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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 IN RE WORLDCOM, INC.
4 SECURITIES LITIGATION,

02 Civ. 3288 (DLC)

5 This Document Relates to:

02 Civ. 4816 (DLC)

6 All Actions

7 -----x

8 July 28, 2005
9 11:00 a.m.

10 Before:

HON. DENISE L. COTE,

District Judge

11 APPEARANCES

12
13 KELLER ROHRBACH, LLP
14 Attorneys for Lead Plaintiffs in ERISA Litigation
15 BY: LYNN LINCOLN SARKO
GARY GOTTO

16 BERNSTEIN, LITOWITZ, BERGER & GROSSMANN, LLP
17 Attorneys for NYSCRF
18 BY: JOHN P. COFFEY

19 - and -
20 BARRACK, RODOS & BACINE
21 By: BETH R. TARGAN

22 LOWEY DANNENBERG BEMPORAD & SELINGER, PC
23 Attorneys for NY Pension Fund and Liaison Counsel
24 BY: NEIL L. SELINGER
25

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1 APPEARANCES CONTINUED
Page 1

2 PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
3 Attorneys for Citigroup, Salomon, and
4 Jack Grubman
BY: ERIC GOLDSTEIN

5 SKADDEN ARPS SLATE MEAGHER & FLOM LLP
6 Attorneys for Underwriter-Related Defendants
BY: BEVERLY A. FARRELL

7 ARNOLD & PORTER LLP
8 Attorneys for Scott Sullivan
9 BY: IRVIN B. NATHAN

10 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
11 Attorneys for Defendant Arthur Andersen, LLP
BY: PETER J. BEHMKE

12 ALLEN & OVERY
13 Attorneys for Carl Aycock and John A. Porter
14 and liaison counsel for other director defendants
BY: PAMELA ROGERS CHEPIGA

15 GIBSON, DUNN & CRUTCHER LLP
16 Attorneys for Merrill Lynch Trust Co.
17 (ERISA Litigation)
BY: PAUL BLANKENSTEIN

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1 THE CLERK: In the matter of WorldCom Securities
2 Litigation.

3 Counsel, please state your names for the record.

4 MR. COFFEY: Good morning, your Honor. This is Sean
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5 Coffey from Bernstein Litowitz, on behalf of lead plaintiff,
6 New York Common Retirement Fund, and with me here today --

7 MS. TARGAN: Beth Targan, from Barrack, Rodos &
8 Bacine.

9 MR. COFFEY: Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. SARKO: Good morning, your Honor. Lynn Sarko,
12 from Keller Rohrback, as an observer in the securities case, on
13 behalf of the ERISA plaintiffs.

14 MR. GOTTO: Gary Gotto, Keller Rohrback, your Honor.

15 MR. SELINGER: Good morning, your Honor. Neil
16 Selinger, Lowey Dannenberg, liaison counsel for the individual
17 action plaintiffs.

18 MR. NATHAN: Good morning, your Honor. Irv Nathan,
19 Arnold & Porter, for the defendant, Scott Sullivan.

20 MS. FARRELL: Good morning, your Honor. Beverly
21 Farrell, from Skadden Arps, for the Underwriter Related
22 defendants.

23 MR. BLANKENSTEIN: Good morning, your Honor. Paul
24 Blankenstein, from Gibson, Dunn & Crutcher, representing
25 defendant Merrill Lynch in the WorldCom Securities Litigation.

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1 MS. CHEPIGA: Your Honor, Pamela Chepiga, Allen &
2 Overy, for certain director defendants.

3 MR. GOLDSTEIN: Good morning, Eric Goldstein, Paul,
4 Weiss, for the Citigroup related defendants.

5 MR. BEHMKE: Good morning, your Honor. Peter Behmke,
6 from Curtis, Mallet-Prevost, for Arthur Andersen.

7 THE COURT: Is there anyone else who wishes to place
Page 3

8 an appearance on the record?

9 (Pause)

10 Thank you.

11 Just a few housekeeping matters before we begin.

12 There is a letter we received on July 25 from Mr. Del
13 Grosso, which I am passing on to lead plaintiff, and a message
14 of complaint with respect to...

15 (Pause)

16 Excuse me one second.

17 I think this is best construed, the second document,
18 as a complaint against Garden City Group on behalf of a person
19 who is blind and is having difficulty dealing with Garden City
20 Group. It is communications we received from Judge Jones'
21 Chambers, and so these two documents will be provided to lead
22 plaintiff.

23 As I came out this morning, I was also handed another
24 document, a Stipulation Agreement of Settlement with Scott
25 Sullivan in the ERISA litigation. Obviously, I have not had an

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1 opportunity to review this, and I will be happy to do so at a
2 later time.

3 Is there anything that ERISA counsel wish to say about
4 that

5 MR. GOTTO: Thank you, your Honor.

6 We have just this morning signed that stipulation with
7 Mr. Nathan. We wanted to provide a copy to the Court.

8 We will be filing a motion for preliminary approval of
9 the settlement with Mr. Sullivan in the next few days.

10 We also will be filing a motion -- the Merrill Lynch

11 appeal was remanded just this week, and we furnished a copy of
12 the remand order as well, and we will be filing papers for
13 preliminary approval of that settlement, as well, the first
14 thing next week, your Honor.

15 THE COURT: Good. Thank you.

16 I also received -- these are messages from lead
17 plaintiff to my chambers, I believe -- two complaints, one by a
18 S. R. Stofle, S-T-O-F-L-E, about the extension of the deadline
19 for submitting proof of claim forms in its communication of
20 July 22nd, 2005, I believe; and the second is a complaint from
21 a S. Kaiser, K-A-I-S-E-R, and it is dated July 11, 2005, and it
22 essentially is a complaint about the amount of the settlements
23 in this action, and it is by someone who lost \$20,000 in their
24 WorldCom investments, which I think were entirely in stock, and
25 complaints essentially that bondholders will receive

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1 substantial recoveries and stockholders will only receive
2 approximately 56 cents per share.

3 This is a matter of importance, of course, for me to
4 consider -- both of these matters are, and I will consider them
5 in more detail at the time of the fairness hearing, and so I
6 will save those for the fairness hearing and will expect
7 counsel to be in a position to comment on them at the time of
8 the fairness hearing.

9 We are here today -- now turning to the issues that
10 bring us together -- pursuant to an Order I issued earlier this
11 week, we are here to decide about preliminary approval of the
12 settlements of the last three defendants in the WorldCom
13 Securities Class Action. These are settlements reached with

14 Mr. Sullivan and also with Mr. Yates and Mr. Myers.

15 In connection with the papers that were provided to
16 me, there was included a Notice of Proposed Settlements, and
17 yesterday I provided to everyone, through an Order, some
18 suggested revisions to that notice. I have further suggested
19 revisions which we will discuss later in this proceeding.

20 Let's turn first, though, to the merits of the inquiry
21 with respect to preliminary approval, and I'll take your
22 application, Mr. Coffey.

23 MR. COFFEY: Thank you, your Honor.

24 Lead plaintiff seeks preliminary approval of our
25 settlements with Scott Sullivan, WorldCom's former chief

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1 financial officer, and with two other former WorldCom
2 executives, David Myers and Buford Yates.

3 As your Honor well knows, the litigation against them
4 was stayed pending the criminal proceedings, and promptly after
5 the Andersen trial ended, we began in earnest to speak with
6 individuals for those three as well as Mr. Ebbers. Those
7 negotiations included extensive analysis of sworn financial
8 statements that were provided by all four of those individuals.

9 In connection with Mr. Sullivan, there was extensive
10 follow up, extensive due diligence done on a number of business
11 interests that he has, certainly due diligence in connection
12 with the house that is being built in Boca Raton. I spoke with
13 the real estate broker, for example. I looked at prior sales
14 agreements. And we reached a conclusion, with regard to
15 Mr. Sullivan, about what would be appropriate to extract from
16 him in a settlement.

17 That included the proceeds of the sale of the house.
18 There is a contract to sell the house, and, in fact, the buyer
19 has a certain period of time, if the buyer elects to exercise
20 his option, to walk away from the deal. Then we, lead
21 plaintiff, would have sole and exclusive right to sell the
22 property.

23 The property is subject to a number of fairly
24 extensive liens. The good news, and I don't really want to
25 compromise anything by getting into too much detail in public,

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1 is that one of the liens, a contractor's lien on the house
2 which was the subject of litigation filed by the contractor,
3 has been resolved at a discount. So that lien is reduced.

4 There is also an attorney's lien, and we had
5 discussions about that and are satisfied that that is an
6 appropriate lien to be paid.

7 With regard to Mr. Sullivan's remaining assets, which
8 are not extensive at all, we insisted that Mr. Sullivan
9 surrender what's left of his WorldCom, now MCI, 401(k) account,
10 which may have been fairly large at one point but is relatively
11 small compared to that now. While it is unclear we could have
12 ever gotten to that had we prevailed in the lawsuit,
13 Mr. Sullivan agreed that he would surrender that.

14 THE COURT: I take it, his 401(k) account was an
15 account in which he held WorldCom stock?

16 MR. COFFEY: It was, your Honor. Based on my prior
17 familiarity with how Salomon Smith Barney worked with WorldCom
18 and, in particular, Mr. Sullivan, I am quite comfortable that
19 it was heavily weighted in WorldCom stock.

20 There were other moving pieces here. We were
21 certainly talking to the U. S. Attorney's Office almost daily.
22 Again, Assistant U. S. Attorney David Anders played a pivotal
23 role in these negotiations. He was assisted by Assistant U. S.
24 Attorney Bill Johnson at one point.

25 We have been in fairly regular contact with the

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1 Securities and Exchange Commission with regard to the Sullivan
2 settlement and the Myers and Yates settlements.

3 I can say that the U. S. Attorney's Office feels that
4 we have extracted a very, very favorable settlement for the
5 class. I note that Mrs. Sullivan has -- at least has a
6 50 percent interest in the mansion in Boca Raton that is being
7 built. She has agreed to convey her interest to the class.

8 In addition to the IRA piece and the house piece, lead
9 plaintiff insisted, and ultimately Mr. and Mrs. Sullivan
10 agreed, that certain money in the sole possession of
11 Mrs. Sullivan be put into a trust solely for purposes of her
12 treating her illnesses and her necessities for her well-being,
13 which are extensive, and I think I would just like to leave it
14 there, and the raising of their child, who is currently 4 years
15 old, and that amount which is in the confidential stipulation
16 which we have given to your Honor is to be set up in trust
17 prior to sentencing, I believe.

18 So we recommend the approval of the Settlement. We
19 think it maximizes the return to the class, the recovery to the
20 class from this particular individual.

21 I can say that, having scrutinized his personal
22 financial statement and the follow-up material, that we have

23 taken substantially all of his assets. There are these
24 interests in these businesses which we are told are virtually
25 worthless, and we conclude that representation is accurate.

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1 There are some additional retirement assets which are
2 not WorldCom-related, or at least not in the WorldCom account.
3 Again, we believe these are beyond our reach, but they are a
4 fraction of what we are getting; they are very, very modest,
5 less than six figures altogether. There are some household
6 effects and things of that nature which are not readily
7 transferable.

8 With respect to Myers and Yates, we spent a lot of
9 time talking to their lawyers, or actually, to be more
10 accurate, lawyers acting on their behalf. They are criminal
11 defense lawyers who have agreed to facilitate discussions.

12 It became clear to us early on that Mr. Myers and
13 Mr. Yates are impecunious, that they have a business that they
14 are doing together. It turns out it is being funded by
15 relatives, primarily. They can't pay their lawyers. It became
16 clear early on that if we were to insist on anything, it would
17 be nominal and it would be paid by relatives.

18 After extensive discussions with the U. S. Attorney's
19 Office, the Class Comptroller, Alan Hevesi, concluded that it
20 would be appropriate to settle with those two individuals for
21 no consideration. While that decision was driven primarily by
22 their financial state, we are mindful, as we made it, that they
23 cooperated early and that their cooperation with the U. S.
24 Attorney's Office certainly benefited the class in the
25 long-run.

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1 I should note, I am permitted to say on the record
2 that the SEC has concluded, with regard to Mr. Myers, that it
3 will seek no monetary payment by him.

4 With regard to Mr. Yates, there has been no final
5 conclusion reached. I have no reason to believe that they will
6 reach a different conclusion with regard to Mr. Yates.

7 So taking all of those factors into consideration, we
8 believe that these three settlements should be preliminarily
9 approved and that final approval should take place at the
10 fairness hearing currently scheduled for September 9.

11 Thank you, your Honor.

12 THE COURT: I should note that Mr. Yates and Mr. Myers
13 have both been excused from appearance today. They would be
14 given an additional opportunity to be heard if they believed
15 that was necessary, but I had received no communication
16 indicating that they wish that additional opportunity.

17 MR. COFFEY: Your Honor, if I may? I forgot one other
18 piece that your Honor characterized as material when we hear
19 from Mr. Ebbers, and that is, of course, that lead plaintiff
20 and lead counsel have agreed that lead counsel will not seek a
21 fee from the recovery for Mr. Sullivan.

22 THE COURT: If you could just give me a moment, I just
23 wanted to confirm that, before we turn to the Notice, there are
24 no questions coming out of the settlement agreements.

25 (Pause)

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1 I note again that each of these agreements has a
2 provision, as did the Ebbers Agreement, that should the
3 financial representations be found to have been, or to contain
4 a material misstatement, that the Settlement Agreements are
5 voidable at the option of the class, but also that, independent
6 of that, that the nondisclosed assets will be turned over to
7 the class as further protection about the accuracy of the
8 financial disclosures.

9 MR. COFFEY: Your Honor, with regard to that
10 particular provision, I should note, with regard to Mr. Myers
11 and Mr. Yates, pursuant to our discussion with the Securities
12 and Exchange Commission, we inserted a provision there that
13 said that our right to those assets is subject to the SEC's
14 rights, if they choose to exercise it. They were quite
15 emphatic about that, and ultimately we judged it to be a
16 dispute about nothing; we agreed to that. So, technically
17 speaking, the SEC would have first dibs, but we have this
18 catchall that ensures that they will not be left with it either
19 way.

20 THE COURT: I have reviewed the Stipulation of
21 Settlement with Mr. Sullivan and the Confidential Supplemental
22 Stipulation with Mr. Sullivan, and many of the pertinent terms
23 have been discussed on the record this morning, and there being
24 no objections from anyone who is present, based on my review, I
25 do give it preliminary approval.

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1 I have reviewed with care the Stipulation of
2 Settlement with Buford Yates and David Myers, and, again, there

3 being no objections at this preliminary approval hearing, and
4 following that careful review, I do grant preliminary approval
5 also to those settlements.

6 Let's turn to the Notice.

7 I want to mark as a court exhibit an additional
8 suggested insert to the Notice. This will be marked as Court
9 Exhibit 1 for the purpose of today's hearing. It is an insert
10 to the Notice, and you can tell that what I circulated
11 yesterday led to some confusion, and for that I apologize.

12 We go to the original Notice. On page 1 there was a
13 paragraph, which was the second from the bottom, and it got
14 deleted in the proposed revision, which was not my intention,
15 and so this Court Exhibit 1 would be a suggested insert.

16 And if we turn now to the Notice that was circulated
17 this morning, it would go on page 1, in the background section,
18 as the second-to-last paragraph in that section. So the
19 paragraph that would precede the paragraph that begins with
20 this language: "This is the Court-approved Notice."

21 There is one other thing that got deleted, and that is
22 part of the top of the document that says, in bold, "To all
23 persons or entities, etc.," I would ask that that be
24 reinserted.

25 Then if I could make some other suggestions for this

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1 Notice, and I'm working from the Notice that was circulated
2 this morning, at the bottom of page 1, third line from the
3 bottom, the word "disseminated," replace that with the word
4 "mailed."

5 Page 2, the sentence just above III, it's final

6 clause, "Which can be obtained," strike "accessed or," and
7 replace "Part VI" with "Part IX," Roman numeral "IX."

8 In the next paragraph, the end of the third line, "The
9 settlements were," strike "were."

10 In the section dealing with David Myers and Buford
11 Yates, strike the word "extensive."

12 Second line from the bottom, strike the word
13 "further," and say "include," not "included."

14 I have two substantive issues to raise with counsel
15 with respect to this Roman Numeral "III."

16 With respect to the description of the Ebbers and
17 Sullivan settlements, the Notice contains percentages --
18 75 percent, 66 percent, 90 percent. The implication would be
19 that Mr. Ebbers and Mr. Sullivan were left with the remainder
20 of those assets, and as we know, what happened is that the
21 remainder of those assets went to others, the ERISA plaintiffs
22 or MCI or potentially a fund, depending on what we are talking
23 about, for individual action plaintiffs, so that may be part of
24 what is netted out. But in any event, I wondered if we
25 shouldn't include a sentence, that I would love counsel to

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1 draft, that would capture the concept that the rest of these
2 assets were being forfeited to others, for instance, the ERISA
3 class plaintiffs. I don't think we need to go into great
4 detail, but just to capture that idea.

5 Then, with respect to Mr. Sullivan, there is a
6 reference in this section to \$200,000, while the Stipulation of
7 Settlement with Mr. Sullivan, at page 14, references a figure
8 of 300,000. It says, "90 percent of the total amount in

9 Sullivan's MCI 401(k) Salary Savings Plan (The 401(k) account),
10 present value of approximately 300,000, after such account is
11 liquidated, net of any taxes, penalties and fees incurred in
12 connection with such liquidation (The net 401(k) amount)."

13 I wondered, Mr. Coffey, if you could just address the
14 use of the figure \$200,000 in the Notice in contrast to the use
15 of the figure \$300,000 in the Stipulation of Settlement.

16 MR. COFFEY: The one thing we do know, your Honor, is
17 the value presently in the account as of the last statement is
18 a little over 300,000. I don't pretend to know after taxes and
19 penalties are paid how much of that there will be left, but the
20 collective view among those of us who discussed it would be
21 probably in the mid-200 range. And, therefore, we thought it
22 would be safe to say that approximately 200,000 of that would
23 be available to our class, since we have agreed with Mr. Sarko
24 and Mr. Gotto that 10 percent of the net 401(k) account will go
25 to the ERISA folks.

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1 So if it is about 250,000 -- and, again, that is an
2 educated guess -- and they get 25,000 of it, we would be left
3 with about 225,000. I wanted to err on the side of
4 underestimating that amount, since this will be going out to
5 the class, to them to evaluate whether that is an adequate --
6 as part of the overall settlement, that is adequate. So that
7 is the relationship between the 300,000 in the Stipulation,
8 which is a statement of present fact, and what's in the Notice,
9 which is a statement of expectation.

10 THE COURT: Going to --

11 MR. COFFEY: Your Honor, while we are on Section III,

12 if I may?

13 THE COURT: Yes.

14 MR. COFFEY: Mr. Ebbers, I believe, is going to wire
15 another 80,000 in cash to the class today, and because -- that
16 was confirmed this morning that that is in the works. We left
17 80,000 in one of the accounts that it is not Mr. Ebbers'
18 personal account, it is an operating account, in order to fund
19 the business, because we want these businesses to continue to
20 operate while we try to maximize their liquidation value. So
21 that's the class's money and we left it in there, but now there
22 has been a sale of an asset, modest enough, but there is now
23 operating money there, so now we are going to take that out.
24 So I would propose changing the number for Ebbers' cash to be
25 5,636,543.69, and paid to the class on July 14 and July 28,

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1 2005.

2 THE COURT: Good. So that will show up in the next
3 draft.

4 MR. COFFEY: Yes, your Honor.

5 THE COURT: Another concept that counsel may want to
6 consider in connection with III is conveying, in a way that I'm
7 not sure our discussion at present does, that this takes
8 substantially all of the personal assets of Mr. Sullivan and
9 Mr. Ebbers, including potentially assets that would have been
10 beyond the reach of any judgment, in the case at least of
11 Mr. Sullivan. I don't want to overstate, so any language that
12 is drafted has to be drafted with care.

13 MR. COFFEY: Well, that would be the case for
14 Mr. Ebbers, as well, your Honor, given what his wife

15 surrendered. So we can say it for both.

16 THE COURT: OK. So I will look with interest at any
17 language that you craft in that regard.

18 Turning to page 3, IV, second-to-last line. I believe
19 this allocation also mirrors the allocation that applies to
20 Arthur Andersen.

21 MR. COFFEY: I had that initial reaction myself, your
22 Honor. I don't think that is quite right.

23 I believe, because the Andersen 10(b) class period is
24 less than the other Exchange Act defendants, I don't believe it
25 shakes out the same way. I may be wrong but I think that's

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1 what happened, because the first statement by Andersen wasn't
2 until their audit opinion issued in 2000. But I will check on
3 that with Mr. Golan and make sure that I have that right.

4 THE COURT: OK. Well, we certainly have the same
5 figures, percentages, that we have used in the Arthur Andersen
6 settlement -- 4.7, 15.2 and 80 percent.

7 MR. COFFEY: I stand corrected, then. I did not
8 understand that, but I will double-check with Mr. Golan and
9 ensure that Andersen is included in here at the same
10 percentages.

11 THE COURT: Page 3, last line, strike the first three
12 words, "Provided, however, that." Begin that sentence with the
13 word "No."

14 Page 4, top line, "plans of allocation, however"...

15 The fifth line, "Part VI" should be "Part IX."

16 Let's go to Section IX.

17 Because we are not mailing the Notice, I want to think

18 very carefully about what we can be providing to class members
19 through the websites and through Garden City, the
20 Administrator, and one suggestion which has been adopted in
21 this Proposed Notice is to include the settlement agreements
22 with the four executive defendants, and I'm pleased that you
23 agreed with that.

24 I'm wondering if we should also include, through the
25 website perhaps, the transcripts of the preliminary approval

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1 hearings for Mr. Ebbers and today.

2 I don't know what other information we have that could
3 be of interest.

4 Mr. Coffey, can you think of anything else that would
5 be of interest to class members that would give them more
6 information?

7 MR. COFFEY: Nothing else comes to mind, your Honor.

8 THE COURT: I also think it would be helpful,
9 Mr. Coffey -- and I expect you've already done this -- to
10 review our more detailed notices that we sent out in connection
11 with the other settlements, just to see if anything in those
12 more detailed notices triggers other pieces of information that
13 must be mentioned, even if just briefly, here or incorporated
14 by reference.

15 And, Mr. Goldstein, I think that would be maybe
16 helpful if you do at that review, too, because you've been so
17 deeply involved in the objections in the litigation in
18 connection with opt-outs.

19 MR. GOLDSTEIN: We will, your Honor.

20 THE COURT: Thank you.

21 And then the fifth page, I am hoping to change the
22 word "August" to "July." My goal here, having spent time
23 yesterday working on this and this morning, is if at all
24 possible I could sign this tomorrow so that you could get it
25 out to the class as soon as possible. I think that would be

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1 wonderful, but if we can't do it, we can't do it. It is more
2 important that it be done right, of course. So if I can't sign
3 it until Monday, so be it.

4 Good. I have two other issues to discuss with lead
5 counsel.

6 I don't believe we have been filing the settlement
7 agreements and under seal the confidential settlement
8 agreements so far. I think I have been getting courtesy copies
9 and signing the preliminary approval orders, and anything I
10 sign of course gets filed. So I think it would be important to
11 have these filed as part of the public record and, where
12 appropriate, under seal, because any preliminary approval I'm
13 giving is, of course, after review of these critical documents
14 and they must be part of the record.

15 So I ask lead counsel to make a collection of the
16 settlement agreements and the confidential settlement
17 agreements so we can get all of those filed, and if need be,
18 look at the docket sheet going back in time in this litigation,
19 because I'm not even sure what got filed originally with the
20 Citigroup settlements, what got docketed.

21 And my last issue is the form of judgment that I may
22 be signing after the fairness hearing in September. I've
23 gotten a series of proposed judgments in connection with each

24 of these separate settlements. I wonder whether there is any
25 reason why I should be signing a series of final judgments as

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1 opposed to a single additional judgment after the fairness
2 hearing that would address all of the settlements that will be
3 the subject of that hearing. And so I raise it now so counsel
4 have a lot of time to think about it, and if they think one
5 judgment would be sufficient, that they have time to draft that
6 and circulate that for review.

7 I believe I have been given today revisions of the
8 preliminary approval orders, and I will review those and expect
9 to be signing them today.

10 Counsel, is there anything else that we need to do at
11 today's hearing?

12 (Pause)

13 Thank you all for your help.

14 MR. COFFEY: Thank you, your Honor.

15 THE CLERK: All rise.

16 MR. SARKO: Thank you, your Honor.

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