

EXHIBIT A

WORLD COM'S REPLY	DEBTORS' RESPONSE
<p>The facts and legal authorities presented in the Lift Stay Motion support the widely-held position that relief from the automatic stay is not required in order to draw a letter of credit.</p>	<p>The issue is <i>not</i> whether a party is required to seek relief from the automatic stay to draw on a letter of credit. The issue, to the extent the Settlement Agreement is deemed to be effective, is whether WorldCom has the right under the Settlement Agreement to draw against the LOC. For the reasons stated in the Objection, WorldCom does not.</p>
<p>It is uniformly clear that the automatic stay does not operate as a stay against the actions taken by a court. The action by the bankruptcy court in the WorldCom Bankruptcy Case in granting the Rule 9019 Motion was not prohibited by the automatic stay and does not render the approval of the Settlement Agreement void.</p>	<p>The case cited by WorldCom, <u>In re Hawaii Dimensions, Inc.</u>, 39 B.R. 606 (Bankr. D. Hawaii 1984), does not stand for this proposition. Indeed, section 362(a)(1) of the Bankruptcy Code provides that the commencement of a chapter 11 case stays “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor” 11 U.S.C. § 362(a)(1). See also <u>Rexnord Holdings, Inc. v. Bidermann</u>, 21 F.3d 522, 527 (2d Cir. 1994)(“The stay is effective immediately upon the filing of the petition, . . . and any proceedings or actions described in section 362(a)(1) of the Bankruptcy Code are void and without vitality if they occur after the automatic stay takes effect.”). The hearing before the bankruptcy court in the WorldCom Bankruptcy Case and the entry of the order approving the Settlement Agreement clearly were the “continuation . . . if a judicial . . . proceeding,” as the bankruptcy court in the WorldCom case “determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein.” See Exhibit A to the Objection. Thus, the actions by WorldCom and the entry of the order approving the Settlement Agreement were violations of the automatic stay and, therefore, such order is void.</p>
<p>The cases offered by Allegiance in support of the argument that the stay operates to toll a creditor’s right to draw on the letter of credit are inapplicable – they merely stand for the basic principle that contractual claims are unenforceable against the Debtor.</p>	<p>WorldCom’s reply proves too much. In essence, WorldCom has argued that each of the conditions precedent to its right to draw against the LOC have been met and, as such, it has the right to do so. However, if this is true, then it means that WorldCom, since the Commencement Date, has been attempting to enforce its rights against the Debtors under the Settlement Agreement – <i>e.g.</i>, seeking payment from the Debtors for the undisputed amounts included in invoices even after the Commencement Date, providing notice to the Debtors of its intent to draw against the LOC, – which, obviously, would be a violation of the automatic stay. Moreover, the commencement of these cases precluded WorldCom from attempting to enforce the terms of the Settlement Agreement and, as such, the sixty (60) day period did not run.</p>
<p>WorldCom is seeking to enforce its contractual rights under the LOC against the Issuer, not Allegiance.</p>	<p>This is incorrect. In order to draw against the LOC, certain conditions must be met under the Settlement Agreement. As such, WorldCom is seeking to enforce its contractual rights, if any, against the Debtors.</p>

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<p>The Debtors' assertion that potential avoidance actions are a defense to stay litigation is misplaced based on Judge Gonzalez' ruling in the WorldCom Bankruptcy.</p>	<p>The facts of this case are different in at least three critical respects.</p> <p>First, the Bank of New York was a secured creditor in the WorldCom Bankruptcy attempting to lift the automatic stay to liquidate certain funds securing its claim, while WorldCom is an unsecured creditor in the Debtors' chapter 11 cases seeking to lift the automatic stay to draw against the LOC. See <u>In re Dairy Mart Convenience Stores, Inc.</u>, 351 F.3d 86, 91 (2d Cir. 2003)(the beneficiary of a letter of credit "itself is an unsecured creditor vis-à-vis the Dairy Mart estate....").</p> <p>Second, the Bank of New York's right to liquidate the funds had matured (<u>i.e.</u>, the Bank of New York honored a draw on a letter of credit), while WorldCom's right to draw against the LOC has <i>not</i> matured.</p> <p>Third, the relief of the bankruptcy court in the WorldCom Bankruptcy Case enabled WorldCom's estates to receive \$2.5 million, while the Debtors' estates would not receive any benefit in the event WorldCom were authorized to draw against the LOC.</p>
<p>The benefits outweigh any harm that would result from lifting the stay.</p>	<p>This is incorrect. To the extent WorldCom is authorized to draw against the LOC, a number of issues would arise.</p> <p>First, JP Morgan's contingent claim would transform into a secured claim against the Debtors' estates. As a result, it is more than likely, that JP Morgan would seek to lift the automatic stay to draw against the CD (<u>i.e.</u>, property of the Debtors' estates). In that regard, the Debtors would need to expend time, money and energy responding to such request (which might include as a defense that WorldCom's sight draft was defective).</p> <p>Second, to the extent the Debtors commenced a preference action against WorldCom and was successful, it would be required to collect the judgment from WorldCom. Accordingly, the harm to the Debtors exceeds any benefit to WorldCom and, thus, the status quo should be preserved.</p>
<p>The Debtors should be judicially estopped.</p>	<p>See below.</p>

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<p>The Settlement Agreement became enforceable as to WorldCom and binding on both parties on May 29, 2003, when the bankruptcy court in the WorldCom Bankruptcy entered the order approving the Settlement Agreement in its entirety. Since then, Allegiance has continued to operate under the terms of the Settlement Agreement and derive benefits from it. Allegiance cannot simply switch the enforceability of the Settlement Agreement off and on at WorldCom's expense.</p>	<p>First, the entry of the order approving the Settlement Agreement and the actions by WorldCom with respect thereto violated the automatic stay. As such, the Settlement Agreement is void and without effect. <u>See In re Best Payphones, Inc.</u>, 279 B.R. 92, 97 (Bankr. S.D.N.Y. 2002) (“Any proceedings or actions described in section 362(a)(1) [of the Bankruptcy Code] are void and without vitality if they occur after the automatic stay takes effect. . . .”)(quoting <u>Rexnord Holdings, Inc. v. Bidermann</u>, 21 F.3d 522, 527 (2d. Cir. 1994).</p> <p>Second, to the extent the Settlement Order is in effect, it is a non-assumed and non-rejected prepetition contract. In that regard, the Debtors may enjoy the benefits of the Settlement Agreement, while “[f]rom the filing until the moment of assumption or rejection, . . . [WorldCom] is held to be barred from enforcing the [Settlement Agreement] and its terms.” <u>In re El Paso Refinery, L.P.</u>, 220 B.R. 37, 43 (Bankr. W.D. Tex. 1998). <u>See generally In re Enron Corp.</u>, 300 B.R. 201 (Bankr. S.D.N.Y. 2003).</p>
<p>Despite the fact that the LOC was issued shortly before the Commencement Date, Allegiance failed to raise the issue of a potential preference to either WorldCom or the WorldCom Court prior to the time the Settlement Agreement was approved. Allegiance affirmatively represented to counsel for WorldCom that it had no objection to presenting the Settlement Agreement for approval. Revealing Allegiance's intentions with respect to the LOC and an avoidance action would most certainly have impacted upon WorldCom's decision to seek bankruptcy court approval at that time and upon the WorldCom Court's decision to approve the Settlement Agreement.</p>	<p>While WorldCom informed the bankruptcy court in the WorldCom Bankruptcy that the Debtors had commenced these chapter 11 cases, WorldCom also explained: “[t]he agreements were actually entered into prior to filing the motion and the approval of this Court is a <i>condition subsequent</i> to those agreements. So it is our view that it is appropriate for the Court to proceed and enter the order and it is, of course, without prejudice to and with reservation of whatever rights [the Debtors] might have as a result of [their] bankruptcy proceeding.” In that regard, and despite the contentions in the Reply, WorldCom acknowledges that “<i>whatever rights [the Debtors] might have as a result of [their] bankruptcy proceeding</i>” were reserved. <u>See</u> Hearing Transcript, pp. 7 and 8. These rights include, without limitation, the Debtors' right to commence an preference action, object to the validity of the Settlement Agreement, seek disgorgement of the payment made to WorldCom prior to the Commencement Date or seek sanctions for violations of the automatic stay.</p>
<p>By approving the Settlement Agreement, the bankruptcy court in the WorldCom Bankruptcy adopted the Debtors' inconsistent position that the agreement was valid and enforceable, and that they intended to operate it.</p>	<p>The Debtors entered into the Settlement Agreement prior to the Commencement Date. As of the Commencement Date, the Debtors did not take a position on validity or enforceability of the Settlement Agreement. In that regard, whether the Settlement Agreement is in effect or not, the Debtors have not yet made a determination as to whether they will assume, reject or seek to terminate the Settlement Agreement.</p>

WORLDCOM'S REPLY	DEBTORS' RESPONSE
Allegiance induced WorldCom to obtain the WorldCom Court's approval of the Settlement Agreement.	This is patently incorrect. The Debtors did not induce WorldCom to obtain approval of the Settlement Agreement.