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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE WORLDCOM, INC., 02 Civ. 3288 (DLC)
3 SECURITIES LITIGATION

4 Proposed Settlement

4 -----x

5 July 11, 2005
5 2:00 p.m.

6 Before:

8 HON. DENISE L. COTE,
9 District Judge

11 APPEARANCES

12 BARRACK, RODOS & BACINE
13 Attorneys for Plaintiff NYS Common Retirement
13 BY: JEFFREY BARRACK, ESQ.

15 BERNSTEIN, LITOWITZ, BERGER & GROSSMANN LLP
15 Attorneys for Class Plaintiffs
16 BY: JOHN P. COFFEY

17 KELLER ROHRBACK LLP
18 Attorneys for ERISA Plaintiffs
18 BY: LYNN LINCOLN SARKO, ESQ.

20 LOWEY, DANNENBERG, BEMPORAD & SELINGER, P.C.
20 Attorneys for New York Pension Fund
21 BY: DAVID HARRISON, ESQ.

22 CURTIS MALLET-PROVOST COLT & MOSLE

23 Attorneys for Arthur Andersen LLP and Melvin Dick
23 BY: PETER BEHMKE, ESQ.
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2

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1 APPEARANCES

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2 HOGAN & HARTSON, LLP

3 Attorneys for Defendant Bernard Ebbers

3 BY: DAVID F. WERTHEIMER

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5 KELLEY, DRYE & WARREN

5 Attorneys for JP Morgan Defendants

6 BY: ROBERT STEINER, ESQ.

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7 PAUL, WEISS, RIFKIND, WHARTON & GARRISON

8 Attorneys for Defendants Citigroup, Salomon, Grubman

8 BY: SUSANNA BUERGEL, ESQ.

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10 SKADDEN, ARPS, SLATE, MEAGHER & FLOM

10 Attorneys for The Underwriter Defendants

11 BY: JAY B. KASNER

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12 DLA PIPER RUDNICK GRAY CARY US LLP

13 Attorneys for MCI, Inc.

13 BY: ERIC B. MILLER, ESQ.

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1 (Case called)

2 THE COURT: We are here today to address the proposed
3 settlement between the class action plaintiffs the and
4 defendant Bernard Ebbers. I received papers last week that
5 includes a proposed preliminary approval order, proposed
6 judgment, the stipulation of settlement, and a confidential
7 supplemental stipulation of settlement. My chambers
8 communicated certain comments to counsel for lead plaintiff
9 that I expected to address at today's conference on the record.
10 That happened, I think, on Friday.

11 We received today, with a July 8th cover letter, a
12 revised stipulation of settlement, which I think principally
13 changes the definition of "litigation" and "action" as those
14 terms were defined in the stipulation of settlement. Of
15 course, I will let Mr. Coffey address that. I should also say
16 I have received certain submissions from plaintiffs in the
17 ERISA class action, and I will address those also later.

18 It appears that the class action plaintiffs reviewed
19 detailed financial information from Mr. Ebbers and that that
20 review was the basis for the terms of the settlement that were
21 reached. If I understand correctly from the stipulation of
22 settlement, there are certain provisions that protect the class
23 in the event that the detailed financial information turns out
24 to be inaccurate. These include that no transferred assets
25 will be returned, that any undisclosed assets will also be

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1 transferred, and that the agreement is voidable by the class
2 and by MCI.

3 There is also an agreement, as I understand it, with
4 the United States Attorney's office and the New York State
5 Attorney General's office.

6 I am interested in learning today, among other things,
7 what the status of the agreement is between MCI and Mr. Ebbers,

8 whether that remains an unresolved issue that might affect my
9 preliminary approval analysis.

10 I have questions about the ERISA note issue, but I
11 think that they have been largely cleared up by the submissions
12 that have been made, so we will deal with that later.

13 If I understand correctly, 5 percent of the assets are
14 being reserved for potential settlement in the individual
15 actions. Am I right?

16 MR. COFFEY: Your Honor, yes. Just to clarify, the
17 noncash assets. The cash is going to be transferred to the
18 class escrow account. Then, as assets are being sold, the
19 proceeds will go into the trust account. 5 percent of that is
20 set aside for other litigations. That is principally going to
21 be the individual actions. But just to be clear, that is from
22 the noncash assets. I should clarify that that includes the
23 income tax rebate. That is cash, but it is defined as a
24 noncash asset because it is not liquid today.

25 THE COURT: There is an allocation that is proposed
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5

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1 here as 80 percent of the recovery from Mr. Ebbers on behalf of
2 the class for Exchange Act claims and 20 percent for Securities
3 Act claims.

4 MR. COFFEY: That is correct, your Honor. That is
5 what we used in both the directors and the Andersen
6 settlements.

7 THE COURT: There is an issue here about notice to the
8 class. Of course, in the most recent mailed notice we did note
9 that there was a possibility that there would be settlements
10 with the four individual defendants that remained open at the
11 time of the mailing and that, for reasons I described or that
12 were described in the notice, we would not be doing a mailed
13 notice again but would rather just be doing a notice through
14 publication, unless there was a specific request for a mailing.

15 I am wondering, and this goes to some extent to the
16 terms of the preliminary approval order, whether we shouldn't
17 hold off with respect to publication notice for at least some
18 short time to see whether there could be just one such notice
19 with respect to the four remaining defendants.

20 MR. COFFEY: That would be the class's preference,
21 your Honor. We have been in discussions with counsel for the

22 remaining three defendants. I think we are very, very close to
23 a deal with two. There are some issues with regard to Mr.
24 Sullivan. We are turning to those now.

25 The good news is that they are being sentenced at the
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1 latter part of this month and early August. That is going to
2 force us to fish or cut bait pretty soon. I am hopeful that we
3 will be before your Honor with at least two, hopefully three,
4 additional settlements in the coming two to three weeks. I
5 would propose a target for publication in very early August.

6 THE COURT: That seems appropriate in my view based on
7 Mr. Coffey's representations. I should also note that under
8 this agreement, the counsel for the lead plaintiff is not
9 seeking attorney's fees to be recovered or paid out of any of
10 the Ebbers settlement. That is another material term to put on
11 the record.

12 That takes us, as far as my review of issues, to two
13 remaining principal issues. I want to check my notes again.
14 One has to do with MCI and the other has to do with the amounts
15 of money involved. Let me turn first to counsel for MCI or Mr.
16 Coffey to address the status of those agreements.

17 MR. MILLER: Your Honor, Eric Miller of DLA Piper
18 Rudnick for MCI. The status of settlement as between MCI and
19 Mr. Ebbers is as follows.

20 In connection with the term sheet that was the
21 precursor to the stipulation of settlement that is before your
22 Honor, Mr. Ebbers and MCI entered into a companion term sheet
23 that sets forth material terms and conditions of the settlement
24 as between MCI and Mr. Ebbers. We circulated to counsel for
25 Mr. Ebbers on late Friday afternoon a draft settlement

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7

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1 agreement, and we expect that comments will be forthcoming
2 shortly.

3 It will be necessary, as we point out in the draft
4 motion papers that will be the companion to that settlement
5 agreement to be filed both in front of Judge Gonzalez in the
6 bankruptcy court and in front of Judge Rakoff in connection

7 with the pending SEC litigation, that the approval process is
8 going to entail bankruptcy court approval as well as approval
9 in front of Judge Rakoff.

10 Whether approval is obtained in front of Judge Rakoff
11 in advance of having a definitive settlement agreement is an
12 open question. But we do anticipate that probably in the next
13 week to ten days we will have a definitive agreement that would
14 be submitted along with the bankruptcy court motion for Judge
15 Gonzalez's consideration.

16 THE COURT: Is Judge Rakoff's approval necessary
17 because Mr. Ebbers is a defendant in the SEC litigation also?

18 MR. MILLER: The principal reason why Judge Rakoff's
19 approval has been deemed appropriate, if not necessary, is the
20 fact that the corporate monitor appointed by Judge Rakoff
21 continues to exercise general supervisory authority over MCI,
22 which is successor by merger to the reorganized WorldCom.

23 MCI determined that out of an abundance of caution,
24 because this involves a material settlement involving a
25 significant former insider, it would be appropriate to get

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1 Judge Rakoff's authorization for the settlement in anticipation
2 of making a similar request to Judge Gonzalez in the bankruptcy
3 proceeding.

4 THE COURT: Thank you. Mr. Wertheimer, do you want to
5 add anything with respect to the status of those discussions?

6 MR. WERTHEIMER: No, your Honor. I think counsel has
7 properly described where we are going. His expectation of a
8 settlement being reached within 9 to 10 days, or I should say a
9 documented final settlement seems reasonable.

10 THE COURT: There is a confidential document that has
11 been provided to me called a confidential supplemental
12 stipulation. It is short. It has three pages of substance and
13 then additional pages with signatures. One of the things that
14 it does is describe what is called a retention fund.

15 The retention fund is a defined term from page 13 of
16 the stipulation of settlement. It is defined to mean the cash
17 that Mr. Ebbers will be permitted to retain to pay legal bills,
18 to establish an escrow account for anticipated legal fees, to
19 pay the ERISA note or an amount of \$450,000 on an ERISA note.
20 Those are the identified purposes. Without putting on the

21 public record the amounts in the confidential stipulation,
22 these issues are discussed at paragraphs 4 through 7.

23 I did a calculation based upon my understanding of
24 what is described at paragraphs 4 through 7 to arrive at a net
25 amount of cash that I understood from this document Mr. Ebbers

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9

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1 was being allowed to retain for personal purposes. Without
2 putting that amount on the record, let's just call it X, is
3 there any reason why that amount, the X amount, should not be
4 publicly disclosed?

5 MR. COFFEY: May I have a moment, your Honor?

6 THE COURT: Yes.

7 MR. COFFEY: Your Honor, if I may, I think the
8 calculation would not involve paragraph 7.

9 THE COURT: Right.

10 MR. COFFEY: I just wanted to make sure we have the
11 same number in mind.

12 THE COURT: Yes. What I did was take the amount in
13 paragraph 4 and subtract the amounts in paragraphs 5 and 6.

14 MR. COFFEY: And the 450?

15 THE COURT: No.

16 MR. COFFEY: The 450 comes out of the retention fund.
17 I'm sorry. It is not in paragraph 4.

18 MR. WERTHEIMER: It is in the definition.

19 MR. COFFEY: Yes. What is left, your Honor, the
20 number in paragraph 4, and I apologize to those present that
21 this is somewhat of a mystery, subtract from that number the
22 number in paragraph 5, the number in paragraph 6, with what he
23 is left over he has to pay 450 of that by tomorrow, of what is
24 left over.

25 The number I think you are thinking of and the number

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10

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1 we are thinking of, our number is 10 percent of what you are
2 thinking of.

3 THE COURT: Fine. Is there any reason why your number
4 should not be publicly disclosed?

5 MR. COFFEY: I will defer to Mr. Wertheimer.

6 THE COURT: Let me explain why. It is hard, I think,
7 for there to be effective notice to the class such that they
8 can opine on the fairness of this settlement in their view
9 without knowing some of the numbers. It seems to me that
10 number that we are focusing on plus perhaps a description of
11 the retention of the home that is in the name of Christy Ebbers
12 are the two most important components of the settlement for the
13 class to make a judgment about the fairness of the terms of the
14 settlement.

15 MR. WERTHEIMER: Your Honor, we have no objection to
16 disclosure of the amount that we are thinking of. That was the
17 10 percent of the figure that your Honor might have otherwise
18 been considering.

19 MR. COFFEY: If Mr. Ebbers has no problem with it, we
20 certainly don't, your Honor.

21 THE COURT: Why don't you place on the record what
22 that amount of cash is, then.

23 MR. WERTHEIMER: Your Honor, that amount of cash is
24 \$50,000.

25 THE COURT: In terms of what Mr. Ebbers is being
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1 permitted to retain, we go to page 15 of the stipulation of
2 settlement, the small paragraph 9 towards the bottom of that
3 page. He is being permitted, in effect, to retain \$50,000 in
4 the retention fund; a residence in Jackson, Mississippi, owned
5 by Christy Ebbers, and I will take representations about that
6 in a moment; certain oil and gas interests; IRA assets; and
7 personalty other than farm vehicles. Is that what it comes
8 down to?

9 MR. COFFEY: It does, your Honor. That is it. There
10 is a catch-all here that says all other assets that he has. We
11 have swept everything away except for certain enumerated
12 excluded assets. This is a catch-all should something else
13 arise and we have the option to void but we may not.

14 I should note that I don't necessarily agree that it
15 is necessary that the class see every piece of this. Certainly
16 if Mr. Ebbers' is willing to reveal it, that is fine with us.
17 In an ordinary settlement there is an amount of money against a
18 claim, and the class typically doesn't get to know what was
19 left. Here, there were discussions about other folks who might

20 have a claim on Mr. Ebbers. The way we tried to work through
21 all that, at least to my understanding, there was an effort to
22 have some mystery about what was left. To the extent that Mr.
23 Ebbers' counsel is willing to put that on the record, we
24 certainly don't have an objection to it.

25 THE COURT: I don't see any reason to put on the
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12

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1 record the amounts or discussion in paragraphs 4, 5, and 6 or 7
2 of the confidential supplemental stipulation. With respect to
3 this residence in Jackson, Mississippi, there is a discussion
4 of another residence also that has to be vacated by a date I
5 believe in October at the latest. Do you want to address those
6 two, Mr. Coffey?

7 MR. COFFEY: The Pine Ridge farm is the principal
8 residence, your Honor. That is the Ebbers estate. We will be
9 selling that. The arrangement is that the trustee, when one is
10 appointed, will make efforts to sell that as soon as possible.
11 If he or she sells it before October 31, then upon reasonable
12 notice the Ebbers will vacate the residence with their personal
13 effects. In any event, by October 31 they have to vacate.
14 That is a multimillion dollar home. There may be some
15 challenges in selling it based on where it is located, but we
16 were pretty adamant in getting that asset.

17 We understand there is another home in Jackson that
18 was purchased for Mrs. Ebbers. What we were told about the
19 number, I am going to defer to Mr. Wertheimer as to whether
20 they are comfortable disclosing that on the record, and, if
21 they are, to tell you.

22 THE COURT: I don't need a number, but I take it it is
23 a more modest residence?

24 MR. COFFEY: It is certainly more modest than the
25 house that she will be leaving. I haven't eyeballed it. We

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13

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1 have a number. It is certainly our understanding that it is
2 not -- I think it is fairly modest, frankly.

3 THE COURT: Are there any objections to this
4 settlement? Hearing none . . .

5 I have in a letter from counsel, I believe it is your
6 letter, Mr. Sarko -- it is really not a letter. It is a
7 memorandum that I received today. It is dated July 8th. It is
8 in support of a motion for approval of note satisfaction
9 agreement. It contains certain descriptions of the value of
10 the settlement with Mr. Ebbers, taken apparently from, Mr.
11 Coffey, your client's website. Are you able to share that with
12 me now, how you would value the settlement based on your best
13 understanding as of today?

14 MR. COFFEY: I will take a stab at it, your Honor. It
15 is difficult. I would say the immediate cash component is
16 approximately \$5½ million, of which 3½ is currently in Mr.
17 Ebbers' accounts besides the amount in the retention fund.
18 Plus, there are the proceeds from a recent sale of an asset of
19 approximately \$2 million, which is in-bound. If that is in his
20 accounts within three days from preliminary approval, the class
21 gets it immediately. If not, we get the paperwork to know it
22 is sufficient to be coming shortly. That is the easy part.

23 There is 173,000 in cash that is going to go to fund
24 the trust as seed money. Then we have the assets. We spent a
25 lot of time going over what the value of those assets are and

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14

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1 estimates. We have some appraisals. Some of it is fairly
2 good. Some of it is kind of loose, but it didn't really matter
3 because we were going to get it anyway. Our conservative
4 estimate that the value of all of these assets could be between
5 25 and \$40 million.

6 By the way, I should note, since MCI counsel is here,
7 that includes Joshua Timberlands, which is the largest asset
8 physically, which MCI has a lien on. Even if we were to go
9 through litigation here, get summary judgment, we would
10 certainly line up behind MCI. They threw that in the pot. The
11 class will get two-thirds of the proceeds of that.

12 There is a wide variety of what that number could be.
13 Again, there are approximately 300 million of debt owed on that
14 property or a significant number. I may not have that number
15 precisely right. As the assets are sold, the proceeds go in
16 the bucket, the trust bucket, and then they are divided up.

17 For purposes of ERISA, what is important is what goes
18 to MCI. Only 25 percent of that is going to go to MCI, 25

19 percent of most of the assets, a third of the Joshua
20 Timberlands proceeds.

21 In order to exceed the \$45 million threshold in the
22 ERISA case to start getting more than the 450,000, it is our
23 estimate that you would have to have assets in the neighborhood
24 of 150 million. Knock on wood we should be so lucky, but I
25 don't think we are going to get there. I don't think there is

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15

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1 any realistic way that we are going to get there.

2 Mr. Sarko has been provided the materials we have been
3 provided. We have looked through them. We have taken a
4 realistic look at it. In return for us, the securities class,
5 arranging with Mr. Ebbers and MCI that they be paid before Mr.
6 Ebbers is sentenced, real hard cash now, Mr. Sarko, having
7 looked at the documentation, agreed that this was of benefit to
8 the ERISA class.

9 I don't think you are ever going to get anywhere near
10 that threshold. Even if the optimistic sides of our estimates
11 prove to be too conservative, I just don't think you are going
12 to get there.

13 THE COURT: Let me see if there are any remaining
14 issues on the securities class documents, and then we will turn
15 to the ERISA. There is a passage on page 31 in the stipulation
16 of settlement that I can't say I fully grasp, but I expect I
17 don't need to for my review. I expect it all concerns
18 bankruptcy issues and the effect of bankruptcy law. It is two
19 sentences that begin in the middle of the page with the phrase,
20 "If a bankruptcy-triggering event occurs," comma. Mr. Coffey?

21 MR. COFFEY: Your Honor, we have built into this
22 settlement the protection that we also built into the Andersen
23 settlement. If Mr. Ebbers puts himself into bankruptcy or if
24 he is put into bankruptcy, the class wants to have a chit for
25 that bankruptcy. We have that. That is provided for in the

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16

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1 confidential supp. It is many billions of dollars of
2 liquidated claim.

3 We only get to use that chit if he is in bankruptcy

4 and a bankruptcy judge orders us to give back all of the assets
5 and the money. In other words, if there is a call-back, we
6 don't want to be where we are today. We want to be better than
7 that in return for getting this done. So Mr. Ebbers has agreed
8 that if that should occur, we have this chit for the
9 bankruptcy. The intent, and I will say it publicly, is to
10 dominate that bankruptcy on behalf of our class in return for
11 his release. He keeps his release, we get the chit.

12 We all hope that never happens. We think the fact
13 that it is out there inoculates Mr. Ebbers against someone
14 putting him into bankruptcy. I believe it has already worked
15 in connection with some folks who had some issues with our
16 settlement, in making them think twice about doing something
17 rash. So hopefully it is never used, but it is there to
18 protect the class.

19 With regard to that, I do need to put out something
20 that isn't in this settlement, because this is an agreement
21 between Mr. Ebbers and the class, but which is part of the
22 whole menu of agreements among all the parties. That is, as
23 part of this, the class lodged an objection in the bankruptcy
24 with regard to certain subordination issues.

25 We are going to withdraw those claims as lead
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1 plaintiff in return for the consideration here with MCI as
2 their part of the deal. That is something that is going to be
3 presented to Judge Gonzalez. I don't think Judge Rakoff sees
4 that. Judge Gonzalez will see that.

5 There has been a summary judgment motion pending to
6 dismiss our claim for quite some time. We have taken a
7 realistic look at that. We have looked at the benefits. But
8 that is part of the agreement that MCI and the class have.

9 There is some language in the released claims of this
10 particular settlement which is identical to the released claims
11 language in the other settlement. But given the circumstances
12 unique to this particular settlement, because we have a side
13 agreement or a separate agreement with MCI, I thought Mr.
14 Miller could explain exactly what our understanding is of the
15 released claims, what it does and does not apply to in the
16 settlement.

17 MR. MILLER: Thank you. As Mr. Coffey just indicated,

18 one aspect of the settlement, the sort of three-way settlement,
19 if you will, that has been reached among Mr. Ebbers, the class,
20 and MCI relates to certain intercreditor arrangements between
21 the class and MCI. Among those intercreditor arrangement is an
22 undertaking by the class individually and as class
23 representative to withdraw certain claims pending in the
24 WorldCom bankruptcy case. Those claims are, as Mr. Coffey
25 indicated, subject to a pending motion for summary judgment

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18

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1 concerning the subordination of those claims.

2 Those claims are claims that relate to equity
3 securities that were purchased by the class representative and
4 other class members. Under the bankruptcy code, there is a
5 provision which states that creditor claims that have as their
6 origin, if you will, the purchase of an equity security are
7 entitled to no better priority than the equity security itself.
8 Under the WorldCom plan of reorganization that was confirmed,
9 and those claims which are subject to subordination will
10 receive no recovery.

11 We pointed out to Mr. Coffey when we reviewed this
12 stipulation of settlement in draft form that paragraph EE of
13 the stipulation of settlement, which contains a proviso that
14 reads, "The released claims described do not operate to
15 preclude any class member or authorized claimant from making
16 any claim with respect to any funds made available as a result
17 of the WorldCom bankruptcy," made perfectly good sense to us
18 insofar as claims asserted by bondholders who were always
19 creditors of WorldCom and who were entitled to receive recovery
20 under the terms of the WorldCom plan are concerned.

21 However, with respect to claims asserted by the class,
22 it is the agreement of the class through its representative to
23 withdraw equity security claims that are subject to summary
24 judgment. We wanted to make sure that that proviso is not read
25 by anyone to suggest that if an individual class member which

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1 has not exercised timely an opt-out right, that that language
2 does not provide that individual class member who has asserted

3 a claim based on the purchase of an equity security with an
4 ability to argue that the class representatives' withdrawal of
5 the class claim would have preclusive effect.

6 I know I said a lot of words, but there is a
7 distinction to be drawn between creditors who have a claim
8 based on a debt security, and there is no understanding on the
9 part of the class and MCI that the distribution rights
10 associated with those claims are going to be disturbed at all
11 under the plan.

12 However, with respect to the equity security-based
13 claim, which is subject to subordination, summary judgment
14 motion pending before Judge Hardin, the withdrawal of those
15 claims by the class representative individually and on behalf
16 of the class will in fact result in MCI having available to it
17 an argument that any individual plaintiffs who have asserted
18 me-too claims will have those claims subject to disallowance
19 for the reasons stated.

20 THE COURT: I actually haven't read or reviewed the
21 proposed judgment yet, the final judgment, because we are
22 months away from me having to decide that. Hearing what you
23 have to say, I am wondering if counsel shouldn't work on a
24 revision to -- I am looking at this for the first time now -- I
25 think it is paragraph 11 to make the distinction between equity

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1 and bondholders clearer.

2 MR. COFFEY: We will do that, your Honor.

3 THE COURT: One final issue that I have to raise, and
4 that is in the proposed preliminary approval order, paragraph
5 11, "Nothing herein shall prohibit a previously settling
6 defendant from pursuing defenses in the litigation based on the
7 alleged responsibility of Ebbers."

8 MR. COFFEY: Your Honor, this is with regard to cases
9 in the litigation other than this action that continue. Once
10 we fix "litigation" versus "action" in the definitions, this is
11 intended not to bar Mr. Selinger or the defendants in Mr.
12 Selinger's case from arguing that Mr. Ebbers should bear most
13 of the responsibility. I think that is the purpose of this
14 paragraph.

15 THE COURT: Let's look at the new definition of
16 "litigation."

17 MR. COFFEY: "Litigation" is meant to be everything
18 that is before you on the securities side, individual action
19 and class action. "Action" is just the class actions
20 consolidated with New York State Common Retirement Fund.

21 THE COURT: Fine. Mr. Sarko --

22 MR. SARKO: Your Honor, do you have a letter that was
23 delivered on Friday to you, July 8th?

24 THE COURT: I have a letter of July 8th with certain
25 attachments. I have a motion for approval of note satisfaction

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21

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1 agreement and a submission of order approving plan of
2 allocation. Those are the three documents I have.

3 MR. SARKO: If I may, your Honor, as part of the
4 settlement there was an issue of the note that the ERISA
5 plaintiffs had. There were a couple of options which the
6 plaintiffs had. One was to participate in the trust
7 theoretically. Two was to look at what was there and seek
8 immediate payment. I sent the letter on Friday, and the note
9 satisfaction agreement actually was executed right before this
10 hearing and is being filed today. But I wanted you to see
11 that.

12 On Friday we finished briefing the Department of Labor
13 on what was going on. They asked a lot of questions. They are
14 satisfied that this would be in the best interests of the ERISA
15 class. Upon the execution of that note, the money will be wire
16 transferred to the escrow account, awaiting the Court's
17 approval. We don't expect the Court to rule on the motion
18 today. It is getting filed today.

19 THE COURT: Thank you. I, obviously, haven't been
20 able to give notice of any conference that we would have to
21 review ERISA issues. I will wait to hear from you, Mr. Sarko,
22 as to when you think it would be appropriate for me to schedule
23 such a conference, unless you know now.

24 MR. SARKO: Your Honor, as my letter said, there are
25 three pieces. There is Mr. Sullivan as the final piece. I

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1 would think that if we wait, we are expecting hopefully that

2 could resolve itself. We also are waiting for the Second
3 Circuit to remand the Merrill Lynch item, and that would
4 complete all items in the ERISA case.

5 THE COURT: Perhaps I should have begun with this as
6 opposed to ending with this. I want the congratulate everyone
7 for their ability to accomplish this settlement and for the
8 hard work that is reflected in this these documents and in the
9 negotiations. Based on my preliminary review, I have no
10 problem, no hesitation, in giving preliminary approval to the
11 settlement of the class with Mr. Ebbers, understanding the
12 impact it will have on the ERISA class action and understanding
13 to the extent described in these papers and orally today with
14 the interplay with the MCI litigation, both in bankruptcy court
15 and before Judge Rakoff.

16 It seems to me that this is an excellent recovery for
17 the class and reflects serious cooperation on Mr. Ebbers' part
18 in divesting himself of assets that rightfully belong to
19 others, given his conviction before Judge Jones.

20 I am confident that the class is well represented in
21 scrutinizing the few remaining assets described in paragraph 9
22 of the settlement agreement to determine whether or not there
23 is any substantial value from those assets such that the class
24 should have made a greater effort to obtain them.

25 Is there anything else that we need to do?

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1 MR. COFFEY: Your Honor, if I might beg your
2 indulgence. Because the settlement had a lot of moving parts,
3 I would like to publicly thank MCI and its counsel for their
4 cooperation in reaching this settlement and indeed for their
5 cooperation throughout this litigation. I must say that the
6 new management at MCI throughout the litigation was extremely
7 cooperative with the class, and especially so in the context of
8 this very difficult negotiation.

9 I would also like to thank the U.S. Attorney's office
10 for having the foresight to go ahead and do the deal this way,
11 to step aside and let the class get the assets. In particular,
12 AUSA David Anders, who mediated, nudged, and presided over this
13 very, very difficult negotiation at times. I think he deserves
14 a special pat on the back.

15 Finally, I don't get to do it very often, but the

16 folks in-house at the Common Retirement Fund were spectacular
17 here. They brought auditors to bear on these financial
18 statements. They asked questions that didn't even occur to us,
19 the lawyers. We felt very, very comfortable by the time this
20 deal was done that the class had been extremely well served by
21 their lead plaintiff as well as the lead counsel.

22 I just wanted to take a moment to thank those people
23 publicly. Thank you, your Honor.

24 THE COURT: Thank you.

25 Mr. Miller, I don't know how often MCI is going to be
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1 before me again. I would like you to convey my thanks,
2 particularly to Ms. Meshulam, who was before me more than she
3 wished to be, was always well prepared and thoroughly
4 cooperative. It was pleasure to have her in my courtroom.

5 MR. MILLER: I will be sure to let her know, your
6 Honor.

7 THE COURT: Thank you all.

8 (Adjourned)

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