only by the Globus exception) and statutory contribution rights. Again -- but in differing amounts -- this, too, will affect any reorganization plan the WorldCom estate may seek to confirm.

Second, Movants insist that risk allocation mechanisms do not confer "related to" jurisdiction unless their award against the bankrupt is "automatic." This argument ignores settled law to the contrary here, (see Cuyahoga, 980 F.2d at 114; Chateaugay, 213 B.R. at 640; Masterwear, 241 B.R. at 516-17), and rests exclusively on Chief Judge Albritton's opinions in Retirement Sys. of Ala. v. Merrill Lynch & Co., 209 F. Supp. 2d 1257 (M.D. Ala. 2002) ("RSA I") and Retirement Sys. of Ala. v. J.P. Morgan Chase & Co., No. 02-A-898-N, 2002 U.S. Dist. LEXIS 19449 (M.D. Ala. Sept. 24, 2002) ("RSA II"). According to Movants, in these cases Judge Albritton held that courts only have "related to" jurisdiction when the defendant has an absolute (rather than contingent) right to indemnification or contribution from a bankrupt entity. See Pl. Br. at 3-4, 7; Int. Br. at 2, 13-14. This is a gross mischaracterization. In both cases, the

² All Plaintiffs can do is refer to two cases from the Northern District of Illinois that are entirely inapposite. In one, the sole issue -- unlike here -- was which of two possible entities had the right to pursue a liquidated claim (i.e., in a fixed amount), against a debtor. See Pl. Br. at 12 (citing In re Green, 210 B.R. 556, 559 (Bankr. N.D. Ill. 1997)). In the other, the court merely stated that it would be inappropriate to presume, without further inquiry, that an indemnification claim would affect assets of the estate. See id. (citing In re Salem Mills, 148 B.R. 505, 508 (Bankr. N.D. Ill. 1992)).

Court in fact assumed that “related to” jurisdiction existed. Instead, it elected to remand purely on principles of discretionary abstention based upon the facts it believed were present. See RSA I, 209 F. Supp. 2d at 1270 (“the court concludes that, assuming it has jurisdiction in the first instance... it should abstain.”); RSA II, 2002 U.S. Dist. LEXIS 19449, at *38 (“even assuming jurisdiction exists under §§ 1334(b) & 1452, [the court] should abstain”). Contrary to Movants’ description, despite two opportunities to do so, in neither case did Judge Albritton hold that there was no “related to” jurisdiction on account of the non-automatic nature of indemnification and contribution claims.

II. CASES ASSERTING SECURITIES ACT CLAIMS THAT ARE “RELATED TO” BANKRUPTCY ARE REMOVABLE

As a fallback, Movants contend that the Court’s “related to” jurisdiction conferred by the Judicial Code is, in effect, blocked by Section 22 of the Securities Act. Under Section 22, Congress conferred concurrent jurisdiction over Securities Act claims in both state and federal courts. 15 U.S.C. § 77v(a). Section 22 also provides that a Securities Act claim filed in a state court of competent jurisdiction cannot be removed. 15 U.S.C. § 77v(a). Movants insist that the bankruptcy removal provision applicable here, (28 U.S.C. § 1452), must yield to Section 22, which was enacted a half century earlier. Settled statutory construction rules, and clear policy objectives, compel the exact opposite conclusion.

Where (as here) a case filed in state court is “related to” a bankruptcy proceeding under Section 1334(b), it can be removed to federal court under Section 1452. This provision was enacted in 1984, when Congress comprehensively overhauled the bankruptcy jurisdictional scheme in the wake of the Supreme Court’s decision in Northern Pipeline Construction Co. v. Marathon Oil Pipe Line Co., 458 U.S. 50 (1982). Like Section 1334(b), Section 1452 is intentionally broad, providing that “[a] party may remove any claim or cause of action in a civil

action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” 28 U.S.C. § 1452 (emphasis added). Under the plain text of Section 1452, therefore, a case -- like this one -- in which “related to” jurisdiction is present, can be removed to the appropriate federal district court.

There are but two exceptions to the broad sweep of Section 1452. Neither applies in this case: the first involves proceedings before the United States Tax Court; the second pertains to civil actions by a governmental unit to enforce such governmental unit’s police or regulatory power. 28 U.S.C. § 1452. Notably, there is no exception to the otherwise virtually unfettered right to remove under Section 1452 for cases “related to” bankruptcy proceedings where they include claims arising under an Act of Congress that otherwise prohibits removal. And, more pointedly, there is no exception under Section 1452 for cases involving claims under the Securities Act.

If Congress had wished to create a third exception to Section 1452, it obviously could have. The non-removability provision of Section 22 was enacted during the Great Depression. Congress obviously believed that the goals it set out to achieve in the Marathan Oil-related bankruptcy overhaul were not subservient to those underlying Section 22; otherwise, that accommodation could have been easily achieved. That Congress struck a different balance compels the rejection of Movants’ position. See Norman J. Singer, Statutes and Statutory Construction §§ 47:23 – 47:25, at 317 (6th ed. 2000) (“The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.”).

Moreover, the primacy of bankruptcy jurisdiction over Section 22 is evident in the plain language of Section 1334(b). Federal courts, of course, have subject matter jurisdiction over Securities Act claims. Under Section 22, state courts do, too. But Congress conferred “related to” jurisdiction even over cases where state courts otherwise enjoyed exclusive jurisdiction. Thus, Section 1334(b) provides that jurisdiction over civil proceedings related to bankruptcy cases exists “[n]otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts.” 28 U.S.C. § 1334(b). Section 1334(b) therefore trumps all statutes, including Section 22 of the Securities Act, that purport to grant jurisdiction to courts other than federal district courts when an action is “related to” bankruptcy.

Movants again offer two answers in response. First, they refer to an unpublished decision in the Northern District of Alabama, Ariail Drug Co. v. Lease Partners Corp., No. CIV A. 96-G-0708-S, 1996 WL 1060890, at *4 (N.D. Ala. May 23, 1996) that, in dicta, observed that there could be no removal under Section 1452 for Securities Act claims. The opinion does not explain the basis for this observation, and no other court has relied upon it on this issue.

Second, Movants contend that the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) somehow insulates their claims from removal and guarantees them a right to adjudicate their claims in state court. See P1. Br. at 17; Int. Br. at 9-11. Congress enacted SLUSA with the goal of making “federal anti-fraud provisions contained in the federal securities laws...the exclusive standard for securities fraud class actions.” A.A. Sommer, Jr., Securities Law Techniques: Transactions and Litigation § 93.03[1][b] (2002). To this end, SLUSA prohibits plaintiffs from bringing certain class actions based on state securities law claims. See 15 U.S.C. § 77p(b). SLUSA makes such class actions removable to federal court, thereby

expanding the scope of removability under federal securities laws. See 15 U.S.C. §§ 77p(c) & 77v(a).

SLUSA contains a narrow carve out which Movants distort: State pension funds are permitted to maintain actions in state court based on state securities law claims. See 15 U.S.C. § 77p(d)(2)(A). Movants assert that this exception somehow broadly extends to any Securities Act case brought by a state pension plan, even where jurisdiction is not based on Section 22 of the Securities Act, but Section 1334 of the Judicial Code. Of course, not even Movants argue that the plain text of SLUSA compels this result. Indeed, SLUSA specifically provides that “nothing in this section may be construed to preclude . . . a State pension plan from bringing an action involving a covered security on its own behalf.” 15 U.S.C. § 77p(d)(2)(A) (emphasis added). Thus, by its plain text, SLUSA does not purport to affect jurisdiction (or removability) provided for elsewhere in the United States Code. Moreover, SLUSA’s pension plan exception was not driven by policies animating Section 22, or any substantive provisions of the Securities Act. Rather, the pension plan exception was simply to further define what SLUSA meant to include within the ambit of a “class action.” Congress wished to make clear that an action by a state pension plan on behalf of beneficiaries (or a class of such pension plans) was not the type of representative action it had in mind under SLUSA. Indeed, the same state pension plan carve out also is contained in the sections of SLUSA that are part of the Securities Exchange Act of 1934, 15 U.S.C. § 78bb(f)(3)(B), even though there is exclusive federal jurisdiction to hear claims arising under the Exchange Act, and accordingly no non-removability provision.

III. ABSTENTION IS NOT APPROPRIATE

A. Mandatory Abstention Is Inapplicable

Section 1334(c)(2) directs a District Court to abstain from hearing a proceeding that, inter alia, (1) is based upon state law, and (2) that could not have been brought in federal court absent bankruptcy jurisdiction under Section 1334.³ Like all cases involving bankrupt issuers of securities, the present action does not meet either mandatory abstention requirement. First, it is not based on a state law claim or cause of action; rather, at the heart of the present action are federal securities law claims under Sections 11 and 15 of the Securities Act. Second, this case could have been brought in federal court as a matter of first instance -- irrespective of WorldCom's bankruptcy. See 15 U.S.C. § 77v(a).

B. Discretionary Abstention Is Not Appropriate

The facts also do not warrant an exercise of discretionary abstention under 28 U.S.C. § 1334(c)(1). Neither the interests of justice nor the interests of comity with State courts -- the two grounds for discretionary abstention set forth in § 1334(c)(1) -- weigh in favor of remanding this case to State court.

As an initial matter, federal courts "have a strict duty to exercise the jurisdiction that is conferred upon them by Congress." Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996). Abstention is an "extraordinary and narrow exception" to this duty. See Eastern Air Lines, Inc. v. Int'l Ass'n of Machinists & Aerospace Workers (In re Ionosphere Clubs, Inc.), 108 B.R. 951, 954 (Bankr. S.D.N.Y. 1989) (citing County of Allegheny v. Frank Mashuda Co., 360

³ Section 1334(c)(2) provides: Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11... with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

U.S. 185, 188-89 (1959)). As such, abstention should be exercised sparingly, within the narrow and specific limits provided by 28 U.S.C. § 1334(c)(1).

In deciding whether it is appropriate to abstain under Section 1334(c)(1), courts frequently consider twelve factors that bear on the interests of justice and comity. See Ionosphere, 108 B.R. at 954. Those factors are: (i) the effect on efficient administration of the bankruptcy estate; (ii) the extent to which state law issues predominate over bankruptcy issues; (iii) the difficulty or unsettled nature of applicable state law; (iv) the presence of related proceedings commenced in state court or other non-bankruptcy courts; (v) the jurisdictional basis, if any, other than Section 1334; (vi) the degree of relatedness or remoteness of proceedings to the main bankruptcy case; (vii) the substance rather than the form of an asserted “core” proceeding; (viii) the feasibility of severing state law claims; (ix) the burden on the bankruptcy court’s docket; (x) the likelihood that commencement of the proceeding in a bankruptcy court involved forum shopping; (xi) the existence of a right to jury trial; and (xii) the presence in the proceeding of non-debtor parties. These factors argue against abstention here.

First, the federal interests at stake in this litigation predominate over state interests. This case sits at the intersection of two key federal statutory schemes: federal securities law and federal bankruptcy law. These statutory regimes have nationwide effect, and were designed with specific, national policy goals in mind. Federal courts have a significant interest in hearing this case and others like it, in order to ensure development of a consistent body of federal securities law and federal bankruptcy law. If federal courts were to relinquish jurisdiction in this case and in similar cases, it would present unacceptable variations, inconsistency, and unpredictability in construing federal laws. This result plays particular havoc

on the utility of risk allocation measures -- which, to be effective, must enjoy some measure of predictability.

Second, the outcome of this case likely will affect the administration of WorldCom's bankruptcy estate, including particularly any plan of reorganization. For the reasons already explained, the rights -- as well as the resolution of Movants' substantive claims themselves -- will alter the assets and liabilities in the WorldCom estate and will thereby affect creditors' ultimate recovery, and the Company's reorganization efforts. In designing the federal bankruptcy laws, Congress intended "to bring into one forum all matters related to the bankruptcy case so as to facilitate the prompt administration of the bankruptcy proceeding." Ionosphere, 108 B.R. at 955.

Third, the presence of related proceedings commenced in state court is a factor that weighs heavily against abstention. Efficiency, and consistency, obviously counsel toward resolving related proceedings in a single coordinated way. This objective is of course underscored by the ruling by the Multi District Litigation Panel in this case. See In re WorldCom, Inc., Sec. & "Erisa" Litig., MDL No. 1487, 2002 WL 31300772 (J.P.M.L. 2002). That one decision from the Middle District of Alabama (now on appeal) may prevent the goal of maximum efficiency from being achieved is no basis for abandoning that goal altogether and instead embracing a plethora of related cases, burdening multiple judicial systems and the parties themselves -- and dramatically exacerbating the claims that may ultimately be made by way of indemnity or contribution.

Fourth, there is a valid basis for federal jurisdiction over this case other than Section 1334, as all Movants are pursuing claims under Sections 11 and 15 of the Securities Act.

Fifth, Movants' right to trial by jury trial can obviously be accommodated in federal court. See Int. Br. at 19.

Finally, the fact that all parties to this suit are non-debtors is inconsequential in light of the nature of the claims asserted. WorldCom is the central actor here; it issued the securities in question. As a result of its filing for Bankruptcy relief, federal courts have exclusive jurisdiction over claims against it. They should similarly assert jurisdiction over cases, like this one, "related to" that bankruptcy.

In sum, the interests of justice and comity weigh heavily against relinquishing federal jurisdiction.

CONCLUSION

For the foregoing reasons, the SIA respectfully requests that the Motion to Remand or to Abstain be denied.

Dated: New York, New York
January 17, 2003

Respectfully submitted,

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