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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re GLOBAL CROSSING, LTD. : 02 MD 1472 (GEL)
SECURITIES AND "ERISA" LITIGATION :
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This Filing Relates To: :
: :
JOHN PUSLOSKIE, DANIEL CHIZUK, : 02 CV 8508 (GEL)
DENNIS THOMAS, SANDRA CUOMBE, :
JOANNE CUNNINGHAM, BRUCE : CLASS ACTION
COLEMAN, RICHARD DOWNEY, JOANNE :
BAUMAN, ROBERT HORVATH, THOMAS : **FIRST AMENDED COMPLAINT**
NORDSETH, ROBERT JOHNSON, RHONDA :
RADEMACHER, RANDY VANSICKLE, :
DANIEL ZABEL, DENNIS DUNBAR, WILLIS :
HOOD, MARY BAKER, DENNIS RAMUS and :
HOPE HUGHETT on behalf of themselves and all :
others similarly situated, :
: :
Plaintiffs, :
: :
vs. :
: :
GARY WINNICK, LODWRICK M. COOK, :
THOMAS J. CASEY, MARK L. :
ATTANASIO, NORMAN BROWNSTEIN, :
JOSEPH P. CLAYTON, WILLIAM S. COHEN, :
WILLIAM E. CONWAY, JR., ERIC HIPPEAU, :
GEOFFREY J.W. KENT, MARIA ELENA :
LAGOMASINO, JOHN L. COMPARIN, :

WILLIAM M. NORRIS, KENNETH P. :
SCHIRMUHLY, STEVEN J. GREEN, :
LINDA A. DEBALSO, MITCHELL C. SUSSIS, :
ROBERT A. KLUG, CARL GRIVNER, :
JOHN DOES 1 through 25, and :
RICHARD ROES 1 through 25, :
: :
Defendants. :
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INTRODUCTION

1. This is an action pursuant to Section 502(a) of the Employee Retirement Income Security Act, as amended (“ERISA”), 29 U.S.C. §1132(a), for relief on behalf of participants and beneficiaries of the Frontier Group Bargaining Unit Employees Retirement Savings Plan (“Plan”), a 401(k) pension plan established, operated and administered by Global Crossing North America, Inc. (“GXNA”) and/or Global Crossing Ltd. (“GX”), and by their directors, officers, employees and agents. Defendants are or were directors and/or officers of GXNA and/or GX and/or other persons who exercised discretionary authority or control over the administration and/or assets of the Plan.

2. Plaintiffs bring this action on behalf of themselves and all persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure (the “Class”). The Class consists of all persons who were participants or beneficiaries in the Plan at any time from September 28, 1999 through June 29, 2001.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to ERISA Section 502(e)(1), 29 U.S.C. §1132(e)(1).

4. Plaintiffs initially filed this case in the Western District of New York, where venue was proper pursuant to ERISA Section 502(e)(2), 29 U.S.C. §1132(e)(2). The Judicial Panel on

Multidistrict Litigation transferred this case to the Southern District of New York pursuant to 28 U.S.C. §1407.

THE PARTIES

5. a. Plaintiff John Pusloskie is a resident of the State of New York. Plaintiff Pusloskie was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

b. Plaintiff Daniel Chizuk is a resident of the State of New York. Plaintiff Chizuk was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

c. Plaintiff Dennis Thomas is a resident of the State of New York. Plaintiff Thomas was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

d. Plaintiff Sandra Coumbe is a resident of the State of New York. Plaintiff Coumbe was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

e. Plaintiff Joanne Cunningham is a resident of the State of New York. Plaintiff Cunningham was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

f. Plaintiff Bruce Coleman is a resident of the State of New York. Plaintiff Coleman was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

g. Plaintiff Richard Downey is a resident of the State of New York. Plaintiff Downey was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

h. Plaintiff Joanne Bauman is a resident of the State of New York. Plaintiff Bauman was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

i. Plaintiff Robert Horvath is a resident of the State of Minnesota. Plaintiff Horvath was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

j. Plaintiff Thomas Nordseth is a resident of the State of Minnesota. Plaintiff Nordseth was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

k. Plaintiff Robert Johnson is a resident of the State of Minnesota. Plaintiff Johnson was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

l. Plaintiff Rhonda Rademacher is a resident of the State of Minnesota. Plaintiff Rademacher was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

m. Plaintiff Randy VanSickle is a resident of the State of Minnesota. Plaintiff VanSickle was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

n. Plaintiff Daniel Zabel is a resident of the State of Minnesota. Plaintiff Zabel was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

o. Plaintiff Dennis Dunbar is a resident of the State of Iowa. Plaintiff Dunbar was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

p. Plaintiff Willis Hood is a resident of the State of Iowa. Plaintiff Hood was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

q. Plaintiff Mary Baker is a resident of the State of Iowa. Plaintiff Baker was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

r. Plaintiff Dennis Ramus is a resident of the State of Iowa. Plaintiff Ramus was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

s. Plaintiff Hope Hughett is a resident of the State of Iowa. Plaintiff Hughett was, at all times material to the Complaint, a participant in the Plan within the meaning of ERISA Section 3(7), 29 U.S.C. §1002(7).

6. GX and GXNA (the “Companies”) are corporations organized under the laws of Bermuda and New York, respectively. GXNA is a wholly-owned subsidiary of Global Crossing North American Holdings, Inc., which is a wholly-owned subsidiary of Global Crossing Holdings Ltd., which is a wholly-owned subsidiary of GX. The Companies are not named as Defendants in

this action because they have filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code.

7. a. Defendant Gary Winnick served at relevant times as chairman and/or co-chairman of the board of directors of GX.

b. Defendant Lodwick M. Cook served at relevant times as co-chairman of the board of directors of GX.

c. Defendant Thomas J. Casey served at relevant times as vice chairman of the board of directors and/or chief executive officer of GX.

d. Defendant Mark L. Attanasio served at relevant times as a director of GX.

e. Defendant Norman Brownstein served at relevant times as a director of GX.

f. Defendant Joseph P. Clayton served at relevant times as a director of GX and president and chief executive officer of GXNA.

g. Defendant William S. Cohen served at relevant times as a director of GX.

h. Defendant William E. Conway, Jr. served at relevant times as a director of GX.

i. Defendant Eric Hippeau served at relevant times as a director of GX.

j. Defendant Goeffrey J.W. Kent served at relevant times as a director of GX.

k. Defendant Maria Elena Lagomasino served at relevant times as a director of GX.

l. Defendant John L. Comparin served relevant times as senior vice president of human resources and/or executive vice president for human resources of GX.

m. Defendant William M. Norris served at relevant times as director of human resources of GX and signed certain government filings on behalf of the administrator of the Plan.

n. Defendant Kenneth P. Schirmuhly served at relevant times as vice president for human resources of GXNA.

o. Defendant Steven J. Green served at relevant times as a director of GX.

p. Defendant Linda A. DeBalso (also known as Linda Woodruff) served at relevant times as vice president for compensation and benefits of GXNA and as a member of the Employees' Benefit Committee [sic] ("EBC") established pursuant to paragraph 11.1 of the Plan. Paragraph 11.2 of the Plan designates the EBC and its members as the "Plan Administrator" and "Named Fiduciary" with responsibility for administration of the Plan and Plan investments.

q. Defendant Mitchell C. Sussis served at relevant times as a director of GXNA.

r. Defendant Robert A. Klug served at relevant times as a director of GXNA.

s. Defendant Carl Grivner served at relevant times as chief operating officer of GXNA.

t. Defendants John Doe 1 through 25 are or were directors and/or officers of GX and/or GXNA who, at relevant times, had or exercised discretionary authority or control over the Plan and/or its assets. Their identities are not yet known to Plaintiffs. Once their identities are discovered, Plaintiffs will seek leave to amend this Complaint to proceed against them under their true names.

u. Defendants Richard Roe 1 through 25 served at relevant times as members of the EBC. Their identities are not yet known to Plaintiffs. Once their identities are discovered, Plaintiffs will seek leave to amend this Complaint to proceed against them under their true names.

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(1)-(3) of the Federal Rules of Civil Procedure.

9. The Class consists of all persons who were participants or beneficiaries in the Plan at any time from September 28, 1999 through June 29, 2001.

10. There are approximately 2,750 Class members located throughout the United States. The Class is so numerous that joinder of all members is impractical. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. The exact number and identity of Class members can be determined through discovery.

11. The Class has a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions which may affect individual Class members include:

- a. Whether the protections afforded to fiduciaries under ERISA Section 404(c), 29 U.S.C. §1104(c), are inapplicable to Defendants because of their failure to advise Plaintiffs and members of the Class that the Plan was intended to be subject to that statutory provision;
- b. Whether the protections afforded to fiduciaries under ERISA Section 404(c) are inapplicable to Defendants because they prevented Plaintiffs and members of the Class from exercising meaningful, independent control over their Plan accounts by restricting their ability to sell GX stock from September 28, 1999 through June 29, 2001;
- c. Whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to ensure that Plan assets were adequately diversified to minimize the risk of large losses;

- d. Whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to inform them of material adverse information in Defendants' possession about the Companies and by affirmatively making materially false and misleading statements concerning GX stock and the prudence of investing in it while personally benefitting from such information and from the fact that Plan participants were continuing to invest in GX stock;
- e. Whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by causing or allowing Plan assets to be invested in GX stock without adequately investigating and monitoring the prudence of such an investment; and
- f. Whether the directors of GXNA, who had the authority to appoint and remove members of the EBC, breached their fiduciary duties to Plaintiffs and members of the Class by failing to adequately monitor the EBC's actions.

12. Plaintiffs' claims are typical of those of the Class because Plaintiffs and the Class suffered similar harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a class action, Class members may not receive restitution or other appropriate relief and the violations of law by Defendants will remain unremedied.

13. Plaintiffs are committed to pursuing this action and have retained counsel experienced in litigation of this nature. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have no interests that conflict with those of the Class.

14. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Individual actions may, as a practical matter, be dispositive of the interests of the Class.

15. A class action is the superior method for fair and efficient adjudication of this controversy. The likelihood that individual members of the class will prosecute separate actions is remote because of the time and expense necessary to conduct such litigation. Plaintiffs' counsel, who are highly experienced in ERISA litigation, see no difficulty in the management of this case as a class action.

SUBSTANTIVE ALLEGATIONS

A. Background Regarding the Plan

16. At all relevant times, the Plan was an employee pension benefit plan within the meaning of ERISA Section 3(2), 29 U.S.C. §1002(2). The Plan was a cash or deferred arrangement as authorized by Section 401(k) of the Internal Revenue Code, 26 U.S.C. §401(k).

17. Frontier Corporation ("Frontier") established the Plan effective March 1, 1994. On or about September 28, 1998, Frontier became an indirect subsidiary of GX and changed its name to GXNA. Both before and after that date, participation in the Plan was limited to employees of specified direct or indirect subsidiaries of Frontier/GXNA (the "Frontier Subsidiaries") who were covered by collective bargaining agreements between the Frontier Subsidiaries and the Communications Workers of America and other labor organizations.

18. The Plan authorized participants to voluntarily contribute between 1% and 17% of their eligible base pay to the Plan. Once a participant enrolled in the Plan and chose how much to contribute, contributions were automatically deducted from his or her pay.

19. The Plan permitted participants to purchase GX common stock with contributions made pursuant to voluntary deferrals from salary or wages. Many participants, including Plaintiffs, relying on statements by Defendants and/or their representatives and agents that the purchase of GX stock was a good investment and that otherwise encouraged the purchase of GX shares, purchased additional stock with their voluntary deferral contributions.

20. Under the terms of the Plan, the Frontier Subsidiaries were obligated to make matching contributions in an amount specified in the Plan and applicable collective bargaining agreements (generally up to 3% of a participant's compensation). The Plan specified that all matching contributions were to be made in GX common stock. The Plan further provided that participants could not sell this stock for five years.

21. The Plan also provided that a profit-sharing contribution was to be made to the account of each Plan participant in an amount equal to a specified percentage of the participant's base pay. These contributions were similarly required to be made in GX stock. Shares contributed as profit-sharing contributions were similarly restricted in that no shares could be sold from a participant's account until they had been held in the Plan for at least five years.

22. On information and belief, the Plan terminated on or about June 29, 2001, when the accounts of its active participants, along with the corresponding Plan assets, were transferred to a 401(k) plan sponsored by Citizens Communications Company ("Citizens") in connection with Citizens' purchase of GXNA's stock in Frontier.

B. Defendants' Status and Duties as Fiduciaries of the Plan

23. Defendants acted as fiduciaries of the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. §1002(21)(A), because they exercised discretionary authority or control over

the management or administration of the Plan and/or discretionary authority or control over the management or disposition of the Plan's assets.

24. ERISA Section 404(a), 29 U.S.C. §1104(a), provides in pertinent part:

(1) . . . [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; [and]

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. . . .

25. ERISA Section 405(a), 29 U.S.C. §1105(a), provides:

In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to the plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as

a fiduciary, he has enabled such other fiduciary to commit a breach; or

- (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

26. ERISA Section 406(b), 29 U.S.C. §1106(b), provides in pertinent part:

A fiduciary with respect to a plan shall not —

- (1) deal with the assets of the plan in his own interest or for his own account

C. Defendants' Conduct as Fiduciaries of the Plan

27. In early 2000, as a result of the restrictions imposed on the sale of GX stock and Defendants' statements encouraging participants to invest their accounts in GX stock, GX stock constituted more than 60% of all Plan assets.

28. Between early 2000 and the middle of 2001, the per-share value of GX stock declined by approximately 80%, causing Plaintiffs and members of the Class to suffer substantial losses.

29. Defendants did not investigate or monitor the suitability of GX stock as an appropriate investment for Plan participants. An objective investigation would have revealed that GX stock was not an appropriate investment for Plaintiffs and members of the Class.

30. Defendants repeatedly encouraged Plan participants to invest in additional shares of GX stock for their Plan accounts and/or to maintain their account investments in GX stock. Defendants routinely advised participants that investing their accounts in GX stock was both prudent and a good investment. At the same time, Defendant Winnick and other Defendants sold their own GX stock at a profit.

31. Defendants continually failed to remove the improper restrictions they imposed on the sale of GX stock contributed to the Plan by the Frontier Subsidiaries.

32. Because of Defendants' positions with the Companies, they knew and/or had access to adverse undisclosed information about the Companies' operations, products, operational trends, financial statements, accounting practices, and business prospects. Defendants knew about, yet failed to disclose to Plaintiffs and Class members, serious ongoing problems with the Companies' financial situation, including the facts that:

- a. The Companies were experiencing declining demand for their products and services;
- b. The Companies' operating performance was artificially inflated through improper accounting for transactions with other telecommunications companies;
- c. The Companies' efforts to provide managed network outsourcing services were failing; and
- d. The Companies' liquidity position and revenues were declining, as was their ability to service their large debts.

33. As a result of Defendants' material misrepresentations and failure to disclose material information concerning the condition of the Companies, Plaintiffs and members of the Class were misled and deprived of the opportunity to make informed judgments regarding investments in GX stock. Had Plaintiffs and Class members been properly and adequately informed about the true financial condition of the Companies and been given accurate information concerning the Companies' prospects, and had GX stock held by the Plan not been restricted, they would not have invested their retirement savings in GX's common stock; they would have disposed of GX stock held in their accounts; and they would not have sustained the damages they ultimately suffered.

D. Inapplicability of ERISA Section 404(c)

34. ERISA Section 404(c), 29 U.S.C. § 1104(c), insulates fiduciaries from liability under certain circumstances. However, Plaintiffs and members of the Class were never told that the Plan was intended to be subject to ERISA Section 404(c). That omission, by itself, precludes Defendants from asserting that Section 404(c) insulates them from liability for the consequences of their conduct as fiduciaries.

35. In addition, by subjecting participants to improper influences and/or concealing material facts relevant to investment in GX stock and/or imposing improper restrictions on the sale of such stock, Defendants deprived Plaintiffs and members of the Class of an opportunity to exercise meaningful, independent control over the assets in their Plan accounts, thereby rendering ERISA Section 404(c) inapplicable.

36. Department of Labor Forms 5500 signed by Defendant Norris confirm that the Plan was not intended to be subject to ERISA Section 404(c).

COUNT I

(For Breach of Duty to Diversify Plan Assets)

37. Plaintiffs incorporate by reference and reallege paragraphs 1-36.

38. Defendants breached their fiduciary obligation to diversify Plan assets to reduce the risk of large losses by causing an excessive amount of Plan assets to be invested in shares of GX common stock and/or by allowing an excessive amount of such investments to accumulate.

39. As a result, Plaintiffs and members of the Class, as well as the Plan, suffered losses, the amount of which will be determined at trial. Defendants are personally liable for these losses.

COUNT II

(For Breach of Duty of Loyalty to Plan Participants)

40. Plaintiffs incorporate by reference and reallege paragraphs 1-39.

41. Defendants breached their fiduciary duty of loyalty to Plan participants by failing to inform them of material adverse information in their possession about the Companies and by affirmatively making materially false and misleading statements concerning GX stock and the prudence of investing in it while personally benefitting from such information and from the fact that Plan participants were continuing to invest in GX stock.

42. As a result, Plaintiffs and members of the Class, as well as the Plan, suffered losses, the amount of which will be determined at trial. Defendants are personally liable for these losses.

COUNT III

(For Breach of Duty of Prudence)

43. Plaintiffs incorporate by reference and reallege paragraphs 1-42.

44. Defendants breached their fiduciary duty of prudence by investing, or allowing to be invested, Plan assets in GX stock without adequately investigating and monitoring the prudence of investing or retaining such stock. Defendants further breached their duty of prudence by failing to take steps to eliminate or reduce the amount of GX stock in the Plan as the Companies' financial prospects worsened.

45. As a result, Plaintiffs and members of the Class, as well as the Plan, suffered losses, the amount of which will be determined at trial. Defendants are personally liable for these losses.

COUNT IV

(For Breach of Co-Fiduciary Duties)

46. Plaintiffs incorporate by reference and reallege paragraphs 1-45.

47. Each Defendant was a co-fiduciary of each of the others. Each Defendant knowingly participated in the fiduciary breaches described herein, enabled co-fiduciaries to commit such fiduciary breaches by his or her own failure to comply with ERISA, and/or knew of the breaches committed by co-fiduciaries but failed to make reasonable efforts to remedy them.

48. For example, the terms of the Plan gave the directors of GXNA, including Defendants Mitchell C. Sussis, Robert A. Klug, and some of the John Doe Defendants (the “GXNA Directors”), discretionary authority to appoint and remove members of the EBC. As part of their duty of prudence, the GXNA Directors were required to monitor the EBC’s activities and to remove any EBC member who was not appropriately discharging his or her fiduciary duties. By failing to adequately monitor the EBC, the GXNA Directors breached their duties as co-fiduciaries because they enabled EBC members Linda A. DeBalso and Richard Roe 1 through 25 to fail to diversify Plan assets, to invest Plan assets imprudently, and to act contrary to the interests of the Plan’s participants and beneficiaries.

49. As a result, Plaintiffs and members of the Class, as well as the Plan, suffered losses, the amount of which will be determined at trial. Defendants are personally liable for these losses.

COUNT V

(For Prohibited Transactions)

50. Plaintiffs incorporate by reference and reallege paragraphs 1-49.

51. Defendants dealt with the assets of the Plan in their own interests, in violation of ERISA Section 406(b)(1), by causing the Plan to invest in and hold GX stock while failing to provide participants with material information in their possession concerning the true economic state of the Companies at a time when Defendants were selling or otherwise deriving economic gain from GX shares.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. A determination and certification that this is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
2. A ruling that Defendants violated the duties, responsibilities, and obligations imposed upon them as fiduciaries and co-fiduciaries;
3. An award to the Plan, Plaintiffs and the members of the Class of such legal, equitable, and/or other relief as will make them whole for the losses caused by Defendants' fiduciary breaches, including pre-judgment and post-judgment interest, reasonable attorneys' fees, expert witness fees, and other costs and expenses; and
4. An award of such other relief as this Court may deem just and proper.

Dated: Washington, D.C.
November 26, 2002

Respectfully submitted,

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