

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
 :
WORLDCOM, INC., et al., : **Chapter 11 Case No.**
 : **02-13533 (AJG)**
 :
 : **(Jointly Administered)**
Debtors. :
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**ORDER DENYING REQUEST BY AKIN GUMP STRAUSS HAUER & FELD
LLP, COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR AWARD OF A PREMIUM**

Upon consideration of (a) the Application of Akin Gump Strauss Hauer & Feld LLP, (“Akin Gump”), Counsel for the Official Committee of Unsecured Creditors (I) for Final Allowance and Award of Compensation for Services Rendered, Including a Requested Premium, and the Reimbursement of Expenses During the Period July 29, 2002 through April 20, 2004 and (II) for Final Allowance and Award of Compensation and the Reimbursement of Expenses Pursuant to 11 U.S.C. § 503(b) During the Period July 21, 2002 through July 29, 2002, (the “Application”), (b) the Reorganized Debtors’ Report and Recommendations Regarding Fees and Expenses for the Third Interim Period, the Fourth Interim Period and the Final Application, (c) the Objection of the United States Trustee (i) to the Final Fee Applications Under Section 330 for Compensation and Reimbursement of Expenses and (ii) to the Request by Akin Gump Strauss Hauer & Feld LLP for Pre-Appointment Fees and For a Bonus, and (d) the Reply of Akin Gump Strauss Hauer & Feld LLP, Counsel for the Official Committee of Unsecured Creditors, to the Objection of the United States Trustee and the Reorganized Debtors to Akin Gump’s Final Fee Application, and good and sufficient notice having been given in accordance

with the case management order of this Court, dated December 23, 2002, and Federal Rules of Bankruptcy Procedure 2002(a)(6) and (c)(2), and the Court:

(a) having specifically considered that portion of the Application submitted by Akin Gump requesting a premium in the amount of \$3,000,000 for their work in connection with the referenced Chapter 11 cases (“Premium”),

(b) having conducted an evidentiary hearing on December 14, 2004 on that portion of the Application requesting a Premium; and

(c) having announced its ruling, a copy of which as corrected and modified by the Court is attached hereto as Exhibit A, on December 21, 2004 in open court with respect to Akin Gump’s request for a Premium; and, after due deliberation and good and sufficient cause appearing therefore, and for the reasons specifically announced in open court on December 21, 2004, it is hereby

ORDERED that the portion of Akin Gump’s Application requesting a Premium is hereby DENIED.

Dated: New York, New York
December 28, 2004

s/ Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY

EXHIBIT A

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(**AS CORRECTED AND MODIFIED BY THE
COURT UP TO AND INCLUDING 12/23/2004)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re

Case No.
WORLDCOM, INC., et al, 02-13533

Reorganized Debtors.

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December 21, 2004
12:35 p.m.

United States Custom House
One Bowling Green
New York, New York 10004

E X C E R P T

12:00 (02-13533) WORLDCOM, INC., ET AL:

DECISION TO BE RENDERED regarding the
"requested premium" portion of Akin Gump
Strauss Hauer & Feld LLP's application
for (I) final allowance and award of
compensation for services rendered,
including a requested premium and
reimbursement of expenses during the
period July 29, 2002 through April 20,
2004, and (II) final allowance and award
of compensation and reimbursement of
expenses during the period July 21, 2002
through July 29, 2002.

B E F O R E:

THE HONORABLE ARTHUR J. GONZALEZ
United States Bankruptcy Judge

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A P P E A R A N C E S:

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BY: NICHOLAS M. BEIZER, ESQ.
(via telephone)

1 Proceedings

2 competitors of WorldCom.

3 Further, it became evident at
4 the early stages of the case that
5 although many of WorldCom's major
6 competitors would benefit from a weakened
7 reorganized entity, they did not
8 necessarily benefit from WorldCom's total
9 demise. Yet, substantial effort was made
10 by some of WorldCom's major competitors
11 to seriously limit its ability to sustain
12 its pre-petition market presence.

13 WorldCom expanded to a company
14 of its size in large part by a series of
15 major acquisitions that resulted in a
16 very complex debt structure. No
17 effective efforts appeared to have been
18 made following the various acquisitions
19 to achieve the synergies that one would
20 have expected in order to integrate the
21 acquired entities. Apparently as long as
22 profits appeared to soar, little was done
23 to achieve the efficiencies necessary to
24 fully effectuate the goals of the various
25 mergers.

1 Proceedings

2 the Committee's formation, Akin Gump
3 served as counsel to an informal
4 committee of certain holders of senior
5 notes of WorldCom in anticipation of
6 negotiating a consensual restructuring of
7 WorldCom's pre-petition debt obligations.
8 Thereafter, on July 29, 2002, the Office
9 of the United States Trustee appointed
10 the Committee. The Committee then
11 selected and retained Akin Gump to serve
12 as its counsel. Sometime thereafter the
13 Court approved their retention.

14 The general description of the
15 assistance to be rendered to the
16 Committee in Akin Gump's retention
17 application appears to conform to the
18 general duties provided by a creditors'
19 committee's counsel. Specifically, Akin
20 Gump was retained and employed to provide
21 the Committee with the following
22 assistance:

23 (a) advise the Committee with
24 respect to its rights, duties and powers
25 in these cases;

1 Proceedings

2 accompanying disclosure statement(s) and
3 related plan documents;

4 (f) assist and advise the
5 Committee as to its communications to the
6 general creditor body regarding
7 significant matters in these cases;

8 (g) represent the Committee at
9 all hearings and other proceedings;

10 (h) review and analyze
11 applications, orders, statements of
12 operations and schedules filed with the
13 Court and advise the Committee as to
14 their propriety;

15 (i) assist the Committee in
16 preparing pleadings and applications as
17 may be necessary in furtherance of the
18 Committee's interests and objectives; and

19 (j) perform such other legal
20 services as may be required or are
21 otherwise deemed to be in the interests
22 of the Committee in accordance with the
23 Committee's powers and duties as set
24 forth in the Bankruptcy Code, Bankruptcy
25 Rules or other applicable law.

1 Proceedings

2 Akin Gump is a large firm with
3 a national and international practice.
4 It possesses extensive knowledge and
5 expertise in the areas of law relevant to
6 the Debtor's cases. In addition, Akin
7 Gump is well qualified to represent the
8 Committee. It has considerable
9 experience in representing unsecured
10 creditors' committees in chapter 11
11 reorganization cases, other debt
12 restructurings and telecommunications
13 matters in general. Akin Gump is
14 currently representing and has
15 represented official creditors'
16 committees in many large, complex chapter
17 11 reorganizations.

18 Akin Gump's compensation for
19 its legal services is based upon an
20 hourly rate. Akin Gump's hourly rate
21 appears to be comparable to other New
22 York firms of the same size and
23 expertise. The record before the Court
24 does not support a contrary finding. In
25 addition, Akin Gump in its application

1 Proceedings

2 specifically reserved the right to file,
3 subject to the discretion of the
4 Committee, an application for an
5 allowance of an enhanced fee award at the
6 end of this proceeding. It is that
7 application that is before the Court
8 today.

9 Akin Gump argues that its
10 extraordinary efforts in this case were:
11 encouraging, advocating, and
12 ensuring the replacement of the Debtor's
13 pre-petition senior management team and
14 board of directors with well-regarded
15 leaders divorced from the Debtor's
16 pre-petition incongruities; specifically,
17 Akin Gump assisted the Committee in its
18 analysis of multiple industry and
19 technology leaders to fill the Debtor's
20 CEO position;

21 taking the lead, together with
22 the Committee's other professionals, in
23 analyzing the ability to disentangle
24 trillions of dollars of inter-company
25 claims and myriad of legal issues related

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2 thereto, which served as the cornerstone
3 of the Debtor's largely consensual
4 chapter 11 plan;

5 guiding diverse creditor groups
6 with disparate interests to coalesce
7 around a fair and reasonable distribution
8 plan that resulted in the filing of a
9 consensual chapter 11 plan for the
10 Debtor; the initial plan had the support
11 of nearly 90 percent of the creditors and
12 the plan was made within 10 months of the
13 petition date which was a "herculean
14 effort shepherded and benefited by Akin
15 Gump's efforts";

16 playing a lead role in settling
17 the penalty phase of the SEC's action
18 against WorldCom that threatened, among
19 other things, a potentially
20 non-dischargeable \$19 billion
21 disgorgement penalty, which would have
22 diluted unsecured creditor recoveries by
23 nearly 50 percent;

24 defeating motions for the
25 appointment of separate official

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2 cases under this title.

3 In determining what constitutes
4 "reasonable compensation" courts have
5 adopted the formula used to calculate
6 fees under various fee-shifting statutes.
7 In re Apex Oil Co., 960 F.2d 728, 731
8 (8th Cir. 1992)(citing In re Manoa Fin.
9 Co., 853 F.2d 687, 690 (9th Cir. 1988)).

10 Reasonable compensation under
11 the fee-shifting statutes is based on the
12 "lodestar" amount. Id. The lodestar
13 amount consists of multiplying the
14 reasonable attorney billing rate by the
15 reasonable number of hours expended. In
16 re United States Lines, Inc., 103 B.R.
17 427, 433 (Bankr. S.D.N.Y. 1989). In
18 Pennsylvania v. Delaware Valley Citizens'
19 Council for Clean Air, 478 U.S. 546
20 (1986), the Supreme Court held that the
21 initial lodestar calculation includes the
22 "novelty and complexity of the issue, the
23 special skill and experience of counsel,
24 the quality of representation, and the
25 results obtained from the litigation."

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2 Id. at 565. (citing Blum v. Stenson, 465
3 U.S. 886, 898-901 (1984)). Thus, these
4 factors "cannot serve as independent
5 bases for increasing the basic fee
6 award." Id. at 565. However, an upwards
7 adjustment of the lodestar amount is
8 "proper only in certain 'rare' and
9 'exceptional' cases, supported by both
10 'specific evidence' on the record and
11 detailed findings." Id. (quoting Blum,
12 465 U.S. 898-901).

13 The burden of proving that such
14 an adjustment is necessary to the
15 determination of a reasonable fee is on
16 the fee applicant. Blum, 465 U.S. at
17 897. An upward adjustment may be
18 justified "only in the rare case where
19 the fee applicant offers specific
20 evidence to show that the quality of
21 service rendered was superior to that one
22 reasonably should expect in light of the
23 hourly rates charged and that the success
24 was 'exceptional.'" Id. at 899. (Here
25 commenting on the "quality of service"

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2 factor).

3 When I used the commenting on
4 the quality of service factor, that was a
5 reference to the Blum case in which the
6 previous statement was made.

7 The issue before the Court is
8 whether Akin Gump has established that
9 its hourly rates charged throughout this
10 case are not reasonable under section 330
11 in light of its efforts and its
12 contribution to the success of this case.

13 The overall results of this
14 case can be fairly described as
15 exceptional, taking into consideration
16 the size, complexity, competitive nature
17 of the industry, efforts of its
18 competitors before regulatory bodies
19 arguing against the interests of the
20 Debtor, all in the context of the
21 accounting irregularities, all addressed
22 in a relatively short period of time and
23 all in the context of the pending SEC
24 action. Such success was the result of
25 highly competent professionals -- working

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2 committees in chapter 11 cases that were
3 large and complex, as well as chapter 11
4 cases involving the telecommunication
5 industry.

6 Akin Gump has such experience
7 since Akin Gump is currently representing
8 and has represented official creditors'
9 committees in many significant chapter 11
10 reorganizations. Akin Gump on its
11 website states that a quality that sets
12 them apart from other top firms is their
13 "aggressive commitment to [their]
14 clients" and their "powerful combination
15 of legal, political and transactional
16 experience." Akin Gump further states
17 that they are "committ[ed] to providing
18 [their clients] with the highest quality
19 of legal services and are positioned to
20 provide legal services that meet the
21 changing needs of [their] clients on a
22 24/7 basis."

23 Akin Gump was aware of most of
24 the tasks to be performed in the WorldCom
25 case, because the issues of the

1 Proceedings

2 further found that Akin Gump's reward for
3 their superior work is to be retained
4 again. As mentioned previously, this
5 Court finds that the superior quality
6 factor is built into Akin Gump's fee
7 structure.

8 This Court rendered a bench
9 decision regarding fee enhancements in
10 the In re Petrie Retail, Inc. case on
11 February 25, 1998. In that case, the
12 committee counsel overcame a number of
13 obstacles to achieve an excellent result
14 when viewed in the context of what was
15 feared to become an administrative
16 insolvency. This Court in denying the
17 creditors' committee's counsel's request
18 for a fee enhancement stated that "I am
19 quite sure your firm's already excellent
20 reputation will be enhanced by your
21 efforts and [the] outcome that I believe
22 all ... would ... and do seek. However,
23 your performance in this case is the
24 level of performance that all clients
25 should expect from the profession[als

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2 greater volume of associate time involved
3 by a debtor's counsel administering the
4 case as creditors' committee's counsel's
5 professionals are more generally involved
6 in the review of the case in an advisory
7 role, which then results for a lower
8 blended hourly rate for the Debtor's
9 counsel versus the higher blended hourly
10 rate for the Committee's counsel, because
11 usually more experienced professionals
12 are dedicated to the advisory and
13 reviewing role.

14 In summary, the Court finds
15 that Akin Gump did not submit evidence to
16 support its request for a fee enhancement
17 by showing that the hourly rate charged
18 by it were unreasonable or that private
19 counsel of comparable experience, skill,
20 outside of bankruptcy, and reputation
21 charged more for their services. The
22 Court finds that Akin Gump's performance
23 falls in hand with their own description
24 of themselves. Presumably, the Committee
25 in retaining Akin Gump expected nothing

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2 less than Akin Gump's superior
3 performance as they have provided, and
4 there is nothing to indicate that the
5 rates charged by Akin Gump are not
6 consistent with the high quality of
7 service that they commit to their
8 clients.

9 Therefore, it is

10 ORDERED, that Akin Gump's
11 request for a fee enhancement under
12 11 U.S.C. 330 is DENIED.

13 The Debtor is to submit an
14 order consistent with this Court's
15 decision. Thank you.

16 (Time noted: 1:03 p.m.)

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