

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

In re:)	Chapter 11
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
Debtors.)	(Jointly Administered)
Windstream Holdings, Inc. and Earthlink Holdings Corp.,)	
Plaintiffs,)	
v.)	Adversary Proceeding
Charlos Yadegarian, Robert Murray, Cindy Graham and Larry Graham,)	Adv. Pro. No. 19-08247 (RDD)
Defendants.)	

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES
ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, Robert Murray, the court-appointed lead plaintiff (“Lead Plaintiff”) in the securities class action captioned as *Robert Murray v. Earthlink Holdings Corp., et al.*, Case No. 4:18-cv-00202-jm (E.D. Ark.) (the “Securities Litigation”) and a defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”) brought by Windstream Holdings, Inc.,² one of the above-captioned

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

² The caption of the adversary proceeding identifies “Earthlink Holdings Corp.” as a plaintiff, and various pleadings filed by the Debtors identify that entity as a Debtor. However, Earthlink Holdings Corp. merged into Windstream Holdings, Inc. in a 2017 merger that forms the basis of certain allegations in the Securities Litigation. Thus, upon information and belief, those two entities are now one and the same.



debtors in possession (the “Debtors”), hereby submits his designation of the record and statement of issues on appeal in connection with his appeal from the *Order Denying the Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint and Extending the Automatic Stay to Non-Debtor Defendants in the Securities Class Action* (the “Order”) entered by the United States Bankruptcy Court for the Southern District of New York, Hon. Robert D. Drain, U.S.B.J., on July 3, 2019, in which the Court found that the automatic stay pursuant to 11 U.S.C. § 362(a) extends to or, to the extent necessary under applicable law, directed that the automatic stay pursuant to 11 U.S.C. § 362(a) is extended to, the non-debtor defendants in the Securities Litigation (the “Non-Debtor Defendants”) with respect to the claims asserted against them therein.

STATEMENT OF ISSUES ON APPEAL

1. Did the Bankruptcy Court err in finding that the automatic stay pursuant to 11 U.S.C. § 362(a) applies to the Non-Debtor Defendants with respect to the claims asserted against them in the Securities Litigation?
2. Did the Bankruptcy Court err in ordering that, to the extent necessary under applicable law, the automatic stay pursuant to 11 U.S.C. § 362(a) is extended to the Non-Debtor Defendants with respect to the claims asserted against them in the Securities Litigation?
3. Did the Bankruptcy Court err in finding that the Debtors are the real party defendant in the Securities Litigation?
4. Did the Bankruptcy Court err in granting the relief requested in the complaint in the Adversary Proceeding despite the fact that the Debtors did not file a motion seeking such relief?

DESIGNATION OF THE RECORD ON APPEAL

Lead Plaintiff hereby designates the following pleadings and other documents as the record on appeal:

DOCKET ENTRIES IN LEAD BANKRUPTCY CASE NO. 19-22312			
ITEM NO.	FILING DATE	ECF DOC. No.	PLEADING / DOCUMENT
1	2/25/2019	1	Voluntary Petition for Windstream Holdings, Inc.
2	2/25/2019	27	Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (I) in Support of Debtors' Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2
3	6/14/2019	676	Agenda for June 17, 2019 Hearing
4	TBD	TBD ³	Transcript of June 17, 2019 Hearing

DOCKET ENTRIES IN ADVERSARY PROCEEDING NO. 19-08247			
ITEM NO.	FILING DATE	ECF DOC. No.	PLEADING / DOCUMENT
5	4/5/2019	1	Complaint to Extend the Automatic Stay or, in the Alternative, to Obtain an Injunction or Other Equitable Relief
6	4/11/2019	2	Summons and Notice of Pretrial Conference in an Adversary Proceeding
7	4/11/2019	3	Affidavit of Service of Jennifer Westwood re: Complaint to Extend the Automatic Stay or, in the Alternative, to Obtain an Injunction or Other Equitable Relief
8	5/29/2019	4	Notice of Hearing on Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint
9	5/30/2019	5	Certificate of Service of Elizabeth Lawler re: Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint
10	6/14/2019	6	Debtors' Response to Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint
11	6/17/2019	9	Affidavit of Service of Jennifer Westwood re: Debtors' Response to Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint

³ The transcript of the June 17, 2019 hearing has not yet been docketed. Lead Plaintiff will supplement this designation to reflect the docket number of the transcript, once filed.

DOCKET ENTRIES IN ADVERSARY PROCEEDING NO. 19-08247			
ITEM NO.	FILING DATE	ECF DOC. No.	PLEADING / DOCUMENT
12	7/3/2019	12	Order Denying the Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint and Extending the Automatic Stay to Non- Debtor Defendants in the Securities Class Action
13	7/17/2019	15	Notice of Appeal re: Order Denying the Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint and Extending the Automatic Stay to Non- Debtor Defendants in the Securities Class Action
14	7/17/2019	16	Certificate of Service Elizabeth Lawler re: Notice of Appeal re: Order Denying the Motion of Securities Class Action Lead Plaintiff to Dismiss Adversary Complaint and Extending the Automatic Stay to Non- Debtor Defendants in the Securities Class Action
15	7/17/2019	17	Civil Cover Sheet (Dist. Ct. Case No. 19-06744)

[signature page follows]

Dated: July 31, 2019

Respectfully submitted,

/s/ Michael S. Etkin

LOWENSTEIN SANDLER LLP

Michael S. Etkin
Andrew Behlmann
Scott Cargill
One Lowenstein Drive
Roseland, New Jersey 070068
Telephone 973-597-2500
Facsimile 973-597-2333
metkin@lowenstein.com
abehlmann@lowenstein.com

Bankruptcy Counsel to Lead Plaintiff

ROBBINS GELLER RUDMAN & DOWD LLP

Randall J. Baron
David A. Knotts
Eun Jin Lee
655 West Broadway, Suite 1900
San Diego, California 92101
Telephone 619-231-1058
Facsimile 619-231-7423
dknotts@rgrdlaw.com
elee@rgrdlaw.com

Lead Counsel to Lead Plaintiff

JOHNSON FISTEL, LLP

W. Scott Holleman
99 Madison Avenue, 5th Floor
New York, New York 10016
Telephone 212-802-1486
Facsimile 212-602-1592
scotth@johnsonfistel.com

Additional Counsel to Lead Plaintiff