

# Minutes of Proceedings

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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Date: June 21, 2007 :  
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In re: :  
: Case No. 02-13533 (AJG)  
WORLDCOM, INC., et al., : Chapter 11  
Debtors. :  
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Present: Hon. Arthur J. Gonzalez \_\_\_\_\_ ECRO  
Bankruptcy Judge Courtroom Deputy Court Reporter

Debtors: WorldCom, Inc. Counsel: STINSON MORRISON HECKER LLP  
By: Michael Tucci, Esq.

Movant: Michael Jordan Counsel: SCHIFF HARDIN LLP  
By: Frederick Sperling, Esq.

Proceedings: ☒ **Motion by Michael Jordan for Reargument with Respect to the Court's Order Denying His Motion for Summary Judgment Regarding Claim No. 36077 and Motion for Leave to File a Reply Brief In Support of His Motion for Reargument**

Orders: ☒ **For the reasons set forth in Exhibit A attached hereto, (1) the Motion for Reargument is Denied, and (2) the Motion for Leave to File a Reply Brief is Denied.**

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FOR THE COURT: Kathleen Farrell, Clerk of the Court

BY THE COURT:

s/ Arthur J. Gonzalez  
United States Bankruptcy Judge

6/21/2007  
Date

s/ Lynda M. Nulty  
Courtroom Deputy

## **EXHIBIT A**

Before the Court is Michael Jordan's ("Jordan") Motion for Reargument with Respect to the Court's Order Denying his Motion for Summary Judgment Regarding Claim No. 36077, hereinafter referred to as the Motion for Reargument. For the reasons that follow, the Court denies Jordan's Motion for Reargument. The Court also denies Jordan's related motion for leave to file a reply brief in support of his motion for reargument.

Jordan argues that the proposed evidentiary hearing to determine what Jordan could have earned had he made reasonable efforts to mitigate is not necessary. Jordan argues that the undisputed facts presented in connection with the motions for summary judgment show that WorldCom cannot meet its burden of proof regarding its mitigation defense. Thus, Jordan argues, because discovery is closed and because WorldCom has identified no witnesses who can testify regarding mitigation, Jordan's motion for summary judgment should be granted "in its entirety."

WorldCom, in response, argues that Jordan's contentions for why reargument is permitted are simply attempts to have the Court reach a different conclusion, and that Jordan's arguments do not show any "matters or controlling decisions" that were not considered by the Court, citing Local Rule 9023-1. WorldCom also argues that Jordan's motion for reargument should be denied because discovery should be reopened.

"The decision to grant or deny a motion for reargument is within the sound discretion of the district court." *In re Payroll Express Corporation*, 216 B.R. 713, 716 (S.D.N.Y. 1997). Local Rule 9023-1 provides, in relevant part, "a motion for reargument . . . shall set forth concisely the matters or controlling decisions which counsel believes

the Court has not considered.” Local Bankruptcy Rule 9023-1(a) is derived from Civil Rule 3 of the United States District Court for the Southern District of New York, and under those rules, courts should apply the identical standards to motions for reargument as to motions to alter or amend a judgment under Federal Rule of Civil Procedure 59(e). *See In re Bressler*, No. 06-11897, 2007 WL 951661 (Bankr. S.D.N.Y. March 27, 2007). “The only proper ground on which a party may move to reargue an unambiguous order is that the court overlooked ‘matters or controlling decisions’ which, had they been considered, might reasonably have altered the result reached by the court.” *In re Jamesway Corporation*, 203 B.R. 543, 546 (Bankr. S.D.N.Y. 1996). Courts should strictly construe the rule permitting reargument “to avoid repetitive arguments on issues that the court has already fully considered.” *See In re Trico Marine Services, Incorporated*, 360 B.R. 53, 61 (Bankr. S.D.N.Y. 2006).

A motion for reargument is not a vehicle for securing a “second bite at the apple” or presenting the case under new theories. *Id.* at 61-62. Repetitive allegations that have already been considered are not grounds for allowing reargument. *See Elghanian v. Schachter*, No. 97 Civ. 0959, 1997 WL 607546 (S.D.N.Y. October 1, 1997).

In light of the above standards and legal principles, Jordan’s motion for reargument is denied. Jordan has not set forth “matters or controlling decisions” that the Court has not previously considered. Jordan has simply reargued its previous contention that Jordan is entitled to summary judgment because WorldCom failed to provide “evidence that a substantially similar endorsement opportunity actually existed.” As stated in the Court’s Opinion of February 13, 2007 (the “February Opinion”), there is a triable issue of fact that needs to be determined as to what Jordan could have reasonably

earned had he taken affirmative steps and fulfilled his obligation to mitigate damages.

Also, as stated above and contrary to one of Jordan's key supports for the motion for reargument, discovery will be reopened.

Thus, as further outlined in the February Opinion, there is a need for an evidentiary hearing. Consequently, it is not clear that WorldCom cannot meet its burden of proof on the amount of damages that could have been avoided by Jordan. However, the record demonstrates that Jordan had opportunities to enter into other endorsement contracts during the relevant period.

For the reasons stated above, Jordan's motion for reargument is denied.

The Court also determines that a reply brief by Jordan is unnecessary and therefore denies Jordan's motion for leave to file a reply brief in support of his motion for reargument.