THE GLOBAL CROSSING ESTATE
REPRESENTATIVE, FOR ITSELF AND AS
THE LIQUIDATING TRUSTEE OF THE
GLOBAL CROSSING LIQUIDATING TRUST

By Special Litigation Counsel,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re
GLOBAL CROSSING LTD., et al.
Debtors.

Chapter 11
Case No. 02-40188 (REG)
(Jointly Administered)

GLOBAL CROSSING ESTATE REPRESENTATIVE, FOR ITSELF AND AS THE LIQUIDATING TRUSTEE OF THE GLOBAL CROSSING LIQUIDATING TRUST,

Plaintiff,

v.

CIBC CAPITAL PARTNERS (CAYMAN) NO. 3, CIBC WG ARGOSY MERCHANT FUND 3 LP, CO-INVESTMENT MERCHANT FUND LLC, CARAVELLE INVESTMENT FUND, LLC, J. BLOOM CORPORATION, D. KEHLER CORPORATION, B. RABEN CORPORATION, J. LEVINE CORPORATION, W. PHOENIX CORPORATION, A. HEYER CORPORATION, M. MONELLO CORPORATION, L. WAGNER CORPORATION, E. LEVY CORPORATION,

Adversary Proceeding
No. 06-_____ (REG)

B. SPOHLER CORPORATION, W. MCLALLEN CORPORATION, K. READ CORPORATION, B. GERSON CORPORATION, K. MAGID CORPORATION, T. MURPHY CORPORATION, M. DALTON CORPORATION, N. WIESENBERG CORPORATION, EJ PIPKIN CORPORATION, J. BUDISH CORPORATION, J. ROSS CORPORATION, P. DANIELS CORPORATION, E. MALLY CORPORATION, H. NOEDING CORPORATION, N. THOMAS CORPORATION, L. DEBAUGE CORPORATION, A. WOOLFORD CORPORATION, N. WESSAN CORPORATION, S. SHAPIRO CORPORATION, AND J. MOGLIA CORPORATION,

Defendants.

THE GLOBAL CROSSING ESTATE REPRESENTATIVE'S COMPLAINT AGAINST CIBC CAPITAL PARTNERS (CAYMAN) NO. 3, CIBC WG ARGOSY MERCHANT FUND 3 LP, CO-INVESTMENT MERCHANT FUND LLC, CARAVELLE INVESTMENT FUND, LLC, J. BLOOM CORPORATION, D. KEHLER CORPORATION, B. RABEN CORPORATION, J. LEVINE CORPORATION, W. PHOENIX CORPORATION, A. HEYER CORPORATION, M. MONELLO CORPORATION, L. WAGNER CORPORATION, E. LEVY CORPORATION, B. SPOHLER CORPORATION, W. MCLALLEN CORPORATION, K. READ CORPORATION, B. GERSON CORPORATION, K. MAGID CORPORATION, T. MURPHY CORPORATION, M. DALTON CORPORATION, N. WIESENBERG CORPORATION, EJ PIPKIN CORPORATION, J. BUDISH CORPORATION, J. ROSS CORPORATION, P. DANIELS CORPORATION, E. MALLY CORPORATION, H. NOEDING CORPORATION, N. THOMAS CORPORATION, L. DEBAUGE CORPORATION, A. WOOLFORD CORPORATION, N. WESSAN CORPORATION, S. SHAPIRO CORPORATION, AND J. MOGLIA CORPORATION

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The Global Crossing Ltd., Estate Representative, for itself and as the Liquidating Trustee of the Global Crossing Liquidating Trust ("Estate Representative") by and through its Special Litigation Counsel, Entwistle & Cappucci LLP, states as follows in support of its Complaint:

I. INTRODUCTION

1. The Estate Representative brings this adversary proceeding against: (1) CIBC Capital Partners (Cayman) No. 3; (2) CIBC WG Argosy Merchant Fund 3 LP; (3) Co-Investment Merchant Fund LLC; (4) Caravelle Investment Fund LLC; (5) J. Bloom Corporation; (6) D. Kehler Corporation; (7) B. Raben Corporation; (8) J. Levine Corporation; (9) W. Phoenix Corporation; (10) A. Heyer Corporation; (11) M. Monello Corporation; (12) L. Wagner Corporation; (13) E. Levy Corporation; (14) B. Spohler Corporation; (15) W. McLallen Corporation; (16) K. Read Corporation; (17) B. Gerson Corporation; (18) K. Magid Corporation; (19) T. Murphy Corporation; (20) M. Dalton Corporation; (21) N. Wiesenberg Corporation (22) EJ Pipkin Corporation; (23) J. Budish Corporation; (24) J. Ross Corporation; (25) P. Daniels Corporation; (26) E. Mally Corporation; (27) H. Noeding Corporation; (28) N. Thomas Corporation; (29) L. DeBauge Corporation; (30) A. Woolford Corporation; (31) N. Wessan Corporation; (32) S. Shapiro Corporation; and (33) J. Moglia Corporation (collectively, the "Defendants").

2. The Estate Representative brings this action to hold the Defendants liable for their participation in insider trading in the common stock of Global Crossing Ltd. ("Global" or the "Company") based upon their knowledge of material, non-public information concerning Global's financial condition, improper accounting techniques and business prospects. Defendants received and/or acted in concert with others who received such material, non-public information from directors of Global designated by Canadian Imperial Bank of Commerce ("CIBC"). On information and belief, Defendants knew that disclosure to them of such material,

non-public information was in breach of the fiduciary duties owed to Global by CIBC and its designated directors on Global's board. While Global's accounting manipulations and misstatements were concealed from the public, Defendants made an enormous profit throughout the years 2000 through 2001 from selling their artificially inflated shares of Global. Defendants must account for and disgorge to the Estate Representative all profits made in such trading.

3. Defendants are affiliated companies of CIBC, CIBC Wood Gundy Capital (SFC) Inc. ("CIBC Wood Gundy"), CIBC Oppenheimer Corp. ("CIBC Oppenheimer"), and CIBC World Markets Corp. ("CIBC World Markets") (collectively, the "CIBC Entities"), defendants in *Global Crossing Estate Representative v. Winnick et al.*, 04 Civ. 2558 (GEL) (the "*Winnick* Action"). From Global's inception in March 1997 through its bankruptcy in January 2002 (the "Relevant Period"), Defendants were controlled by or acted in concert with the CIBC Entities and their officers, several of whom sat as directors on Global's board. These directors were Jay Bloom, Dean Kehler, Jay Levine, William Phoenix, and Bruce Raben (collectively, the "CIBC Directors"). Through their affiliation with the CIBC Directors, Defendants were able to dispose of much of their stock in Global while possessing inside knowledge of the manipulation and misstatement of Global's income statements and balance sheets which disguised Global's true financial condition. These directors, acting together and in concert with others insiders named in the *Winnick* Action (collectively, the "Insiders"), engaged in a multiyear scheme to provide themselves, the CIBC Entities, and the Defendants with profits from insider selling and other ill-gotten compensation from self-dealing transactions with Global, while leaving Global and its creditors to hold the bag.

4. The multiyear scheme began when the CIBC Entities and their CIBC Directors acted with the others Insiders named in the *Winnick* Action to manipulate and misstate the

financial condition of Global, including its subsidiaries and related entities throughout the world during the Relevant Period. During this period, the CIBC Directors and the other Insiders dominated the board of directors of Global and knew of the misstatements of Global's revenues, assets and obligations, and the growing disparity between the Company's reported revenues and its real revenues from operations. This inflation of reported revenues caused the Company to incur enormous debt that it ultimately could not pay, and contributed eventually to the Company's January 28, 2002 bankruptcy filing.

5. The Company's IRU transactions, described further herein, were erroneously accounted for in a manner that inflated its reported operating income to levels necessary to maintain its credit ratings and lending covenants. The revenues that Global received from numerous IRU transactions were wrongly recorded as current income from Global's business operations. This created the false appearance that Global's businesses were healthy and disguised the mismatch between its reported income and its true financial picture. Proper accounting would have amortized much of this reported income over a long period of time.

6. The Defendants, through information disclosed by the CIBC Directors, knew that the reporting of IRU transactions and other accounting manipulations made a sham of Global Crossing's income statements and balance sheets as further described herein. On information and belief, the Defendants then traded in Global's shares based upon what they knew to be material inside information, in violation of the fiduciary duties that the CIBC Directors and the CIBC Entities owed to Global. Since Global was at all relevant times insolvent, these fiduciary duties were also owed to Global's creditors.

7. For the Defendants, the scheme provided enormous financial rewards in the form of opportunities to sell Global stock at inflated prices based upon the Company's reported

financial performance. Even when Global's stock price was declining, Defendants were able to reap a substantial profit because they were aware of the Company's true financial condition and had already hedged much of their stock through "collar" contracts involving sales of stock for future delivery in which the Defendants were able to dispose of their Global's stock at substantially above market prices when the transactions matured.

8. While the Defendants were making a fortune from insider trading because the Company's financial statements were manipulated to appear robust, in truth many of Global's operations were struggling and the Company was at all relevant times insolvent. Buoyed by artificially strong credit ratings and inflated stock prices, and willingly assisted by others outside the Company, Global incurred billions of dollars of debt that its business operations would never be able to repay.

9. By this Complaint, the Estate Representative brings the following claims against the Defendants. The Estate Representative seeks a disgorgement of the profits made by the Defendants as a result of insider trading based upon material, non-public information which Defendants received with the knowledge of the CIBC Directors' and the CIBC Entities' breach of their fiduciary duties owed to Global and its creditors (Count 1). The Estate Representative also seeks relief in the form of the imposition of a constructive trust or trusts on the profits realized by the Defendants (Count 2). The Estate Representative additionally seeks an accounting of the profits realized by the Defendants (Count 3).

10. The sole ultimate beneficiaries of this action are creditors of Global Crossing whose allowed claims in the Company's bankruptcy remain largely unsatisfied.

II. PROCEDURAL BACKGROUND

11. On January 28, 2002, Global Crossing and fifty-four of its debtor subsidiaries filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. On

August 20, 2002, twenty-three of Global's debtor-subsidiaries filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. The filing entities are referred to herein as the "Debtors."

12. On January 28, 2002 and September 4, 2002, Global Crossing and its various subsidiaries incorporated in Bermuda ("the Bermuda Debtors") presented a winding-up petition in the Supreme Court of Bermuda under the Companies Act of 1981.

13. On September 10, 2002, the Debtors filed their Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (as amended, modified and supplemented from time to time, the "Plan"). The Plan was confirmed by an order of this Court dated December 26, 2002 (the "Confirmation Order") and became effective on December 9, 2003.

14. On or about October 24, 2002, the Bermuda Debtors filed with the Bermuda Court Schemes of Arrangement (collectively, the "Schemes"), which were sanctioned by an order of the Bermuda Court dated January 3, 2003. The terms of the Schemes incorporate, in relevant part, the terms of the Plan.

15. Pursuant to the terms of the Plan (including Section 5.8 thereof), the Confirmation Order, and the Liquidating Trust Agreement dated as of December 9, 2003 (the "Liquidating Trust Agreement"), the Liquidating Trust was established for the purpose of liquidating its assets for the benefit of the Debtors' creditors who held Allowed Claims in Classes C, D, E, and F. The assets of the Liquidating Trust consist of, among other things, certain causes of action (as defined in the Plan, the "Estate Representative Claims") transferred by the Debtors to the Liquidating Trust free of all claims, liens and encumbrances.

16. Pursuant to the terms of the Plan (including Section 5.8 thereof), the Confirmation Order, and the Liquidating Trust Agreement, the Estate Representative, consisting of five

individuals, was designated to, among other things, act as Liquidating Trustee and prosecute and resolve the Estate Representative Claims in the name of the Estate Representative and/or in the names of the Debtors.

17. Pursuant to the terms of the Plan (including Sections 1.44 and 1.90 thereof and documents referred to therein), the Estate Representative Claims are defined to "include, with respect to officers, directors and their Affiliates of the Company and its Subsidiaries, … claims and causes of action of any kind or nature." Accordingly, all the claims in this action are Estate Representative Claims within the meaning of the Plan, and the Estate Representative has standing to bring this action pursuant to the terms of the Plan and the Confirmation Order.

III. THE PARTIES

A. The Plaintiff

18. Plaintiff Estate Representative is authorized to bring the claims asserted in this Adversary Proceeding pursuant to section 5.8(h) of the Plan and the Liquidating Trust Agreement. Pursuant to the Confirmation Order and Plan, the Estate Representative, whose retention was approved by the Bankruptcy Court, is authorized to seek to recover the property of the Debtor and prosecute claims of the Debtor and its Estate for the benefit of creditors whose allowed claims remain largely unsatisfied after Global Crossing's emergence from bankruptcy.

19. The Estate Representative is charged by the Bankruptcy Court with liquidating assets of Global Crossing for the benefit of Creditor Classes C, D, E, and F. As referenced in the Plan, those Classes have more than $6.2 billion in unsatisfied outstanding allowed claims, as follows:

Class	Identity	Allowed Claims	Partial Satisfaction
C	Lender Claims[1]	$2,260,257,918.26	$300,562,307.50 cash; $175,000,000 cash; 2,400,000 shares of New Global Crossing; 50% of the beneficial interest in the Liquidating Trust
D	GC Holdings Notes Claims[2]	$3,896,484,000	$18,975,000 cash; 9,867,000 shares of New Global Crossing; 37.95% of the beneficial interest in the Liquidating Trust
E	GCNA Notes Claims[3]	$632,523,250	$3,080,000 cash; 1,601,600 shares of New Global Crossing; 6.16% of the beneficial interest in the Liquidating Trust.
F	General Unsecured Claims[4]	[Currently in dispute in the Bankruptcy Court]	$2,945,000 cash; 1,531,400 shares of New Global Crossing; 5.89% of the beneficial interest in the Liquidating Trust.

20. On information and belief, a majority in interest of Creditor Classes C, D, E and F resided and sustained the economic impact of their losses in New York State.

[1] Class C consists of creditors of the following: the August 10, 2000 Amended and Restated Credit Agreement; and The Final Stipulation and Order Providing Adequate Protection to JP Morgan Chase Bank as Administrative Agent for the Senior Secured Lenders, dated May 16, 2002, and "so ordered" by the Bankruptcy Court on May 17, 2002.

[2] Class D consists of holders of: 9.125% Senior Notes due 2006 ($900,000,000 original principal amount); 9.5% Senior Notes due 2009 ($1,100,000,000 original principal amount); 8.7% Senior Notes due 2007 ($1,000,000,000 original principal amount); and 9.625% Senior Notes due 2008 ($800,000,000 original principal amount).

[3] Class E consists of holders of: 7.25% Senior Notes due 2004 ($300,000,000 original principal amount); 6% Dealer Remarketed Securities due 2013 ($200,000,000 original principal amount); 9.3% Medium-Term Notes due 2004 ($20,000,000 principal original amount); and 9% Debentures due 2021 ($100,000,000 original principal amount).

[4] Class F consists of any pre-petition Claim against any of the Debtors, including but not limited to any ERISA Claim and Other Litigation Claim, that is not an Other Secured Claim, Lender Claim, Administrative Expense Claim, Priority Tax Claim, Priority Non-Tax Claim, GCNA Notes Claim, GC Holdings Notes Claim, Convenience Claim, Securities Litigation Claim or Intercompany Claim.

B. Defendants

21. CIBC Capital Partners (Cayman) No. 3 is a partnership organized under the laws of the Cayman Islands. During the Relevant Period, CIBC Capital Partners (Cayman) No. 3 was a wholly-owned, indirect subsidiary of CIBC.

22. CIBC WG Argosy Merchant Fund 3 LP ("CIBC Argosy") is a partnership organized under the laws of Bermuda. During the Relevant Period, CIBC was a general partner of CIBC Argosy. CIBC Argosy was controlled by limited partners Jay Bloom, Dean Kehler, Andrew Heyer, Mario Monello and Leon Wagner, all managing directors of one of more of the CIBC Entities and other CIBC affiliated companies. CIBC WG Argosy Merchant Fund 3 LP was included in the definition of "CIBC" in Global Crossing's Bye-Laws adopted on August 13, 1998.

23. Co-Investment Merchant Fund LLC ("Co-Investment Fund") is a limited liability company that was incorporated under the laws of Delaware. The purpose of the fund was to permit certain employees of CIBC and its affiliates to profit by investing in ventures undertaken by CIBC and its affiliates. Co-Investment Merchant Fund LLC was included in the definition of "CIBC" in Global Crossing's Bye-Laws adopted on August 13, 1998.

24. Caravelle Investment Fund, LLC ("Caravelle") is a limited liability company that was organized under the laws of Delaware on June 17, 1998, two months before Global's IPO. During the Relevant Period, it was managed and advised by Caravelle Advisors, LLC, a Delaware company, which was indirectly and beneficially owned and controlled by Jay Bloom, Dean Kehler and Andrew Heyer.

25. J. Bloom Corporation was a corporation formed by Jay Bloom that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 28, 1998,

a few weeks before Global Crossing's IPO. (See, Jay Bloom in Section C Additional Persons and Entities).

26. D. Kehler Corporation was a corporation set up by Dean C. Kehler that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 28, 1998, a few weeks before Global's IPO. (See, Dean Kehler in Section C Additional Persons and Entities).

27. B. Raben Corporation was a corporation formed by Bruce Raben that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Bruce Raben in Section C Additional Persons and Entities).

28. J. Levine Corporation was a corporation formed by Jay R. Levine that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on August 10, 1998, three days before Global's IPO. (See, J. Levine in Section C Additional Persons and Entities).

29. W. Phoenix Corporation was a corporation formed by William Phoenix that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, William Phoenix in Section C Additional Persons and Entities).

30. A. Heyer Corporation was a corporation formed by Andrew Heyer that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 28, 1998, a few weeks before Global's IPO. (See, Andrew Heyer in Section C Additional Persons and Entities).

31. M. Monello Corporation was a corporation formed by Mario Monello that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 28, 1998, a few weeks before Global's IPO. (See, Mario Monello in Section C Additional Persons and Entities).

32. L. Wagner Corporation was a corporation formed by Leon Wagner that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 28, 1998, a few weeks before Global's IPO. (See, Leon Wagner in Section C Additional Persons and Entities).

33. E. Levy Corporation was a corporation formed by Edward Levy that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Edward Levy in Section C Additional Persons and Entities).

34. B. Spohler Corporation was a corporation formed by Bruce Spohler that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Bruce Spohler in Section C Additional Persons and Entities).

35. W. McLallen Corporation was a corporation formed by Walter McLallen that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Walter McLallen in Section C Additional Persons and Entities).

36. K. Read Corporation was a corporation formed by Keith Read that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998,

a few weeks before Global's IPO. (See, Keith Read in Section C Additional Persons and Entities).

37. B. Gerson Corporation was a corporation formed by Brian Gerson that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Brian Gerson in Section C Additional Persons and Entities).

38. K. Magid Corporation was a corporation formed by Kevin Magid that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Kevin Magid in Section C Additional Persons and Entities).

39. T. Murphy Corporation was a corporation formed by Thomas Murphy that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Thomas Murphy in Section C Additional Persons and Entities).

40. M. Dalton Corporation was a corporation formed by Mark Dalton that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Mark Dalton in Section C Additional Persons and Entities).

41. N. Wiesenberg Corporation was a corporation formed by Neil Wiesenberg that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Neil Wiesenberg in Section C Additional Persons and Entities).

42. EJ Pipkin Corporation was a corporation formed by E.J. Pipkin that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, E.J. Pipkin in Section C Additional Persons and Entities).

43. J. Budish Corporation was a corporation formed by Jon Budish that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Jon Budish in Section C Additional Persons and Entities).

44. J. Ross Corporation was a corporation formed by Jane Ross that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Jane Ross in Section C Additional Persons and Entities).

45. P. Daniels Corporation was a corporation formed by Patrice Daniels that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Patrice Daniels in Section C Additional Persons and Entities).

46. E. Mally Corporation was a corporation formed by Edward Mally that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Edward Mally in Section C Additional Persons and Entities).

47. H. Noeding Corporation was a corporation formed by Heinz Noeding that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Heinz Noeding in Section C Additional Persons and Entities).

48. N. Thomas Corporation was a corporation formed by Neal Thomas that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Neal Thomas in Section C Additional Persons and Entities).

49. L. DeBauge Corporation was a corporation formed by Leslie DeBauge that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Leslie DeBauge in Section C Additional Persons and Entities).

50. A. Woolford Corporation was a corporation formed by Andrew Woolford that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Andrew Woolford in Section C Additional Persons and Entities).

51. N. Wessan Corporation was a corporation formed by Neil Wessan that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Neil Wessan in Section C Additional Persons and Entities).

52. S. Shapiro Corporation was a corporation formed by Steven Shapiro that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30, 1998, a few weeks before Global's IPO. (See, Steven Shapiro in Section C Additional Persons and Entities).

53. J. Moglia Corporation was a corporation formed by James Moglia that engaged in the insider selling of Global stock. It was incorporated under the laws of Delaware on July 30,

1998, a few weeks before Global's IPO. (See, James Moglia in Section C Additional Persons and Entities).

C. Additional Persons and Entities Identified Herein

54. CIBC is a Canadian chartered bank with its principal place of business at Commerce Court, Toronto, Ontario, Canada M5L 1A2. During the Relevant Period, CIBC operated through various subsidiaries which it owned and controlled including CIBC Wood Gundy, CIBC Oppenheimer and CIBC World Markets. These CIBC Entities were original investors in Global. They also provided commercial and investment banking services, underwriting services, and supposed advisory services to Global. In return, they received at least $58.7 million in fees, 48,625,622 shares of stock (which split 2 for 1 in March 1999), and as many as 5 seats on Global's Board of Directors, through which the CIBC Entities (along with other Insiders with their designated directors) exercised control over the operations of the Company.

55. Jay R. Bloom ("Bloom") was a member of the board of directors of Global from March 1997 to June 20, 2000. Bloom was placed on the Company's Board by CIBC. Bloom was at all relevant times a managing director of CIBC Oppenheimer, co-head of CIBC World Markets High Yield Merchant Banking Funds, a limited partner of CIBC Argosy, and a co-owner and manager of Caravelle. He is currently also a managing partner of Trimaran Capital Partners, L.L.C. and a member of the Investment Committee of Trimaran Advisors, L.L.C., the investment advisor to Caravelle.

56. Dean C. Kehler ("Kehler") was a member of the board of directors of Global from March 1997 to June 20, 2000. Kehler was placed on the Company's Board by CIBC and served on Global's audit committee. Kehler was at all relevant times a managing director of CIBC Oppenheimer, co-head of CIBC World Markets High Yield Merchant Banking Funds, a limited

partner of CIBC Argosy, and was a co-owner and manager of Caravalle. He is currently also a managing partner of Trimaran Capital Partners, L.L.C. and a member of the Investment Committee of Trimaran Advisors, L.L.C., the investment advisor to Caravelle.

57. Bruce Raben ("Raben") was a member of the board of directors of Global from March 1997 to June 20, 2000. Raben was placed on the Company's board by CIBC. Raben was at all relevant times a managing director of CIBC Oppenheimer and held an interest in Co-Investment Fund.

58. Jay R. Levine ("Levine") was a member of the board of directors of Global from March 1997 to September 22, 1999. Levine was placed on the Company's Board by CIBC. Levine was at all relevant times a managing director of CIBC Oppenheimer, managing director of CIBC Wood Gundy, manager of CIBC World Markets High Yield Merchant Banking Funds, and held an interest in Co-Investment Fund. He is currently also a managing director of Trimaran Capital Partners, L.L.C.

59. William P. Phoenix ("Phoenix") was a member of the board of directors of Global from March 1997 to September 22, 1999. Phoenix was placed on the Company's board by CIBC. Phoenix was at all relevant times a managing director of CIBC Oppenheimer, co-head of CIBC's subsidiary CIBC Credit Capital Markets, and held an interest in Co-Investment Fund. He is currently also a managing director of Trimaran Capital Partners, L.L.C.

60. Andrew Heyer ("Heyer") was at all relevant times a managing director of CIBC World Markets High Yield Merchant Banking Funds, a limited partner of CIBC Argosy, and a co-owner and manager of Caravelle. Heyer has been the vice chairman of CIBC World Markets Corp from June 2001 to the present. He is currently also a managing partner of Trimaran

Capital Partners, L.L.C. and is a member of the Investment Committee of Trimaran Advisors, L.L.C., the investment advisor to Caravelle.

61. Mario Monello ("Monello") was a managing director of CIBC World Markets and a limited partner of CIBC Argosy at all relevant times.

62. Leon Wagner ("Wagner") was a managing director of CIBC World Markets, co-head of High Yield Sales and Trading, and a limited partner of CIBC Argosy at all relevant times.

63. Edward Levy was a limited partner of CIBC Argosy and held an interest in Co-Investment Fund at all relevant times. He is presently a managing director of CIBC World Markets Corp.

64. Bruce Spohler was a limited partner of CIBC Argosy and held an interest in Co-Investment Fund at all relevant times. He is presently a managing director of CIBC World Market Corp. High Yield Group.

65. Walter McLallen was a manager of CIBC High Yield Capital Markets and held an interest in Co-Investment Fund at all relevant times.

66. Keith Read held an interest in Co-Investment Fund at all relevant times. He is presently an officer at CIBC World Markets Private Finance.

67. Brian Gerson was a manager director at CIBC Wood Gundy and held an interest in Co-Investment Fund at all relevant times.

68. Kevin Magid was a managing director of CIBC World Markets High Yield Group from 1995 through 2000 and held an interest in Co-Investment Fund at all relevant times.

69. Thomas Murphy held an interest in Co-Investment Fund at all relevant times. He is presently an officer at CIBC World Markets.

70. Mark Dalton held an interest in Co-Investment Fund at all relevant times. He is presently an officer at CIBC World Markets. He is currently also a managing director of Trimaran Capital Partners, L.L.C..

71. Neil Wiesenberg held an interest in Co-Investment Fund at all relevant times and was formerly a managing director of CIBC World Markets, Leveraged Finance Group.

72. E.J. Pipkin held an interest in Co-Investment Fund at all relevant times. He was formerly an officer at CIBC Wood Gundy High Yield Group and CIBC World Markets.

73. Jon Budish held an interest in Co-Investment Fund at all relevant times. He was formerly a managing director of CIBC World Markets.

74. Jane Ross was a managing director at CIBC World Markets and held an interest in Co-Investment Fund at all relevant times.

75. Patrice Daniels was a managing director of CIBC World Markets, Corporate and Leveraged Finance Group from March 1997 through October 2001 and held an interest in Co-Investment Fund at all relevant times.

76. Edward Mally was a managing director of CIBC World Markets, Research Group from 1995 through 2002 and held an interest in Co-Investment Fund at all relevant times.

77. Heinz Noeding held an interest in Co-Investment Fund at all relevant times.

78. Neal Thomas was formerly an officer of CIBC World Markets and CIBC Argosy and held an interest in Co-Investment Fund at all relevant times.

79. Leslie DeBauge was formerly an officer at CIBC Oppenheimer and held an interest in Co-Investment Fund at all relevant times.

80. Andrew Woolford was formerly an officer at CIBC World Markets, Private Finance Group and held an interest in Co-Investment Fund at all relevant times.

81. Neil Wessan was an officer at CIBC World Markets from August 1995 through April 2000 and held an interest in Co-Investment Fund at all relevant times.

82. Steven Shapiro was a managing director in the High Yield Group of CIBC World Markets and previously a research analyst for the Argosy Group, L.P. He held an interest in Co-Investment Fund at all relevant times.

83. James Moglia was formerly a managing director of CIBC World Markets and held an interest in Co-Investment Fund at all relevant times.

84. Pacific Capital Group, Inc. ("PCG") is a merchant bank specializing in telecommunications, media and technology and at all relevant times had substantial holdings in Global's common stock. PCG played a principal role in the founding of Global. PCG was founded and controlled by Gary Winnick.

85. Gary Winnick ("Winnick") was the founder of Global and, at all relevant times, served as Chairman and a member of Global's board of directors. On December 30, 2002, Winnick resigned from the positions he held at Global. Winnick was the founder of PCG, described more fully below.

86. Andersen Worldwide S.C. ("Andersen Worldwide") was a Swiss partnership organized as a Societe Cooperative under the Swiss Federal Code of Obligations and was comprised of member firms, including Arthur Andersen LLP ("Andersen LLP") and Arthur Andersen & Co. ("Andersen & Co"). Andersen Worldwide, Andersen LLP and Andersen & Co., together with the individual partners of the member firms, are collectively referred to as "Andersen." Andersen served as Global's "independent" auditor from 1997 through 2002, and issued clean and unqualified audit opinion letters in connection with Global's financial

statements for 1998, 1999, and 2000, which were incorporated with Andersen's approval in Global's public filings.

87. Jack B. Grubman ("Grubman") was, at all times during the Relevant Period, the primary telecommunications industry analyst at Salomon Smith Barney ("SSB"), a wholly-owned subsidiary of Citigroup, Inc. Grubman worked at SSB from the fall of 1994 until August 2002. Grubman was one of the most powerful men on Wall Street. As observed by *Time Magazine* on August 5, 2002, "every big investor knew Grubman was the axe"; the one man who could make or break any stock in the [telecommunications] industry with a thumbs-up or thumbs down. SSB held Grubman out as SSB's resident guru on telecommunications stocks. Grubman was one of the highest paid analysts in the securities industry, with total compensation during 1999-2002 that averaged approximately $20 million per year. On August 15, 2002, Grubman resigned from SSB and received a compensation package worth approximately $32 million.

IV. JURISDICTION AND VENUE

88. This Court has jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1334(b) and 1334(e).

89. Pursuant to Section 5.8(h) *(Role of the Estate Representative)* of the Plan, confirmed by the Confirmation Order, the Estate Representative has, without limitation, "the power and authority to prosecute and resolve, in the names of the Debtors and/or the name of the Estate Representative, the Estate Representative Claims."

90. In addition, pursuant to Section 5.8(c) (*Liquidating Trust Assets*) of the Plan, the Estate Representative may initiate and prosecute the instant Adversary Proceeding. "Any cash or other property received from third parties from the prosecution, settlement, or compromise of the Estate Representative Claims shall constitute Liquidating Trust Assets for purposes of distributions under the Liquidating Trust."

91. The Confirmation Order anticipates the filing of this Adversary Proceeding for the benefit of the Liquidating Trust, stating in paragraph AA(i) that "[t]he Liquidating Trust shall consist of the Liquidating Trust Assets, which, in addition to the assets described in section 1.77 of the Plan, shall include any Cash or other property received from third parties from the prosecution, settlement, or compromise of the Estate Representative Claims." The Confirmation Order further states that "[t]he Trustee shall have the powers and responsibilities set forth in the Liquidating Trust Agreement and section 5.8(g) of the Plan."

92. Pursuant to Section 5.8(r) (*Retention of Professionals by the Estate Representative*) of the Plan, the Estate Representative is authorized by the Court to retain and compensate counsel "to assist in its duties on such terms as the Estate Representative deems appropriate, without Bankruptcy Court approval."

93. This Adversary Proceeding, and all claims asserted herein for the benefit of the Liquidating Trust, seeks to recoup the illicit profits by which Defendants benefited. This Adversary Proceeding is properly brought pursuant to the authority granted to the Estate Representative, and is properly before the Court pursuant to the above-cited sections of the Plan and the Confirmation Order.

94. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District, and pursuant to 28 U.S.C. § 1409(a) because this is a proceeding arising under Title 11 or arising in or related to a case under Title 11.

95. This Adversary Proceeding is brought in accordance with Federal Rules of Bankruptcy Procedure 7001, *et seq.*.

V. FACTUAL ALLEGATIONS

A. The Formation of Global Crossing

96. Following passage of the Telecommunications Act of 1996 (the "Act"), a host of start-up telecommunication companies, such as Global Crossing, were formed to take advantage of the provisions of the Act. Global Crossing, originally called Global Telesystems, was founded in March 1997 by Winnick and his partners at PCG.

97. In or about late 1996, Winnick and PCG began planning the financing of a fiber optic cable under the Atlantic Ocean between the United States and Europe. The Company's original plan was to build an international fiber optic telecommunications network and to sell or lease capacity on that network, starting with the trans-Atlantic cable. Fiber-optic networks originally competed with metal wire and satellite communications and, because they were less expensive than the older methods of transmitting voice and data, quickly garnered significant market share. Global's ultimate business plan was to be a "carrier's carrier" and sell capacity on its fiber-optic network to carriers who would, in turn, sell that capacity to end users or other carriers. Global's customers were expected to benefit from this service because it eliminated their need to commit the substantial capital required to build their own undersea cable networks and decreased the risks associated with forecasting the industry's future capacity requirements. Instead, those costs and risks were shifted to Global.

98. Soon after being formed, Global designed and built global long distance telecommunications facilities and services using a network of undersea digital fiber-optic cables and terrestrial backhaul capacity, segment by segment, starting with a transatlantic cable system called Atlantic Crossing ("AC-1"), a system connecting the United States and Europe; then Pacific Crossing ("PC-1"), a system connecting the United States and Asia; Mid-Atlantic Crossing ("MAC"), a system connecting the eastern United States, Bermuda, the Caribbean and

Central America; and Pan American Crossing ("PAC"), a system connecting the western United States and Central America. The cables making up the Company's network were either laid on the ocean floor (subsea) or underground (terrestrial).

99. As observed in the financial press such as *Forbes* Magazine in an October 2000 article entitled "Doing It With Mirrors" and *Fortune* Magazine in a June 2002 article entitled "Emperor of Greed," Global's ostensible business model was a modest one, not much different from a utility. It sold capacity -- typically for 25-year periods -- on its network. Capacity was generally sold in the form of Indefeasible Rights of Use ("IRUs"), described further herein, which gave the purchaser the right for a period -- normally 25 years -- to transmit a defined quantity of data over a specified cable link. Proceeds from IRU sales and incidental service revenues would generate the returns on the Company's investment. It could have been a safe, conservative investment with predictable returns, but that was not the goal of Winnick and other Insiders like the CIBC Entities, the initial investors in Global. They wanted to leverage the early success of fiber optic networks into the public perception that Global was a telecommunications giant. That could only be done if the market received a completely distorted view of the Company and its finances.

100. To that end, Insiders, including the CIBC Entities and the directors who were their designees, joined with Andersen accountants, securities analysts such as Grubman, and various underwriters of Global's numerous offerings to create a hugely distorted picture of Global's financial condition. As a result of this distorted accounting, the Company eventually raised more than $20 billion in the debt and equity markets in just three years. Upwards of $6.2 billion in debt, which the Company never had realistic prospects of being able to pay as it came due, remains unpaid.

B. Global Crossing's Improper Accounting Techniques

101. With the active collusion of Andersen, its "independent" auditor, Global structured deals and accounted for transactions in a fashion that abused traditional methods of accounting, and built an entire company based on erroneous "upfront" revenue recognition by persistently and wrongly characterizing certain transactions as capital lease transactions. That led lenders (including creditors who are the beneficiaries of this action) to subscribe to Global's public and private debt offerings, and otherwise to loan Global money in the belief it was capable of making billions of dollars in profits, and also led to artificial demand for Global's stock, enabling Insiders including the Defendants to sell the stock at unrealistically high prices.

102. Generally Accepted Accounting Principles ("GAAP") are guidelines by which the accounting profession defines acceptable accounting practices. GAAP are the official standards adopted by the American Institute of Certified Public Accountants ("AICPA"), through the three successor groups it established: the Committee on Accounting Procedure; the Accounting Principles Board ("APB"); and the Financial Accounting Standards Board ("FASB").

103. An Indefeasible Right of Use ("IRU") is the right to use a specified capacity over a designated communications cable owned by a telecom company for a set period of time, often as much as 25 years. The purchaser of an IRU pays a set price, usually at least 25% up front, and receives the right to use that capacity for the designated length of time. An IRU therefore has certain characteristics that make it facially analogous to a lease of real estate or equipment. However, since the essence of an IRU is to provide a customer with data transmission service capacity over a period of time, and since numerous users run their transmissions on the same cable at the same time or at different times, an IRU can never properly be viewed as a lease at all.

104. Ordinarily, leases of real estate or equipment -- except those that qualify for sales-type treatment under FASB Statement No. 13 -- are called operating leases. GAAP requires the lessor of an operating lease (like a service provider under a service contract) to allocate the revenue over the length of the lease term, even if some or all of the payments are made up front.

105. FASB Statement No. 98 provides that a lease involving real estate shall be classified as a sales-type lease only if it complies with FASB Statement No. 13, paragraph 7(a). That paragraph provides that for a lease to qualify as a capital lease, ownership of the property must be transferred to the lessee by the end of the lease term; it further provides that if the original lease is an operating lease, any sub-lease must also be classified as an operating lease. IRU sales are not leases of real estate at all (although the cable runs under land or over seabed) and do not qualify as capital leases of equipment, since ownership of the fiber-optic cable is never transferred to the lessee and the other criteria of Statement No. 13 are not met.

106. From the beginning, with Andersen's encouragement, Global erroneously treated IRU sales as sales-type leases, purporting to rely on FASB Statement No. 13. When an IRU was sold, Global recognized the revenue on the sale immediately, and amortized the costs associated with the IRU over the term of the agreement — typically up to 25 years.

107. IRU sales were among Global's major sources of reported revenue. From at least April 1998 through June 1999, Global wrongfully treated each IRU sale as a sales-type lease under FASB Statement No. 13, recognizing the entire amount of the payments immediately as revenue.

108. The practice of recognizing the revenue on the sale immediately, while at the same time amortizing the costs associated with the IRU over the term of the agreement, violated

GAAP's Matching Principle, under which revenues and expenses resulting from the same transaction must be recognized in the financial statements at the same time.

109. In 1998, Global recognized $418 million in revenue from IRU sales that it improperly treated as sales-type leases, representing 98.8% of the Company's total revenue for the year. In 1999, Global recognized $728 million in revenue from IRU sales that it improperly treated as sales-type leases, representing 48.8% of Global's total revenue for the year.

110. Treating IRU sales as sales-type leases gave investors a grossly distorted picture of Global's revenues and encouraged them to believe the Company might someday attain profitability. Assuming that all of the IRU sales in 1998 and 1999 had properly been treated as operating leases or service contracts and not sales-type leases, Global's reported revenue for 1998 would have been $7.3 million, and for 1999 would have been $28.2 million—far less than the amounts actually reported. Never profitable, Global would have shown much larger losses than it did, and its financial statements would have been wholly insufficient to support the massive lending that actually occurred.

111. Beginning in the mid-1990s, the characterization of transactions as sales-type leases, on which companies recognized revenue immediately, became the subject of increasing criticism in the finance industry because of fears that the accelerated booking of such revenues would result in misleading earnings reports to investors

112. In May 1998, the FASB Emerging Issues Taskforce sought clarification from the FASB as to the appropriate treatment of transfers of real estate with property improvements or integral equipment. In October 1998, the FASB published a draft of its proposed statement, which indicated that the FASB would require that any purported transfer of an improvement or

integral equipment on land would be accounted for as a transfer of real estate, and would require a transfer of title before the entire payment could be booked as revenue.

113. Global and Andersen recognized that the anticipated FASB pronouncement would keep the Company from recognizing revenue "up front" from IRU sales, because no title to real estate changed hands in connection with an IRU sale. Thus, it would be clear to the world that Global would no longer be able to treat IRU sales as sales-type leases and would no longer be able to immediately recognize the revenue from such sales. Global did not make any effort to conform the Company's accounting practices to this anticipated pronouncement, but instead sought to evade its effect.

114. In addition to sales of IRUs for cash, Global, like other telecom networks, commonly engaged in "swaps," in which the companies bought and sold IRUs among themselves. This permitted telecom companies to expand their networks and fill gaps in existing networks, while avoiding the cost of laying new fiber optic cables or constructing new networks.

115. Parties to IRU swaps did not usually treat the transactions as sales and did not usually book revenue from the deals. Since its inception, in disregard of proper accounting practices, Global regularly booked sales revenue from those transactions. In a press release dated April 7, 1998, Global announced "Qwest and Global Crossing to Swap Transatlantic High Capacity Fiber Between U.S. Cities and Europe." In its Form 10-K for the year ended December 31, 1998, Global listed Qwest as one of its biggest capacity purchasers, and reported revenue from the swap using sales-type lease accounting.

116. Accounting Principles Board Opinion No. 29 sets forth the GAAP guidelines for accounting for transactions involving non-monetary assets. The seller of such an asset can generally record revenue based on the fair value of the asset received. However, if two similar

non-monetary assets are exchanged, the exchange must be accounted for based on the difference between the cost basis, or book value, of the asset relinquished and the asset received.

117. In a memo dated February 10, 1999, Joseph Perrone, then the partner in charge of the Global account at Arthur Andersen, specifically counseled Global on how to improperly manipulate the accounting rules so that two telecom companies could both recognize revenue by exchanging like amounts of capacity and treating each side of the deal as a purportedly independent sale transaction. The memo instructed Andersen's telecom clients that they could realize revenue by exchanging network capacity among themselves, while each party treated the transaction as a "sale" by recording revenue from the transfer based on the fair value of the IRU it relinquished. The memo encouraged Global to attempt to evade the requirement of booking the exchange of similar assets based on the book values of the assets exchanged, by obscuring the reciprocal nature of the transactions or by making the network capacity appear dissimilar in order to render the book value requirement of APB No. 29 inapplicable.

118. On July 1, 1999 the FASB issued its long-anticipated Interpretation No. 43 ("FIN 43"), in which the FASB provided clarification of GAAP's requirements for accounting for the sale of real estate, and provided that in all sales after June 30, 1999, the definition of "real estate" would include any interests in property improvements or integral equipment on that property that could not be removed and used separately from the real estate without incurring significant cost. In order to qualify as a sale of real estate under GAAP, FIN 43 made it clear that there must be an actual transfer of title, rather than merely a transfer of use. As there is no transfer of title in an IRU sale, it was now unmistakably clear that Global could no longer treat IRU sales or swaps as sales-type leases of real estate.

119. Global represented in its financial filings (and thus to its lenders) that compliance with this interpretation would not have any material effect on the Company's finances. In doing so, the Company misrepresented the effect of FIN 43. As the CIBC Directors and the CIBC Entities knew, a correct application of FIN 43 to Global's past and future financial performance would in fact have had a devastating effect.

120. On September 30, 1999, Andersen published its "White Paper," which summarized FIN 43's requirement of a title transfer in order to qualify an IRU sale as a sales-type lease transaction, but concluded that telecom firms could still continue recognizing revenue immediately in connection with some IRU sales.

121. After the White Paper was published, Andersen and Global knew that the Company could not transfer title in connection with an IRU sale relating to land-based cable, and thus could not immediately recognize the revenue on an IRU sale where the cable was based on land. However, Global continued to maintain that it could recognize revenue "up front" in connection with an IRU sale on ocean-based cable, because the seabed has no landowner and there was no title to transfer. Thus, although Global reluctantly decided not to recognize revenue "up front" in connection with IRU sales related to land-based cable, it continued to immediately book revenue in connection with IRU sales relating to oceanic cable, on the purported theory that an IRU sale constituted a transfer of a depreciable asset.

122. In determining that it could treat an IRU sale on an oceanic cable as a transfer of an asset, Global ignored the economic and electronic realities of the IRU sale transactions. The continued treatment of IRU sales involving oceanic cable as sales-type leases, purportedly falling under FASB Statement No. 13, continued the artificial inflation of Global's revenue.

123. The White Paper also repeated Andersen's guidance that telecom firms could book revenue simply by exchanging network capacity among themselves. Andersen explained how to structure an IRU swap with the specific intent of avoiding the requirement of accounting for the exchange of similar assets using the book value of the assets exchanged. The White Paper said nothing about the requirement of disclosing the reciprocal nature of such transactions.

124. Global did not properly apply APB No. 29, which should have precluded Global from recording revenue from *any* IRU Swap deal—terrestrial or oceanic – beyond the difference in book value between the IRU received and the IRU given up.

125. On January 12, 2000, an email from Andersen to Global insiders attached an internal Andersen email, which stated:

> Rick Petersen took a call this afternoon from the Chief Accountant of the SEC and the Chief Accountant in the Division of Corporation Finance. The staff said that it tentatively had reached the view that an IRU is likely not a lease and that therefore up-front revenue recognition is not appropriate.

126. Faced with the SEC's view that it could no longer do so, the Company announced on February 18, 2000 that it had stopped treating the majority of IRU sales, even in connection with oceanic cables, as sales-type leases -- although it still maintained sales type lease treatment for certain oceanic IRU sales.

127. This change (which was not made retroactively) had a dramatic impact on Global's financial statements in 2000 and afterward. Because FIN 43 made it plain that Global was no longer permitted to book its IRU sales as sales-type leases, it could no longer record the fair market value of the IRUs it sold as revenue in the periods during which the agreements were reached. Thus, because a significant portion of Global's reported revenue was generated through IRU sales, compliance with FIN 43 caused a considerable drop in Global's reported revenues.

For example, the amount of GAAP revenue Global recognized on IRU sales dropped from $418 million in 1998 and $728 million in 1999, to $350 million in 2000.

128. In January 2000, Global abandoned any pretense of exchanging different "kinds" of capacity, and commenced its Global Network Offering ("GNO"). Capacity sold pursuant to Global's GNO was not permanently designated capacity, but was general capacity that allowed the "purchaser" to use a certain unit of capacity anywhere on Global's global network. The purported justification of the GNO was a complete sham; the true and undisclosed purpose of the GNO program was to facilitate future improper accounting for swaps. By no longer requiring a particular physical section of the network to be swapped, the Company would be in effect trading rights of future use.

129. Global's adoption of the GNO had an impact on its accounting practices: because a "purchaser" could direct capacity over any portion of the Global Crossing network, the Company could no longer pretend that it was selling a designated "asset" as part of an IRU. Thus, Global could no longer falsely account for IRU sales as sales-type leases or as transfers of depreciable assets.

130. However, Global continued to recognize income from swaps. Because Global offered generic capacity as part of the GNO, any capacity it swapped with other telecom companies for GNO capacity was "similar" to the capacity acquired. The exchange of similar capacity heightened the requirement that the Company should have recorded capacity exchanges using their book value pursuant to APB No. 29. But Global continued to ignore that principle.

131. Global paid lip service to FIN 43 but began in 2000 to include in its filings and annual reports "pro forma" profit-and-loss statements, which ignored the effect of FIN 43 and reported "cash revenues" and "Adjusted EBITDA" ("Earnings Before Income Taxes,

Depreciation and Amortization") as if FIN 43 had never been promulgated. In addition, during 2000, the Company began to rely increasingly on the booking of income from "swap" transactions that had no economic reality.

132. "Adjusted EBITDA" was the Company's favorite term for earnings, on which it encouraged financial analysts to concentrate. Disregarding GAAP and FIN 43, "Adjusted EBITDA" included what were described as "cash revenues," the amounts received "up front" in cash from IRU sales and the so-called revenues received from swaps. "Adjusted EBITDA" also included in earnings (by disregarding as expenses) the amounts GAAP required the company to expense each year for the amortization of goodwill and the depreciation of its cable systems.

133. In 1999 the Company acquired a number of subsidiaries for which it paid far more than fair value. The excess of the amount paid over fair value was recorded on the Company's books as "goodwill," and by the end of 1999 this figure exceeded $9 billion on the Global books. GAAP required the Company to record an annual amortization expense to write off that "goodwill," but the "Adjusted EBITDA" earnings presentation ignored that requirement.

134. A major part of the Company's business was always the sale of capacity on its cable systems. GAAP required that the capitalized cost of those systems (which included not only construction costs but numerous "soft" costs such as advisory fees) be depreciated over time. The "Adjusted EBITDA" earnings presentation ignored that requirement.

135. Through its representatives on the board of directors, CIBC encouraged and approved of the Company's use of "Adjusted EBITDA" as its preferred method of reporting earnings beginning with its reports of results for the year 1999. For that year the Company reported a GAAP operating loss of $7.5 million and a net loss of $71 million, which would have been much larger if it had restated past earnings to conform with FIN 43. However, it reported

"Adjusted EBITDA" of $708 million for the same period and relied on that figure as the most meaningful expression of its "earnings."

136. The use of this measure of earnings was a complete distortion of the Company's true economic state, which was at all times a state of ever-growing operating losses and ever-deepening insolvency.

C. CIBC's Role In The Formation of Global Crossing and Raising Capital

137. In late 1996, one of the first steps Winnick took in the formation of Global was to approach Raben, a former colleague at Drexel Burnham Lambert Inc. who had joined CIBC in Los Angeles. Winnick proposed to Raben his plan to lay fiber-optic cable under the Atlantic. Raben relayed the idea to Kehler, Heyer and Bloom, all managers of CIBC's high-yield bond department in New York who had also worked with Raben and Winnick at Drexel.

138. CIBC invested $38 million for 38% of the common stock of the first Global entity, Global Crossing Ltd., LDC ("GT Parent"), a Cayman Islands company that eventually came to hold all the stock of Global's operating subsidiaries. The stock cost CIBC $1 per share (the equivalent of $0.33 per share when adjusted for later splits). Fifteen months later, when Global offered its stock to the public, CIBC's stake in the company had a market value of $926 million.

139. On information and belief, Kehler, Heyer and Bloom also invested CIBC's money through a partnership, CIBC Argosy, which would allow them to keep a substantial percentage (18%) of the profits to be made from Global Crossing.

140. CIBC also raised capital for Global. From mid-1998 onwards, Global grew into a voracious consumer of cash -- cash it did not have. Global's need for cash made Global's credit rating critically important. Absent a favorable credit rating, Global could not raise capital. The erroneous and misleading accounting practices described above contributed to Global's ability to

achieve favorable credit ratings and purport to comply with its loan covenants -- but in fact, Global was always insolvent because it never had the resources to pay its debts as they matured.

141. In 1998 and 1999, CIBC had a major role in Global's raising of approximately $9.2 billion through offerings of debt to investors and through credit facility financing.

142. CIBC Oppenheimer co-led the IPO in 1998 of Global Crossing's common stock. CIBC Oppenheimer was also an initial purchaser and reseller of the offering of Global Crossing Holdings Ltd. 10-1/2% senior exchangeable preferred stock due 2008.

143. CIBC Wood Gundy acted as exclusive placement agent for the issuance by Global Telesystems Holdings Ltd. ("GT Holdings") of $100 million in GT Holdings Preference Shares and the issuance by GT Holdings of $150 million in Senior Notes.

144. From 1997 through 2000, Global Crossing paid the CIBC Entities at least $58.7 million in fees relating to these and other transactions.

145. Through the CIBC Entities' involvement in the above-noted financings, as well as through the CIBC Directors (Bloom, Kehler, Raben, Levine and Phoenix), Defendants acquired intimate knowledge of the Company's business, finances, prospects and accounting techniques.

D. The CIBC Entities Profit From Insider Trading

146. On August 13, 1998, Global became a public company. Immediately prior to the IPO, the shareholders of GT Parent other than CIBC exchanged all their GT Parent shares for shares of Global Crossing. GT Parent thus became CIBC's wholly-owned subsidiary and, on information and belief, had no function other than to hold Global Crossing's stock.

147. To the extent the CIBC Directors and CIBC itself owed fiduciary duties to GT Parent, Global and its creditors succeeded to, and became the beneficiaries of, those duties by virtue of these transactions.

148. After the exchange, CIBC (which did not exchange its shares) held a 26.51% beneficial ownership interest in Global through GT Parent. CIBC and three other Insider shareholders together held a 73.34% ownership interest in Global. Through their designated directors and combined majority stock ownership, they jointly completely controlled Global's board of directors and dominated its affairs and thus owed fiduciary duties to Global and its creditors.

149. By the end of 1998, Global's market capitalization had risen to over $9 billion as its stock price closed above $45 per share. On March 9, 1999, Global's stock split two-for-one.

150. As the price of Global's shares rose, CIBC made plans to sell, based upon the inside information on Global's true financial condition. According to an August 3, 2002 article in Toronto's *Globe and Mail* entitled "CIBC's Billion Dollar Stock Bonanza", in the spring of 1999, the Chairman of CIBC, Al Flood, stated: "We have made enough money" and asked the bank's New York office to begin preparing a plan to sell or lock in its profits on the Global shares. However, CIBC had to proceed cautiously because it had a 25% stake in the Company, had acted as the co-lead underwriter of Global's IPO and had allocated 1.3 million shares to sell to its clients, and had designated five of its employees to serve as directors of Global.

1. <u>The US West Tender Offer</u>

151. The first opportunity for the CIBC Entities to sell their Global shares came on June 21, 1999 in connection with the US West tender offer. In May 1999, the CIBC Entities, together with other Insiders, completely controlled the Company's board of directors. While the stock price was at its zenith, Global negotiated (and its board approved) a merger deal with US West, a key condition of which was that US West first make a tender offer to Global's shareholders to purchase 39.2 million shares (about 9.5%) of Global's outstanding stock at $62.75 per share -- a premium over the stock's all-time highest trading price. All shareholders

were entitled to participate, but the principal benefit went to the Insiders since they owned most of the stock. The Insiders collectively tendered and sold to US West more than 29 million shares for about $1.826 billion.

152. CIBC's profit (including defendants CIBC Argosy and Co-Investment Fund's profit) from tendering 8,828,552 shares was $553,991,638. Meanwhile, the insolvent Company benefited not at all. It remained strapped for cash, and -- at almost the same time as the tender offer closed -- borrowed approximately $3.6 billion in transactions negotiated in major part by the CIBC Entities. If Global's board members had been concerned primarily with the Company's interests rather than the interests of the shareholders who had put them all on the board, they would have been able to negotiate a deal allowing Global to receive some part of US West's $1.826 billion through stock sales or otherwise. That would also have eliminated the need for raising a major part if not all of the $3.6 billion in debt in which the CIBC Entities played such a key role.

153. The Insiders then engaged in a further exercise in self-dealing at the expense of Global. The merger contract with US West provided that an $850 million cash breakup fee would be paid to Global if US West's board of directors entertained a merger proposal from another company.

154. On June 13, 1999, Qwest made US West a better merger proposal. The US West board ultimately accepted Qwest's proposal, and the US West-Global merger did not take place.

155. Global's board of directors could have terminated the merger agreement in June or early July 1999 or called on US West to do so, and thus could have gotten the $850 million cash breakup fee for the company.

156. But the Global board did no such thing -- because that would have given US West the right to terminate the tender offer, and thus deprive the Insiders of the opportunity to tender their shares for a $1.826 million profit. Instead, Global negotiated a deal with US West and Qwest which left the tender offer in place but reduced Global's breakup fee from $850 million to $210 million, net of expenses, of which $103.5 million was paid to Global in the form of its own stock that became worthless less than three years later.

157. The claims against the CIBC Entities for breaches of fiduciary duty and usurpation of corporate opportunity in connection with the US West tender offer are set forth in the Consolidated Amended Complaint filed in the *Winnick* Action.

2. The Secondary Offering

158. The second opportunity for the CIBC Entities to sell their Global shares came on or about April 11, 2000 when Global again offered its shares to the public ("Secondary Offering").

159. In August 1998, the CIBC Entities entered into a Registration Rights Agreement with the other Insiders (and Global) to "piggyback" their shares on any public offering by registering and selling to the public up to 25% of their restricted stock holdings after a year. Global's directors granted those registration rights to their designating companies. Once again, this prospectively deprived Global of the opportunity to offer its shares pro tanto to raise much-needed cash for itself.

160. The registration rights matured August 15, 1999, but a lockup agreement resulting from Global's merger with Frontier extended the restriction through the end of March 2000. After the merger with Frontier, Levine and Phoenix left Global's board.

161. When the lockup period expired, the CIBC Entities demanded registration of its shares and caused Bloom, their representative on Global's Executive Committee, to approve the

Secondary Offering. They also caused their designated directors (Bloom, Kehler and Raben) to sign the registration statement for the Secondary Offering.

162. In April 2000, CIBC, along with other Insiders who were parties to the Registration Rights Agreement, sold more than 21.3 million shares at a price of $33.00 for a total of $709.5 million, depriving Global of the opportunity to sell those shares instead.

163. CIBC, through defendant CIBC Capital Partners (Cayman) No. 3, sold 6,768,158 shares. CIBC reaped a profit of $223,349,214 in the Secondary Offering. The claims against the CIBC Entities for breaches of fiduciary duty and usurpation of corporate opportunity in connection with the Secondary Offering are set forth in the Consolidated Amended Complaint filed in the *Winnick* Action.

164. Even as the CIBC Entities were continuing to dispose of their holdings in Global, the CIBC Directors and the other Insiders continued to lend their affirmative support to misleading statements about Global's financial condition. The Secondary Offering Prospectus was signed by Bloom, Kehler and Raben. It incorporated by reference Global's Form 10-K annual report for 1999, which contained misleading disclosures regarding the Company's change in accounting procedures after FIN 43 became effective by making a technically truthful but highly misleading claim that none of the new accounting practices affected its cash flows. Even so, the balance sheet contained in the Secondary Offering Prospectus revealed that all of Global's reported shareholders' equity of $9.2 billion was represented by "Goodwill and other intangible" assets. The Company had a negative net tangible book value.

165. The prospectus for Global's Secondary Offering on April 10, 2000 also reported that after the successful offering, CIBC would continue to hold 60,071,396 shares of common stock. CIBC, however, had different intentions. Throughout the rest of 2000 through 2001, the

CIBC Entities discreetly sold a significant portion of their remaining shares of Global by using the Defendant entities. At the time the Defendants sold their holdings in Global, they had material non-public adverse information about the inflation of corporate earnings, the Company's unsustainable level of debt, and the uncertain prospects for its future.

E. Defendants' Insider Trading After June 2000

166. On June 5, 2000, Leo J. Hindery, Jr., who had only three months earlier become Global's Chief Executive, sent a confidential memorandum to Winnick and other officers of Global Crossing. In the memorandum, Hindery suggested that Global must dispose of certain of its assets, "talk publicly everyday about how better run [Global] Crossing is, and then meet or exceed near-term financial expectations" or sell the company. Hindery added: "The stock market can be fooled, but not forever, and it is fundamentally insightful and always unforgiving of being misled."

167. After the CIBC Entities had already capitalized on the CIBC Directors' fiduciary relationship with Global by turning their initial investment of approximately $38 million in Global into approximately $1 billion, they arranged for the CIBC Directors to resign from Global's board in order to sell their remaining shares held by the Defendants.

168. Bloom, Kehler and Raben left Global's board on June 20, 2000. Raben's June 23, 2000 letter to Winnick stated that he was asked by CIBC World Markets to resign. (Levine and Phoenix had resigned in 1999, after the merger with Frontier).

169. According to an April 29, 2002 *Canadian Business* article, the CIBC Directors resigned from Global's Board so they could make further sales of their own stock (which was held by several of the Defendant entities) without publicly reporting the sales. At the time, upon information and belief, the CIBC Directors and Defendants knew that Global was insolvent but they wanted to sell their artificially inflated stock before the reality of Global's financial

condition became known to the public. They wanted to sell their Global stock anonymously so as not to alert other investors that the affiliates of a major underwriter for Global's financings were dumping the stock. Neither the proxy statements filed with the SEC on May 8, 2000 and July 26, 2000 nor any press release gave investors any warnings about CIBC's plans. They did not even mention the resignation of the CIBC Directors.

170. In preparation for selling their Global stock, on or about April 10, 2000, Bloom, Kehler, Phoenix and Levine exercised their stock options and each obtained 120,000 shares at $0.835, for a cost of $100,200 each. On that day, Global's stock price was just slightly over $33. On April 20, 2000, Levine and Phoenix each distributed his 120,000 Global shares as follows: CIBC Capital Partners (Cayman) No. 3 (96,000 shares); Andrew R. Heyer (10,133 shares); Dean C. Kehler (5,867 shares); Mario A. Monello (4,000 shares); and Leon M. Wagner (4,000 shares). As discussed below, on information and belief, CIBC Capital Partners (Cayman) No. 3, Heyer, Kehler, Monello and Wagner sold these shares under Rule 144 and 144(k).

171. Prior to their resignation from Global's board, the CIBC Directors and the Defendants devised a plan to lock in the prices of their Global shares before the Company's inevitable demise could become known to the public. As early as December 14, 1999, the CIBC Entities considered entering into collar transactions with Goldman, Sachs & Co. ("Goldman Sachs"). In anticipation of these transactions, the attorneys for Goldman Sachs sought and received interpretive advice from the Securities and Exchange Commission as to whether entering into a pre-paid variable share forward contract would constitute a transaction complying with the manner-of-sale requirements of Rule 144(f) and Section 9(g) under the Securities Act of 1933. Rule 144 allowed Goldman Sachs, as a non-soliciting market maker or a broker agent, to sell restricted stock in Global held by the CIBC Entities and the Defendants. On May 31, 2000,

CIBC WG Equity Capital Markets faxed back to Goldman Sachs a copy of Goldman Sach's Master Agreement for Over-The-Counter Options.

172. In one of the largest equity hedges ever negotiated in Canada, according to an August 3, 2002 *Globe and Mail* article, CIBC locked in its profit on 47 million Global shares by entering into hedging contracts beginning in 2000 to sell the stock at future dates ending in 2003 for fixed prices that ranged between $20 and $64 a share. CIBC confirmed in an October 2000 announcement that it had hedged the majority of its remaining 47 million shares of Global Crossing.

173. These hedging transactions were critically important to the CIBC Entities and the Defendants because they anticipated that Global stock would soon plummet because they knew of Global's true financial condition -- but the hedging contracts set a floor price for which the CIBC Entities, the CIBC Directors and the Defendants could sell their remaining Global stock.

1. CIBC Capital Partners (Cayman) No. 3

174. In June 2000, CIBC Capital Partners (Cayman) No. 3, CIBC's wholly-owned, indirect subsidiary, entered into collar agreements with Goldman Sachs for an option to sell 10 million Global shares at a floor price of $20.30 and a cap price of $63.95. The trade date for these shares was June 2, 2000 and the expiration dates were throughout August 2002 to October 2002.

175. In September 2000, CIBC Capital Partners (Cayman) No. 3 entered into collar agreements with Merrill Lynch for an option to sell 10 million Global shares at a floor price of $24.71 and a cap price of $47.21. The trade dates for these shares were dates throughout September 2000 and the expiration dates were dates throughout October 2001.

176. In August 2000, CIBC Capital Partners (Cayman) No. 3 entered into collar agreements with Citibank/Salomon Smith Barney for an option to sell 10 million Global shares

at a floor price of $27.675 and a cap price of $61.50. The trade date for these shares was August 24, 2000 and the expiration dates were dates throughout October 2003.

177. In October 2000, CIBC Capital Partners (Cayman) No. 3 entered into another collar agreement with Citibank/Salomon Smith Barney for an option to sell 5 million Global shares at a floor price of $24.995 and a cap price of $53.965. The trade date for these shares was October 2, 2000 and the expiration dates were dates throughout October 2002.

178. In January 2001, CIBC Capital Partners (Cayman) No. 3 entered into collar agreements with Merrill Lynch for an option to sell 422,536 Global shares at a floor price of $20.00 and a cap price of $44.90. The trade date for these shares was February 6, 2001 and the expiration dates were dates throughout September 2003.

179. The total number of shares hedged in the foregoing transactions was 35,422,536. In CIBC's Fourth Quarter 2000 Report to its shareholders, dated December 7, 2000, CIBC stated that it had hedged the majority of its remaining 47 million shares of Global Crossing. The Fourth Quarter 2000 Report stated: "Revenue for the year 2000 benefited from gains on sales of corporate assets including… a $697 million (Canadian dollars) gain on the sale of a portion of our investment in Global Crossing Ltd…. World Markets revenue was up $882 million (Canadian dollars) for the year. This growth in revenue was driven by merchant banking gains, including a gain on the sale of a portion of our investment in Global Crossing Ltd…."

180. As the price of Global's shares receded throughout 2001, on information and belief, CIBC Capital Partners (Cayman) No. 3 exercised its options to sell its Global shares at the floor prices of the foregoing collar agreements.

181. On information and belief, on or about January 24, 2001, CIBC Capital Partners (Cayman) No. 3 also entered into another collar transaction exercising its option to sell 10,177,229 Global shares.

182. In addition to the hedging transactions described above, CIBC Capital Partners (Cayman) No. 3 sold its Global shares through CIBC World Markets. On May 31, 2000, CIBC Capital Partners (Cayman) No. 3 sold 10,000,000 Global shares, with CIBC World Markets acting as an agent in a broker transaction under Rule 144. CIBC Capital Partners (Cayman) No. 3 made $296 million in this transaction.

2. CIBC Argosy And The Corporations Controlled By Its Partners

183. CIBC was the general partner of CIBC Argosy, which was controlled by limited partners Bloom, Kehler, Heyer, Monello and Wagner. Bloom and Kehler served on Global's board of directors.

184. On February 15, 2000, pursuant to a compensation plan, CIBC Argosy distributed 12,900,796 shares to companies that had been formed for the purpose by CIBC Argosy's limited partners: J. Bloom Corporation, D. Kehler Corporation, A. Heyer Corporation, M. Monello Corporation, and L. Wagner Corporation. The market value at the time of the distribution was $61 a share but the limited partners paid the equivalent of pennies a share.

185. On information and belief, on or about January 22, 2001, CIBC Argosy sold all of its remaining 2,755,555 Global shares in a Rule 144(k) sale.

186. On July 21, 2000, J. Bloom Corporation transferred 300,000 shares of Global's restricted stock to Goldman Sachs 2000 Exchange Fund, L.P.

187. On information and belief, on or about January 8, 2001, J. Bloom Corporation sold its remaining 1,979,182 Global shares in a Rule 144(k) sale.

188. On July 21, 2000, A. Heyer Corporation transferred 300,000 shares of Global's restricted stock to Goldman Sachs 2000 Exchange Fund, L.P.

189. On information and belief, on or about September 19, 2000, A. Heyer Corporation sold 250,000 Global shares in a Rule 144(k) sale.

190. On information and belief, on or about January 8, 2001, A. Heyer Corporation sold its remaining 2,583,864 Global shares in a Rule 144(k) sale.

191. On information and belief, on or about January 8, 2001, D. Kehler Corporation sold its remaining 3,133,864 Global shares in a Rule 144(k) sale.

192. On information and belief, on or about November 14, 2001, M. Monello Corporation sold its remaining 2,176,943 Global shares in a Rule 144(k) private placement sale.

193. On July 18, 2000, L. Wagner Corporation sold 250,000 Global shares for $8,250,000 in a private placement, with Fahnestock and Co. acting as a market maker or a broker agent under Rule 144.

194. On information and belief, on or about November 20, 2000, L. Wagner Corporation sold its remaining 1,826,943 Global Crossing shares in a Rule 144(k) sale.

3. Co-Investment Fund and Its Distributions

195. The purpose of Co-Investment Fund was to permit certain employees of CIBC and its affiliates to profit from CIBC and its affiliates' ventures. The CIBC Directors Raben, Levine and Phoenix held an interest in Co-Investment Fund.

196. On August 15, 2000, Co-Investment Fund distributed 5,683,410 Global shares to the Defendant corporations formed by twenty-four individuals who held an interest in the Fund as follows:

197. B. Raben Corporation received 1,124,713 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, B. Raben Corporation sold these shares on or about October 16, 2000 in a Rule 144(k) sale.

198. J. Levine Corporation received 208,280 Global shares from the Co-Investment Fund on August 15, 2000. On September 29, 2000, J. Levine Corporation entered into a Variable Liquidity Contract with Fleet National Bank for an option to sell 19,000 Global shares at a floor price of $30.7808 and a cap price of $40.0150. The trade date for these shares was September 29, 2000 and the termination date was September 28, 2001. On September 29, 2000, J. Levine Corporation also entered into a Share Option Transaction with Fleet National Bank for an option to sell 180,000 shares at a strike price of $20.00 with a trade date of September 29, 2000 and an expiration date of September 28, 2001. On information and belief, J. Levine Corporation sold its Global shares pursuant to the terms of these agreements.

199. W. Phoenix Corporation received 208,280 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, W. Phoenix Corporation sold these shares in a Rule 144(k) sale.

200. E. Levy Corporation received 705,375 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, E. Levy Corporation sold these shares in a Rule 144(k) sale.

201. B. Spohler Corporation received 685,935 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, B. Spohler Corporation sold these shares in a Rule 144(k) sale.

202. W. McLallen Corporation received 685,935 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, W. McLallen Corporation sold these shares in a Rule 144(k) sale.

203. K. Read Corporation received 236,051 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, K. Read Corporation sold these shares in a Rule 144(k) sale.

204. B. Gerson Corporation received 214,945 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, B. Gerson Corporation sold these shares in a Rule 144(k) sale.

205. K. Magid Corporation received 211,121 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, K. Magid Corporation sold these shares in a Rule 144(k) sale.

206. T. Murphy Corporation received 148,851 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, T. Murphy Corporation sold these shares in a Rule 144(k) sale.

207. M. Dalton Corporation received 142,186 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, M. Dalton Corporation sold these shares in a Rule 144(k) sale.

208. N. Wiesenberg Corporation received 140,520 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, N. Wiesenberg Corporation sold these shares in a Rule 144(k) sale.

209. EJ Pipkin Corporation received 218,212 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, EJ Pipkin Corporation sold these shares in a Rule 144(k) sale.

210. J. Budish Corporation received 178,934 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, J. Budish Corporation sold these shares in a Rule 144(k) sale.

211. J. Ross Corporation received 99,975 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, J. Ross Corporation sold these shares in a Rule 144(k) sale.

212. P. Daniels Corporation received 96,087 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, P. Daniels Corporation sold these shares in a Rule 144(k) sale.

213. E. Mally Corporation received 94,421Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, E. Mally Corporation sold these shares in a Rule 144(k) sale.

214. H. Noeding Corporation received 94,421 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, H. Noeding Corporation sold these shares in a Rule 144(k) sale.

215. N. Thomas Corporation received 62,206 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, N. Thomas Corporation sold these shares in a Rule 144(k) sale.

216. L. DeBauge Corporation received 23,593 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, L. DeBauge Corporation sold these shares in a Rule 144(k) sale.

217. A. Woolford Corporation received 27,771 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, A. Woolford Corporation sold these shares in a Rule 144(k) sale.

218. N. Wessan Corporation received 27,771 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, N. Wessan Corporation sold these shares in a Rule 144(k) sale.

219. S. Shapiro Corporation received 27,277 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, S. Shapiro Corporation sold these shares in a Rule 144(k) sale.

220. J. Moglia Corporation received 20,550 Global shares from the Co-Investment Fund on August 15, 2000. On information and belief, J. Moglia Corporation sold these shares in a Rule 144(k) sale.

221. On information and belief, Co-Investment Fund sold its remaining 3,014,564 Global shares in a Rule 144(k) sale.

4. Caravelle Investment Funds LLC

222. As of March 30, 2000, Caravelle held 218,434 Global shares. Caravelle was controlled by Bloom, Kehler and Heyer. Bloom and Kehler served on Global's board of directors. On information and belief, Caravelle sold its Global shares in a Rule 144(k) sale.

F. Grubman's Hyping of Global Stock

223. As noted earlier in this Complaint, the Insiders falsified Global's revenues and exaggerated its earnings in public filings over a period of years. They also employed the

assistance of Grubman, SSB's supposedly independent securities analyst, to lend legitimacy to Global and keep the Company's credit ratings up, although they knew that the Company was incurring debt beyond its ability to repay. While the Insiders cashed out their artificially inflated shares, the Company paid SSB more than $120 million in fees for investment banking and underwriting, much of which was in reality a payoff for Grubman's unduly optimistic analyst reports.

224. Winnick befriended Grubman and made him a part of Global's inner circle. A May 31, 2002 article in *The Wall Street Journal* entitled, "How Analyst Grubman Helped Call Shots at Global," stated that Grubman may have had a hand in the actual management of Global Crossing. During the Relevant Period, Grubman assisted the Insiders in creating the image of Global as a financially robust company by designing and financing acquisitions and transactions, underwriting numerous offerings, and through SSB's and Grubman's pumping of the stock price by generating unduly optimistic and misleading statements about the Company's actual financial condition and prospects.

225. Despite SSB and Grubman holding themselves out as independent, equity research specialists in the telecom industry, they ignored the generally accepted accounting principles applicable to the telecom industry in favor of an alternative method of reporting based on "cash revenues" and "adjusted EBITDA" used by the Insiders, in order to keep the Company's credit ratings up. Grubman knowingly and continually issued deceptively positive analyst reports, which recommended the purchase of Global common stock and which set price targets for Global stock without any reasonable factual basis, in order to win and retain investment banking business for SSB.

226. Grubman initiated his analyst coverage of Global on September 8, 1998, shortly after the IPO. From the first coverage, Grubman gave Global the highest "Buy" recommendation and issued glowing reports on why Global was one of his favorite stocks. Throughout 1999, Grubman reiterated to investors that they should be "aggressive buyers of GBLX" (Global's stock).

227. By late 1999, the FCC amended the Submarine Cable Landing License Act to streamline approvals, which allowed new competitors to enter the fiber optic cable transmission market with relative ease. As a result of competitors pouring in, prices for bandwidth to Europe and Asia from North America fell more than 50% in both 2000 and 2001. Global and its directors, including defendants' designees, understood the nature of the business. Dan Cohrs, Global's CFO, acknowledged in testimony before the Energy and Commerce Committee of the United States Congress that, "We always projected prices to be declining. The nature of our business was that every business case ever prepared in the history of Global Crossing showed declining prices for capacity because of technological advances. And so the typical business case would have annual price declines of 15 to 30 percent per year."

228. Global was poorly positioned to deal with the bandwidth price decline since, as the Insiders knew, it was not the highly successful, financially sound company presented in its financial statements but was really a company whose actual cash revenues were barely a sliver of its reported "cash revenues." The Company found itself burdened with a level of debt service that might have been appropriate if it had truly been a multi-billion dollar company, but the debt burden it assumed was far beyond Global's ability to handle, considering its far more modest, actual revenues.

229. In an e-mail dated March 7, 2000, entitled "It's tough to build a European business without money," Charles Mancini wrote to three other Global employees begging for their assistance in trying to get CFO Dan Cohrs to finally approve a spending plan in Europe so the Company could sign leases for data centers and offices in various European location in order to develop its business. Mancini warned that if the Company did not obtain a particular site in London, the Company would have to stop working on the project. Mancini advised the email recipients that Global's European Chief Financial Officer, Donald Muir, refused to sign off on the leases because Cohrs would not allow it. Mancini concluded the e-mail by warning, "Please guys, this is getting pretty serious."

230. On March 15, 2000, Charlene Shelley, a Client Services Consultant at Global Center, sent an e-mail to Maria Funkhouser entitled, "We Are Losing Customers" in which she advised that Global Center was "losing customers left and right" as a result of its cash problems and identified several of the more recent customers the Company had lost because they were "sick of [Global's] network problems and the poor service they have received over the past year." Funkhouser responded by advising, "I want you to know that Scott and I are aware of these issues, they are nationwide!"

231. Throughout 2000, as the Insiders continued to sell stock, Grubman continued to paint a sunny picture of Global's financial condition. In the February 23, 2000 Research Call Note, Grubman stated "[w]e would be aggressive buyers of GBLX stock. We think the stock is greatly undervalued" and reiterated his $70 target price for Global's shares.

232. Two months later, Grubman was deeply involved in Global's April 2000 Secondary Offering at $33 per share, from which the Insiders (including CIBC) derived proceeds

of approximately $700 million, and SSB, as the co-lead underwriter, was paid $13 million in fees.

233. From February 17 to May 23, 2000, the market price of Global's stock fell from $61 to $23.625. Regardless, Grubman's July 26, 2000 report on Global continued to maintain SSB's highest "Buy" rating. It stated that Grubman expected Global's August 1st reported earnings to exceed SSB's prior Second Quarter 2000 revenue estimate of $1.3 billion and Adjusted EBITDA of $383 million. Grubman also continued to set Global's target stock price at $70 per share, despite a steady two-week decline from $34.50. Grubman's report stemmed the downward momentum on July 26, with Global shares losing only $0.50 in value that day. However, by the morning of August 1, 2000, Global had slid to $24.75 per share. Grubman had to act.

234. Grubman again "strongly reiterated" his "Buy" recommendation and his $70 target for the stock price on August 1, 2000, after Global reported "cash revenues" of $1.4 billion and Adjusted EBITDA of $435 million for the second quarter of 2000. In that report, Grubman stated:

> We believe GBLX represents one of the best overall global network assets in the world of telecom which is the key ingredient to drive products and revenues in this industry…. GBLX once again beat numbers on all accounts. They are building their network out ahead of schedule, productizing the network in a very rapid fashion, truly represent a terrific set of global assets and at current valuations we believe are being very severely mispriced in the market. We would obviously be aggressive buyers of the stock.

235. On that day, Global's high was $26.37 per share. On each succeeding day, Global moved upward with daily highs of $29.44, $30.25 and $31.19 per share. By the following Monday, August 7, partly in response to Grubman's research report, the price of Global Crossing

shares rose to $31.88 per share on volume of 10.5 million shares. Meanwhile, the Defendants continued to sell off their holdings.

236. In Grubman's September 5, 2000 analyst report on Global, he retained his "Buy" rating and $70 target for Global Crossing stock. Commenting on Global's latest guidance to the market for 2000 of $5.2 billion in "cash revenue" and $1.34 billion in "adjusted EBITDA" from continuing operations, Grubman noted that, "in an industry where numbers have been guided downward, this increase in guidance by GBLX is clearly very positive." That day, 30.9 million shares of Global were traded with Global's share price holding at approximately $35.00 per share.

237. SSB and Grubman continued their glowing analysis of Global in Grubman's September 20, 2000 report on the telecommunications industry. Despite the general market malaise with regard to telecom stocks, Grubman maintained a "1S" rating for Global and blamed the plunge of telecom stocks, in part, on other analysts' misguided comments:

> We want to take this opportunity to strongly reiterate our bullish view of the telecom services industry. We remind people that our long-term investment thesis on this industry remains unchanged despite the fact that the stock performance of the telecom services sector has fallen off a cliff.
>
> * * *
>
> We believe Wall Street is allowing the depression in the stock prices to dictate research. Issues that are being raised are not new and could have been raised when these stocks were 70% higher. We fundamentally believe in the growth of this industry, in the potential for value creation in this industry. But it ain't easy. Anyone who thought that this group would just go straight up was sadly mistaken. At a time like this, when the valuations are absurdly low, and there is huge capitulation on Wall Street, we

> thought it was a good idea to remind people where we stand. We are very aggressive on these names. Clearly, on any subset of the names we alluded to, we would be buying aggressively.

238. On September 20, Global Crossing had opened at $29.81 per share after a steady two week decline from $35.00. Once again, Grubman's report turned the tide with Global trading at $32.50 per share within a few days. On October 11, 2000, Grubman again gave Global's stock a Buy rating at $70, saying "GBLX is clearly undervalued, we believe, and we would buy aggressively at these levels."

239. Throughout the remainder of 2000 and most of 2001, Grubman continued to endorse Global longer than any other analyst, recommending the stock as one of his "top picks" as late as May 2001. Other analysts deserted the Company based upon the shake-out in telecommunications stocks, but Grubman's top three picks continued to be the now notorious trio of SSB banking clients -- Global, Qwest and WorldCom.

240. In issuing their reports that recommended the purchase of Global stock, SSB and Grubman failed to disclose material, non-public adverse information that they (like the CIBC's representatives on Global Crossing's board) possessed about Global. Specifically, SSB and Grubman failed to reveal to the public:

- that Global's reported revenues were artificially inflated by aggressive accounting for IRU sales;
- that Global was issuing misleading "pro forma" financial reports that misstated the Company's cash revenues and earnings;
- that Global's "growth" depended almost entirely on reciprocal capacity swaps and questionable acquisitions;
- that Global was entering into economically worthless IRU Swap transactions with other telecom companies in order to boost revenue and meet quarterly revenue expectations;
- that other telecom companies with which Global did business and upon which Global depended for IRU sales were in financial trouble; and

- that Global had very limited cash flow and was running out of liquid funds, despite the fact that the Company touted its "cash" position in fraudulent "pro forma" financial reports.

241. These allegedly "independent" analyst research reports and ratings were used covertly to lure investment banking business while keeping the public in the dark about Global's real financial condition. Meanwhile, Defendants, which knew of Global's real financial condition from the CIBC Directors and the CIBC Entities, continued to profit from the sale of Global shares at locked-in prices they had negotiated earlier.

G. The Defendants Profit From Insider Trading While Knowing That The CIBC Directors and The CIBC Entities Breached Their Fiduciary Duties To Global Crossing

242. Defendants sold artificially inflated Global stock with insider knowledge of the Company's adverse financial condition. On information and belief, Defendants together sold a total of approximately 77,880,129 Global shares after the Secondary Offering. The sales were made with inside knowledge of Global's misleading and improper revenue and income recognition policies which inflated the value of Global's stock and of the declining prospects for its business. Defendants acquired this inside knowledge from the CIBC Directors and the CIBC Entities. On information and belief, Defendants knew that such material, non-public information was disclosed to them in violation of the fiduciary duties owed to Global by the CIBC Directors and the CIBC Entities.

243. In all, on information and belief, Defendants unlawfully obtained approximately $2 billion in profits through their relationships with the CIBC Entities and CIBC Directors, all to the detriment of Global Crossing and its creditors. The profits made from these insider sales were wholly the result of self-interested dealing and breaches of fiduciary duty by the CIBC Directors and the CIBC Entities, as Defendants well knew and intended.

VI. COUNTS

A. Count 1 – Disgorgement of Profits from Insider Trading

244. The Estate Representative realleges and incorporates by reference the allegations in all preceding paragraphs of this Complaint.

245. Defendants profited from selling Global stock based on material, non-public information which was provided to them by the CIBC Directors and the CIBC Entities.

246. The CIBC Directors owed Global fiduciary duties of loyalty. These duties required them at all times to act faithfully on behalf of Global Crossing and to conduct themselves in a manner they reasonably believed to be in the best interest of the Company. As part of their fiduciary duties, the CIBC Directors were at all times required to be honest and candid and to make full disclosures in connection with their dealings with the Company and its Board of Directors. Further, in their communications with investors and creditors, those directors were obligated to communicate honestly, candidly and completely in all material respects.

247. The CIBC Directors, together with other Insiders identified herein, jointly dominated and controlled Global's board until late June, 2000. By virtue of the acts and omissions described herein, the CIBC Directors acted together with others to repeatedly violate their fiduciary duties of loyalty to Global and aid and abet similar violations by others -- violations for which Defendants are responsible.

248. The CIBC Directors violated their duties of loyalty by causing Global Crossing to recognize revenue improperly with respect to the IRU transactions described herein, for the purpose and with the effect of manipulating and misstating Global Crossing's financial condition and enriching themselves and their principals.

249. The CIBC Directors also breached their fiduciary duty of loyalty to Global by causing to be reported in Global Crossing's financial statements the financial effects of these IRU transactions as though they were valid and in compliance with applicable accounting and other requirements, when, as described herein, they were not. With respect to those same transactions, the CIBC Directors violated their duties to conduct themselves honestly, candidly and with full disclosure in their dealings with the Company and its Board of Directors.

250. Further, the CIBC Directors, acting together with other self-interested directors, breached their fiduciary duties of loyalty by causing Global to enter into transactions by which Defendants obtained and sold Global stock at inflated prices while they possessed material knowledge of the Company's true financial state, all of which was not clearly disclosed to the public and the Company's creditors. The Estate Representative seeks the disgorgement of all proceeds of such sales in an amount to be determined at trial as described herein.

251. The Defendants engaged with the CIBC Directors and the CIBC Entities in a common enterprise pursuant to which material, non-public information concerning Global's financial condition and business prospects was passed to Defendants, who capitalized on it by selling or contracting for the sale of Global stock prior to the time the material information was available to the public. The CIBC Directors and CIBC Entities intended to benefit Defendants by such disclosures. On information and belief, Defendants knew that the disclosure to them of such material, non-public information was in violation of the CIBC Directors and the CIBC Entities' fiduciary duty of loyalty owed to Global and its creditors. Defendants, motivated by greed, simply did not care.

B. Count 2 – Imposition of Constructive Trust

252. The Estate Representative realleges and incorporates by reference the allegations in all preceding paragraphs of this Complaint.

253. The Estate Representative has no adequate remedy at law.

254. Defendants were unjustly enriched through their sales of Global shares with inside knowledge of Global Crossing's true financial condition.

255. In equity and good conscience, Defendants ought not to retain any proceeds of such sales, which amounted to approximately $2 billion. A constructive trust and equitable lien should be imposed upon the amounts by which the Defendants were unjustly enriched in all these transactions, for the benefit of the Company and its unsatisfied creditors.

C. Count 3 – Accounting

256. The Estate Representative realleges and incorporates by reference the allegations in all preceding paragraphs of this Complaint.

257. Defendants are required to account to the Estate Representative for all profits made in connection with their insider selling of Global's shares.

VII. AD DAMNUM CLAUSE

WHEREFORE, Plaintiff demands judgment as follows:

A. Directing each Defendant to disgorge the profits earned on trading of Global Crossing stock on the basis of material, non-public information, plus prejudgment interest thereon.

B. Imposing a constructive trust for the benefit of the Estate Representative upon all proceeds of the Defendants' sales of Global Crossing stock.

C. Directing an accounting by the Defendants for all profits made from selling Global Crossing stock on the basis of material, non-public information.

Dated: New York, New York
June 20, 2006

Respectfully submitted,
ENTWISTLE & CAPPUCCI LLP

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