

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-0706 (MFW) through
. 01-0709 (MFW)
. .
ETOYS, INC., et al., .
. 824 Market Street
. Wilmington, Delaware 19801
Debtors. . December 22, 2004
. 11:40 a.m.

TRANSCRIPT OF 9019 MOTION HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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By: ROBERT ALBER, ESQ.
(Via telephone)

1 THE COURT: Good afternoon.

2 MS. BALASCHAK: Good morning, Your Honor. Susan
3 Balaschak on behalf of Traub Bonaquist and Fox and the Post
4 Effective Date Committee. Your Honor, currently on the agenda
5 for today are two settlement agreements that we're seeking this
6 Court's approval of. However, before we go into the
7 settlements I would like to introduce Ron Sussman from Kronish
8 Lieb that would like to make a few introductory remarks to the
9 Court this morning.

10 THE COURT: All right.

11 MR. SUSSMAN: Good morning, Your Honor. Kronish,
12 Lieb, Weiner and Hellman by Ron Sussman for the firm of Traub
13 Bonaquist and Fox. I'm here today, Your Honor, representing
14 Traub Bonaquist due to the mountain of pro se paper that's been
15 filed with the Court in the recent weeks raising a sum
16 incomprehensible, and largely scurrilous allegations lodged
17 against Traub Bonacquist and, frankly, just about everyone
18 else that's involved in the EToys case. On the Court's
19 calendar are the two settlements that Ms. Balaschak mentioned
20 and she will address those momentarily with the Court's
21 permission. However, I want the Court to know that
22 Traub Bonaquist takes any charges of ethical impropriety
23 seriously and jealously guards its reputation, Your Honor. A
24 law firm's reputation, as you might well expect is its life
25 blood upon which the law firm's lawyers and their families rely

1 to survive. Accordingly, Your Honor, Traub Bonaquist has asked
2 me to review the array of pleadings filed by these pro se
3 objectors, and to assist them in parsing out the charges,
4 investigating the time line and the facts, and to fix anything
5 that needs to be fixed.

6 That said, I have spoken with the United States
7 Trustee's Office last night, and then again this morning, and
8 they've also indicated their intention to investigate, and
9 they'll speak to that, of course. Each of us, that is those of
10 us on behalf of Traub Bonaquist and at the U.S. Trustee's
11 Office, view the proposed settlements as a separate matter from
12 the myriad of allegations contained in the objections. We
13 believe that the settlements can move forward while the UST
14 investigates, while we investigate, while we cooperate with the
15 UST's investigation and, therefore, Your Honor, if the Court
16 concurs what we'd like to do is move forward with the hearing
17 on whether the settlements are appropriate under 9019 of the
18 bankruptcy code, and schedule a status conference on a date
19 that's convenient for the Court to address the various charges
20 leveled against the parties, approximately 45 days from today,
21 a time that both the United States Trustee's Office, and Traub
22 Bonaquist feels comfortable will give them the time to properly
23 investigate and report back to the Court its findings with
24 respect to the various charges that have been leveled.

25 THE COURT: Well, do the parties agree with that?

1 Does the U.S. trustee agree with that?

2 MR. HAAS: No, I don't agree, Your Honor. Collateral
3 Logistics, Steve Haas.

4 MR. ALBER: Yeah, Robert Alber Each Way Shareholder's
5 Group, Your Honor. We hardly find that our allegations are --
6 our papers or anything else. If we did, we wouldn't take up
7 the Court's time. We do believe that if such matter is moved
8 forward, and we understand because of the late -- the emergency
9 motion that we put in and Collateral Logistics, for that
10 matter, that a lock be put on the account of the estate until
11 this whole mess is sorted out.

12 THE COURT: Well, do you think we can proceed with
13 the settlement motions, and not deciding the --

14 MR. HAAS: No, ma'am, we thing that that needs to be
15 delayed until somebody can investigate and verify as the
16 foundation for the allegations is the affidavits of Traub
17 Bonacquist and Fox, Paul Traub, and Barry Gold into the Court
18 record, and the trustee already has seen this matter before,
19 that the conflict exists in both sales. So, it's not like it's
20 a mystery. There's proof positive in this very court --

21 THE COURT: Well, before you go, or forward, I'm
22 asking whether or not the settlements have anything to do with
23 the allegations. Is the Kilroy Realty settlement, for example,
24 affected by the allegations?

25 MR. HAAS: We don't think any settlements can be done

1 in good faith knowing that the protections that were placed in
2 -- you know, in the very basic premise of diametrically opposed
3 parties there's no check and balance. There's nobody on the
4 PEDC to vote as our RR Donnelley hasn't had, Larry Durrant's
5 there for years. Scott from Furtree says that he was aware,
6 off the record, of this relationship with Paul Traub and Barry
7 Gold, but didn't find that it helped or harmed them in any way,
8 but if Donnelley is --

9 THE COURT: Stop.

10 MR. HAAS: I'm sorry, ma'am.

11 THE COURT: I don't want to hear the allegations.

12 MR. HAAS: Okay.

13 THE COURT: What do they have to do with Kilroy
14 Realty?

15 MR. ALBER: As far as we're concerned, Your Honor,
16 the Each Way Shareholders Group, it says in the Kilroy proposed
17 settlement that it was voted upon and approved by the PEDC.
18 If, in fact, our allegations are true, as we believe them to
19 be, then the PEDC will not vote on them. In fact, there's been
20 fraudulent voting according to the Court records which is,
21 itself, a violation.

22 THE COURT: All right. Well, let me hear from the
23 U.S. trustee.

24 MR. PERCH: Good morning, Your Honor. Frank Perch
25 for the United States Trustee for the District of Delaware.

1 Your Honor, the United States Trustee has, of course, been
2 reviewing, very carefully, the matters that have been alleged
3 in this case. It is a matter of great concern to the U.S.
4 Trustee that it appears, based upon the papers that have been
5 filed in this case since sometime in mid-November that it may
6 be becoming to light that there were connections that were not
7 disclosed. I won't get into the details at this point, because
8 we're not addressing the merits of those matters before the
9 Court.

10 But, to the extent that it may be that there were
11 connections that should have been disclosed that were not
12 disclosed at any time during this case, all the way through the
13 approval of the final fee applications for the Traub Bonacquist
14 firm, all the way through the confirmation of the plan, and up
15 through times very recent in this case that is a matter that we
16 believe needs to be looked into.

17 It is somewhat unfortunate that in some of the
18 pleadings filed by the objectors it has been presented to the
19 Court as a little bit of a he said/she said in terms of
20 discussions between the objectors and Mr. Kenney of my office.
21 What I want to stress to the Court is that the U.S. Trustee
22 takes these allegations seriously, that the U.S. Trustee also
23 is realizing that these allegations, unfortunately, come to
24 light at a very late stage in the case, and the U.S. Trustee
25 wants to investigate, carefully, before taking any rash and not

1 legally justified action.

2 MR. HAAS: Well, Your Honor --

3 THE COURT: Please don't interrupt.

4 MR. PERCH: Based upon --

5 MR. HAAS: Pardon me, Your Honor.

6 THE COURT: Go ahead.

7 MR. PERCH: Thank you, Your Honor. Based upon the
8 information that we are aware of, we do not, notwithstanding
9 the seriousness of these allegations, we do not see a reason
10 for treating these allegations as irretrievably tainting these
11 proposed settlements and precluding Your Honor from approving
12 the settlements. So, we are not here this morning interposing
13 an objection to the settlements, recognizing, however, that we
14 do reserve all of our rights with respect to any issues that
15 may be raised, and we are looking into the legal procedural
16 framework that would be best appropriate to raise these issue
17 given the timing that they arise in the case regarding the non-
18 disclosures in this case, and regarding the status of Traub
19 Bonacquist and Mr. Gold in light of those facts. We reserve
20 all of those rights. We are not opposed to Mr. Sussman's
21 proposal of setting a status conference at some reasonable time
22 frame to address how those issues may be raised.

23 I think that Ms. Balaschak or Mr. Sussman could
24 probably address to the Court, better than I, some of the
25 factual inaccuracies in the objections with respect to the

1 relationship that was brought up between Mr. Donnelley's
2 company and Mr. -- and Goldman-Sachs in the settlement. I'll
3 let them address that.

4 Suffice it to say, Your Honor, that, as I said, the
5 United States Trustee takes all of this very seriously, is
6 extremely concerned about this situation, but does not view it
7 as something that precludes the Court from considering the
8 settlements today.

9 THE COURT: Well, let me hear with -- let me hear
10 from counsel regarding whether I can go ahead with Goldman-
11 Sachs, without deciding the allegations.

12 MS. BALASCHAK: Your Honor, I believe that there are
13 some, at least with respect to the Goldman-Sachs' motion, their
14 -- the statements that were made in the objections are,
15 actually, not factually correct. RR Donnelley is no longer a
16 member of the Post-Effective Date Committee, and was not a
17 member during the discussions and the settlement of the
18 Goldman-Sachs pure preference and fraudulent conveyance
19 litigation.

20 And, also, Your Honor --

21 THE COURT: Do you have somebody to testify to that
22 account?

23 UNIDENTIFIED SPEAKER: Your Honor, may I interject?

24 THE COURT: No.

25 UNIDENTIFIED SPEAKER: Okay.

1 MS. BALASCHAK: Your Honor, what I can do, is I can
2 confirm that at the confirmation hearing, when the
3 representations to this Court were made that RR Donnelley,
4 Mattel, Inc., and Furtree Value Fun were the three selected
5 Post-Effective Date Committee members were, in fact, committee
6 members at that point.

7 Currently, the committee consists Fisher Price, Fur
8 Tree Value Fun and Lego.

9 THE COURT: Well, are you testifying? Do you have --

10 MS. BALASCHAK: I didn't believe, Your Honor, that it
11 was necessary to have a witness come forward to identify the
12 makeup of the committee?

13 THE COURT: Why, given the allegations that were
14 filed?

15 MS. BALASCHAK: I'm sorry, Your Honor?

16 THE COURT: Why didn't you think it was necessary
17 given the allegations that were raised?

18 MS. BALASCHAK: Your Honor, I make the representation
19 to the Court that those are, actually, the three numbers, and I
20 believe, pursuant to the plan, the identity of the members as
21 the makeup of the Post-Effective Date Committee changed, we
22 were not required, pursuant to the plan, to continually file
23 documents.

24 THE COURT: Perhaps not, but you need to make a
25 factual record as to who was on the committee, when the

1 settlement was done. I mean, that's -- that has now come in --
2 has come a matter of dispute.

3 MR. SUSSMAN: May I have just a moment?

4 THE COURT: Yes.

5 MS. BALASCHAK: Your Honor, from what I understand,
6 I, myself, can swear to the composition or composition of the
7 committee, and that our --

8 THE COURT: Well, you can't be a witness and an
9 attorney.

10 MS. BALASCHAK: Well, maybe, Your Honor, if --

11 THE COURT: Why do we need to go ahead with these
12 settlements?

13 MS. BALASCHAK: Your Honor --

14 THE COURT: Given the cloud that has now been put on
15 them?

16 MS. BALASCHAK: Your Honor, actually, if the Court --
17 the only reason why -- at least with the Kilroy litigation it's
18 important to go forward. Your Honor, these are the last two
19 settlements before this Court. That would conclude all the
20 matters pending before Your Honor other than the CLI or the
21 Steve Haas claim and the objection thereto. That would
22 complete all the matters, and that will also allow us to make
23 another distribution before the end of the year.

24 With the Kilroy litigation, that settlement was the
25 subject of mediation in California, and that would allow the

1 California case to be settlement and resolved, and the
2 adversary before Your Honor to be resolved, and the current
3 trial that's pending on January 13th not to go forward. So, it
4 is important, Your Honor, for us, that the Kilroy litigation
5 get resolved. Putting aside the fact that it will bring
6 approximately \$2.6 million into the estate. That is the
7 urgency of having the Kilroy matter resolved.

8 THE COURT: Anybody else wish to be heard on that?

9 MR. HAAS: Yes, ma'am. Collateral Logistics --

10 THE COURT: Wait a second, Mr. Haas.

11 MR. GREGER: Yes, Your Honor, Michael Greger of
12 Allen, Matkins, Leck, Gamble and Mallory on behalf of Kilroy
13 Realty. To begin with, we're not taking a position on the
14 issues raised by the objecting parties. Frankly, we are not
15 familiar with any of those facts. The Court did ask a question
16 as to what was the reason to get the settlement approved today,
17 versus some date off in the future, and there's a very simple
18 reason. The reason my client entered into the settlement was
19 to avoid the substantial cost and expense associated with
20 trial.

21 As we stand here today, the Superior Court in Los
22 Angeles has a trial scheduled to start, I believe, the end of
23 January. If this Court doesn't approve this settlement, and
24 this process goes on, I don't believe my client will be willing
25 to go forward with the settlement under the current terms,

1 because there's going to be a substantial cost. I believe
2 there's 20 or so depositions that have to be completed, expert
3 witnesses need to be brought up to speed, and trial preparation
4 has to go forward.

5 Give those facts, Your Honor, and, obviously, we
6 didn't enter into the settlement to pay the estate a million
7 750 and withdraw an administrative claim of over a half million
8 dollars only to be embroiled in this litigation. Our specific
9 contemplation in the agreement between the parties was that we
10 would be dismissed pursuant to final non-appealable
11 resolutions. So, our concern here today, number one, is the
12 trial date to get this resolved. And, number two, I guess, if
13 the Court is not inclined to do so, I think we need to think
14 about the agreement not going forward at all.

15 THE COURT: Mr. Haas?

16 MR. HAAS: Your Honor, I just think that any
17 settlement issues, especially being that they were after the
18 November 19th, where I first placed the items about this
19 failure to disclose in the record, being that both Barry Gold
20 represents one party of interest that would agree to the
21 settlement, and Paul Traub, Bonacquist and Fox firm represent
22 the opposing party's interests and that being specious at the
23 minimum, I think that it's just prudent that we delay until
24 somebody can put the proper people that all parties involved
25 can have good faith in that their judgment is true and correct.

1 THE COURT: Well, Traub Bonacquist was not
2 representing Kilroy.

3 MR. HAAS: No, it's representing the creditors who
4 would need a voice that they could have faith in to review the
5 matter, you know, correctly. By approving it, nobody could
6 have faith that this issue couldn't be re-raised as done in a
7 knee jerk reaction to the allegations that were made to fast
8 track the case down. I mean, they're getting two and a half
9 million in, but they're, basically, giving up 12 and a half
10 million dollars out of the \$15 million in question that was
11 done within 90 days of the filing.

12 MR. SUSSMAN: Your Honor, if I may be heard?

13 THE COURT: Yes.

14 MR. SUSSMAN: Ronald Sussman, Kronish Lieb for --

15 THE COURT: You have to speak into the microphone so
16 everybody can hear.

17 MR. SUSSMAN: Ronald Sussman, Kronish Lieb for the
18 Traub firm. Your Honor, I want to make something clear here.
19 First, from the Traub firm's personal prospective, is it
20 important that the settlements go forward today in light of
21 these allegations? No. Is it important, in terms of the case,
22 as it relates to the Kilroy matter? We understand that it is.
23 But I do want the Court to understand something else. I do
24 believe that counsel can testify competently, and I'm perfectly
25 willing to conduct that examination, as to the composition of

1 the committee, and who voted -- well, not who voted, because
2 I'm not going to reveal the internal workings of the committee,
3 but I can have testimony as to the composition of the committee
4 at the times that these settlements were reached, such that I
5 can indicate to the Court that those factual allegations raised
6 by these pro se objectors are specious. Now --

7 THE COURT: I'm not going to go into that today. I'm
8 just not going to hear it until all parties have an opportunity
9 to investigate, and we can have more on that. But with respect
10 to Kilroy, Mr. Haas, I still don't understand why that
11 settlement, which was negotiated between counsel for Kilroy and
12 counsel for the committee cannot proceed today.

13 MR. WERKHEISER: Your Honor, Gregory Werkheiser for
14 the debtor. For the record, if I could just add a few points
15 as to the Kilroy settlement, the Kilroy settlement resulted
16 from a mediation that occurred, actually, in October, and the
17 debtor was subsequently represented by Irell and Manella,
18 counsel, in connection with that litigation. I would further
19 add, Your Honor, that the plan that was confirmed in this case
20 allowed either the plan administrator or the committee to
21 resolve pending causes of action subject to Court approval if
22 it did not meet within the perimeters that there was authority
23 granted to settle without such court approval under the plan.
24 So, they weren't dependent upon the existence or non-existence
25 of any alleged connections or conflicts on the part of the

1 other party.

2 And then, finally, Your Honor, I would just, simply,
3 add that the allegations that have been made, have been made as
4 to the existence of an alleged conflict between the PEDC and
5 Goldman-Sachs, and no one has suggested that there's any
6 connection as between Kilroy and Goldman-Sachs as to this
7 matter. Thank you.

8 THE COURT: All right. Mr. Haas, given that it was
9 the debtor and not the PEDC that did the settlement, does that
10 change your belief?

11 MR. HAAS: No, ma'am. I think that everybody's
12 knowledge of this existing relationship between Traub and Barry
13 Gold, especially Scott Fir Tree Value Fun said that everybody,
14 unofficially, knew it and accepted it.

15 THE COURT: Mr. Haas.

16 MR. HAAS: Yes, ma'am?

17 THE COURT: That is not relevant.

18 MR. HAAS: Okay. I'm sorry.

19 THE COURT: The debtor is the one that negotiated
20 with Kilroy and settled, not the PEDC, not Traub, and not Barry
21 Gold, correct?

22 MR. HAAS: Is that what Mr. Werkheiser is testifying?

23 MR. WERKHEISER: I'm coming to the podium, Mr. Haas.
24 I'm not testifying, but the debtor -- the plan administrator is
25 the fiduciary for the debtor. So, a point of clarification, I

1 mean, certainly, Mr. Gold had exercised some discretion in
2 connection with that settlement, but the debtor was separately
3 represented by counsel at Irell and Manella in this
4 proceedings.

5 MR. HAAS: And as such that Mr. Gold was the debtor's
6 representative, I think all his judgments are brought into
7 question and need review.

8 THE COURT: Well, why with respect to Kilroy? This
9 was a settlement that was done in connection with the
10 California state action that I allowed to proceed.

11 MR. HAAS: And I understand, Your Honor. I just --
12 again, I'm not here to represent anybody's party. I'm just
13 here asking and pleading that everything they have done is
14 subject to question and the motivation behind it. If there's
15 already one issue, I'm concerned about others. My simple
16 question is, being that they're saying the pressure to do list,
17 as the money is already still frozen wherever it is, and it's
18 just a matter of money coming back, that why can't they just
19 delay the trial date of January to a further date down the line
20 to give the trustee time to review or whoever parties that the
21 Court considers to review as the pressure to do it today in
22 light of things that have to be clarified. And all I do is I
23 want to note the objection that I think it would be prudent to
24 delay and allow the Court to make a decision knowing that I'm
25 not counsel, and don't have basis in law to argue the position

1 correctly.

2 THE COURT: Well, what funds are frozen?

3 MR. HAAS: The 15 million that Kilroy Realty, from a
4 letter of credit, that was prior within the period of time that
5 --

6 THE COURT: No, they drew on the letter of credit and
7 the estate is suing to get that back. It was not frozen.

8 MR. HAAS: Oh, okay. Well, I'm sorry.

9 THE COURT: Am I incorrect?

10 MS. BALASCHAK: You're correct, Your Honor.

11 MR. HAAS: Yeah. All right. Well, and settling a
12 \$15 million matter that the estate felt would like to get back
13 for only 2.6 million with Barry Gold being the representative
14 that made the decision, I think all of Barry Gold's decisions
15 are suspect, at a minimum, and should be reviewed before going
16 further, and that's what I have to say on the matter, Your
17 Honor.

18 THE COURT: All right.

19 MR. WERKHEISER: Your Honor, I would just add one
20 more point. The objections that were filed were directed to
21 the Goldman-Sachs settlement, Your Honor. I think there was
22 passing reference to Kilroy in, perhaps, one of them, but they
23 are not directed to this, and no one in the objection indicated
24 there was any challenge to the business judgment exercised by
25 the debtor in entering into these settlements, particularly the

1 Kilroy settlement.

2 THE COURT: Well, they are now.

3 MR. ALBER: If I may, Your Honor?

4 THE COURT: Yes, Mr. Alber?

5 MR. ALBER: Yes. Robert Abler, EToys Shareholders
6 Group. As far as the Kilroy settlement goes, we didn't have --
7 did not launch an objection to the Kilroy settlement. Our
8 underlying objection dealt with Goldman-Sachs, RR Donnelley
9 connection, and, as far as the terms of the Kilroy settlement,
10 we don't have a problem, because if its not -- we don't have a
11 problem with that, because there's not -- it does not include
12 the broad sweeping release of claims or waiver claims against
13 Goldman-Sachs. What we are concerned with, though, is, if and
14 when our allegations may or are true and correct, that the
15 debtor will come under -- will incur liability in as far as
16 Barry Gold was a party to -- and Gregory Werkheiser and MNAT
17 were a party to the settlement proposal with Kilroy, and this
18 could far exceed the two and half million. Therefore, we do
19 request that the -- everything be stopped in its tracks until
20 this can be investigated by the U.S. trustee or whoever the
21 Court deems appropriate.

22 THE COURT: Well, I'm not sure I understand your
23 allegation that if your proven correct it will, somehow, mean
24 that the Kilroy settlement is tainted. Why do you think that?

25 MR. ALBER: Well, if our allegation, or Mr. Haas'

1 allegations are proven correct, Your Honor, then the debtor
2 will incur liability for any matter that is represented as
3 being true and correct, and they will incur liability.

4 THE COURT: What do you mean they'll incur liability?
5 What do you mean?

6 MR. ALBER: Well, the entire -- we see it as the
7 debtor -- the debtor and the entire state, of which we are a
8 party of interest to, will incur liability if the matter is --
9 goes forth after we have raised these allegations, which we
10 believe are quite serious, and we believe are true.

11 THE COURT: Well, let's assume they're true, what do
12 you mean the estate is going to incur liability? To whom? For
13 what?

14 MR. ALBER: Well, we --

15 MR. HAAS: We assume that maybe somebody else would
16 have, maybe, argued a better position and a better settlement.

17 MR. ALBER: Yes.

18 MR. HAAS: I mean, that's the basis of our
19 fundamental -- we believe that a better settlement could have
20 done, and we just wanted -- we would like, as a matter of juris
21 prudence that somebody that everybody now has faith in that
22 gets appointed to however process goes forward, being that we
23 couldn't find -- you know, we're not knowledgeable in the
24 process, but whoever is -- if Barry Gold is removed, that
25 person be allowed to approve or disapprove of the settlement.

1 That's all we ask is a short period of time. If these
2 allegations are proved false that we've made, then it's moot,
3 and the settlement can go forward, and it's only a short period
4 of time, but if they are true, then everything that Barry Gold
5 and Paul Traub has done is under scrutiny and investigation,
6 and this matter happened in this period of time just seems to
7 expedient given that we haven't reviewed and verified the facts
8 that are alleged, and we think that the 15 million could
9 actually, in full, possibly come back with somebody else doing
10 the negotiation. We don't know the motive behind Barry Gold
11 and everything, if the allegations that we have alleged are
12 true.

13 MR. ALBER: And, additionally, Your Honor, if I may?
14 Robert Alber, EToys Shareholders Group, part of our motion that
15 we filed a couple of days ago, our emergency motion, dealt with
16 the fact that the EToys Shareholders Group is operating with me
17 acting in a pro se capacity, but I'm not an attorney,
18 obviously, and we need -- we do need legal counsel appointed to
19 us by the Court in order to argue these very serious
20 allegations we've made, which we do believe to be true and
21 correct.

22 So, we go along with Mr. Haas' motion that nothing
23 further should be done. This matter has been dragging on for
24 years now, and the 15 million is still there.

25 THE COURT: It is not still there. Why do you think

1 the 15 million is still there?

2 MR. ALBER: Well, they have been drawing upon it,
3 Your Honor.

4 MR. HAAS: No, they have already drawn.

5 MR. ALBER: Oh, they've already drawn all of it.
6 Okay. I apologize then, Your Honor.

7 MS. BALASCHAK: Your Honor, I actually believe, based
8 on the facts that are presented in the motion that go through
9 the background of the lawsuit before this Court, and in
10 California, that we've already advised the Court that mediation
11 went forward, and that the settlement was reached at the
12 conclusion of mediation, and that we believe that based on the
13 facts I can go through, Your Honor, that are not disputed, that
14 you can find that the settlement is, at a minimum, reaches the
15 lowest point of the continuance of reasonableness sufficient to
16 be able to find, as a legal matter, that the settlement
17 proposed is fair and equitable without regard to any of the
18 allegations that were made.

19 THE COURT: Regardless of who made it?

20 MS. BALASCHAK: Exactly, Your Honor.

21 (Pause)

22 THE COURT: Well, I'm going to do this, with respect
23 to the Kilroy settlement, I will approve it. I don't think
24 that the allegations made by Mr. Haas or Mr. Alber go to the
25 merits of that settlement. The alleged conflict does not have

1 anything to do with Kilroy or Kilroy's counsel. I am familiar
2 with the case having abstained from deciding the adversary in
3 this case -- in this court, and since the settlement was
4 reached in the State Court litigation, given the -- both the
5 allegations of estate and the defenses of -- and allegations of
6 Kilroy in its own separate action, I think the settlement is
7 reasonable, and well within the business judgment of the estate
8 to reach the settlement. And I don't think it merits any
9 continuance to allow the allegations regarding the Traub firm
10 or Mr. Gold to be fully -- so, I will approve that settlement
11 agreement.

12 The other, given the allegations raised, really
13 should be continued until they can be addressed more fully by
14 both the U.S. trustee and the Court.

15 MS. BALASCHAK: Okay. Your Honor, I will submit an
16 order to the Court with respect to the Kilroy, and shall we
17 call chambers to get a date that's 45 days out for a status
18 conference?

19 THE COURT: Well, I'd like to talk about -- or have
20 you talked with Mr. Haas and Mr. Alber, because I think it's
21 their motions that would be heard by the Court. The U.S.
22 trustee hasn't filed anything to my knowledge.

23 MR. PERCH: Your Honor, we have not filed anything,
24 but that doesn't mean that we would not consider filing
25 something.

1 THE COURT: I understand. All right.

2

3

(Pause)

4

THE COURT: I'd like a -- well, I will have a status
5 conference, if the parties want.

6

MR. HAAS: A status conference concerning what, Your
7 Honor?

8

THE COURT: Concerning when to hear your motions, and
9 be advised whether the U.S. trustee is going to file any motion
10 as a result of the allegations raised by you.

11

MR. HAAS: Okay. And when would that be, Your Honor?

12

THE COURT: Well, I know we do have Collateral
13 Logistics' trial scheduled for February 4 at two o'clock.
14 Should we have it at 1:30 that same day?

15

MR. ALBER: That would be fine with us, Your Honor.
16 Robert Alber, EToy Shareholders Group.

17

MR. PERCH: That's February 4, Your Honor?

18

THE COURT: February 4.

19

MR. PERCH: 1:30?

20

THE COURT: Yes.

21

MR. SUSSMAN: Your Honor, I hate to be the fly in the
22 ointment. I, actually, have a longstanding vacation scheduled
23 for -- starting the 3rd through the 7th. Anything else around
24 those dates would be fine.

25

MR. ALBER: Your Honor, I can't hear anything, Your

1 Honor.

2 THE COURT: Yeah, you have to talk --

3 MR. SUSSMAN: I'm sorry.

4 THE COURT: You can raise it.

5 MR. SUSSMAN: What I had said was, I'd hate to be the
6 fly in the ointment, but I do have a longstanding vacation
7 scheduled from the 3rd to the 7th. Anything else around those
8 dates would be fine.

9 MR. HAAS: Well, could we hear it some time before?
10 Put another date on the calendar, Your Honor?

11 THE COURT: How about February 1st at nine o'clock?

12 MR. SUSSMAN: That's all right with me, Your Honor.

13 MR. PERCH: That's fine with the U.S. trustee, Your
14 Honor.

15 MR. WERKHEISER: That's fine with the debtor, Your
16 Honor.

17 THE COURT: All right.

18 MR. ALBER: May I, respectfully, ask the Court
19 something? Robert Alber, Etoy Shareholders Group.

20 THE COURT: Yes.

21 MR. ALBER: That -- Mr. Perch, who I did not mean to
22 interrupt earlier. I couldn't hear him very well, has stated
23 that the U.S. Trustee's Office is going to be looking into
24 these very serious allegations, and we would like the -- we
25 would just like to clarify in the court today that we will be

1 made a full part in the investigation as we are the ones making
2 allegations. And, also, that our motion be put through that we
3 do be represented by legal counsel.

4 THE COURT: Well, I haven't seen your motion to be
5 represented by legal counsel, so I'm not going to address it
6 today.

7 MR. ALBER: Okay. It was in the -- you may not have
8 gotten it yet, Your Honor. It was filed a couple of days ago.
9 We submitted the orders today.

10 THE COURT: Well, if you file motions you have to get
11 them scheduled for a hearing. You can't just file them. I
12 won't consider them without a hearing.

13 MR. ALBER: Okay. That's part of the reason we need
14 legal counsel, Your Honor. We're doing our best. Thank you.

15 MR. HAAS: Your Honor, Steve Haas, Collateral
16 Logistics. Is there a measure where we can ask that Traub,
17 Bonacquist and Fox, Paul Traub and Barry Gold either deny that
18 those affidavits are stated are true and correct, or verify
19 that they're true and correct?

20 THE COURT: Well, I will schedule -- I'm having a
21 status conference on your motions for February 1. I will
22 require answers to those motions be filed the week before, in
23 accordance with our local rule. So, answers should be filed by
24 January 25th.

25 MR. HAAS: Additionally, on the motion that Mr.

1 Rosner had used to compel me to answer the questions, which
2 pertain to the trial date of February 1, he has still refused
3 to, in kind, give answers to my questions, which also addressed
4 these matters, and we would already have answers sworn to.
5 Being that he failed to put that in the motion that Your Honor
6 signed, can I ask that we now compel the PEDC to answer the
7 discovery questions?

8 THE COURT: Well, there is no motion to compel that
9 I'm hearing today.

10 MR. HAAS: Okay.

11 THE COURT: So, no.

12 MS. BALASCHAK: I believe, Your Honor, that that
13 takes care of the matters before the Court today.

14 THE COURT: All right. And I'll hear from the
15 parties on February 1st.

16 MS. BALASCHAK: Okay. Thank you, Your Honor.

17 THE COURT: The Collateral Logistics trial is not
18 rescheduled. That will be held on February 4th, as originally
19 scheduled. Okay?

20 MR. WERKHEISER: Thank you, Your Honor.

21 THE COURT: All right. We'll stand adjourned.

22 UNIDENTIFIED SPEAKER: Thank you, Your Honor.


23 * * * *

24

25

CERTIFICATION

I, DEBRA L. STOREY, certify that the foregoing is a correct transcript to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.


DEBRA L. STOREY
J&J COURT TRANSCRIBERS, INC.

Date: 12/31/04