

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 Alexandria Division

4 : Civil Case  
5 : No. 1:24-md-03111  
6 IN RE: CAPITAL ONE 360 :  
7 SAVINGS ACCOUNT INTEREST RATE :  
8 LITIGATION : June 16, 2025  
9 : 2:30 p.m.  
10 ..... : .....

11 TRANSCRIPT OF PRELIMINARY SETTLEMENT APPROVAL HEARING  
12 BEFORE THE HONORABLE DAVID J. NOVAK  
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

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19 **COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES**  
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**P R O C E E D I N G S**

COURTROOM CLERK: Civil action 1:24-MD-3111,  
In re: Capital One 360 Savings Account Interest Rate  
Litigation.

Lead counsel, please introduce yourself and your  
co-counsel for the Court.

MR. WALDMAN: Good afternoon, Your Honor.  
Chet Waldman, lead counsel for plaintiffs and the proposed class  
in this matter. With me from my firm is my partner Philip Black  
and Carl Stine behind me. We have our local counsel Matt Kaplan  
here, and we have Jeff Kaliel from the Kaliel & Gold firm behind  
me as well.

MR. BALSER: Good afternoon, Your Honor. David Balser,  
King & Spalding, on behalf of the Capital One defendants. I  
have with me John Moran from McGuireWoods and John Campbell from  
Capital One.

THE COURT: That's fine. All right. We also have our  
special master here, who's done a terrific job.

So we're here for the preliminary approval hearing.  
Before we get started, I wanted to talk to you about your  
*in camera* submission that you sent to me. That was totally  
inappropriate. You can't do that. You can't send something  
without a -- it is a material issue here for this settlement, in  
my mind.

As I understand it, Capital One has reserved the

1 ability to opt out of this agreement if there's 58,500 opt-outs.  
2 Is that right, Mr. Balser?

3 MR. BALSER: It is, Your Honor.

4 THE COURT: I mean, why is that not on the record? To  
5 me -- you know, we also have in the background now this New York  
6 case that as I understand is going to be in front the MDL panel  
7 on July 31st. I mean, to me, that counsels in favor of  
8 consolidation, the fact that you could potentially opt out of  
9 this case and we have to litigate it, don't you think?

10 MR. BALSER: Well, Your Honor, typically that provision  
11 is referred to as a blow provision, a common provision in  
12 settlement agreements and class actions, and we typically submit  
13 those under seal. And I can't recall a circumstance in which a  
14 court has unsealed it.

15 And the reason that typically they are filed under seal  
16 is that there is a cottage industry of plaintiffs' firms that do  
17 solicit opt-outs and try to hold up settlements in that way, so  
18 we typically don't like that ilk of plaintiffs' firm to know  
19 what the number is that they have to shoot for. That's why it  
20 was filed under seal.

21 THE COURT: Well, it wasn't filed under seal.

22 MR. BALSER: I mean it was submitted *in camera*. I  
23 misspoke. Submitted *in camera*.

24 THE COURT: Well, I mean, if anything, that's what it  
25 should have been, filed under seal, and you could have filed a

1 pleading on that.

2 I don't agree with that, though. I think this is a  
3 material term. There's a lot of money at stake here, there's a  
4 lot of prospective plaintiffs, and I think it's certainly  
5 possible you could have 58,000 opt-outs. I mean, I don't know,  
6 but the class size here is how big?

7 MR. BALSER: About 4 million.

8 THE COURT: Yeah. If you distill that down, you might  
9 have that possibility. I don't know. We're going to move  
10 forward, though. But I think you should have filed it.

11 All right. Mr. Waldman, I've looked over these terms.  
12 There's a couple of things that are -- a couple of changes I  
13 would like to make here. You want to come on up and I'll give  
14 you a chance to give me feedback on this.

15 So with this notion of the opt-outs that I just  
16 addressed with Mr. Balser, this issue about the end date, which  
17 I think is a major issue here, I think some folks are going to  
18 be fighting over this going forward. And the payment issue. My  
19 thought is that we should have the special master continue to  
20 oversee these issues and file some reports with me just to make  
21 sure we're all headed on the same page.

22 Substantively as we go through this, I'm okay with the  
23 settlement as you put forward to me, so don't misinterpret  
24 anything I'm saying. But I still have this New York case here  
25 in the back of my mind, and I'm worried there might be other

1 states that might file stuff too. I don't know if that's going  
2 to happen or not as well.

3 So it seems to me that we ought to have the special  
4 master continue to oversee this, and particularly the number of  
5 opt-outs, the end date as it goes to that second tier of folks,  
6 the 125 million part of it, and compliance with payment. I'm  
7 sure you'll be on top of that, but I think we ought to have the  
8 special master do it.

9 Do you have any issues with that?

10 MR. WALDMAN: Plaintiffs do not. That's not a problem  
11 for us.

12 THE COURT: All right. Mr. Balser, do you have any  
13 problem with that?

14 MR. BALSER: No, Your Honor.

15 THE COURT: I think what we'll do is, I'm going to have  
16 the special master file a report with me 10 days before the  
17 final approval hearing and then every six months thereafter.  
18 And Mr. Balser, you-all can give him quarterly reports so he can  
19 take a look at it. I'm sure you're going to share it with  
20 plaintiffs' counsel anyhow. But that way he can inform me as to  
21 how we're doing on this, particularly if we do have a problem  
22 with the opt-outs as we get closer.

23 Are you okay with that?

24 MR. BALSER: Yes, Your Honor.

25 THE COURT: All right. Mr. Waldman, are you okay with

1       that?

2               MR. WALDMAN:   Sure.

3               THE COURT:   You want to just put on the terms, then, of  
4       the agreement and we'll kind of go through that?

5               MR. WALDMAN:   So you want as part of the terms of the  
6       preliminary approval order that the special master will issue a  
7       report 10 days ahead of the final approval hearing?

8               THE COURT:   Yeah.   But in terms of the agreement that I  
9       have from you is, you've got a \$525 million total settlement  
10      that's in two parts, with 360 million going to the class members  
11      distributed on a pro rata basis, and the fees and expenses are  
12      coming out of that 360.   Is that right?

13              MR. WALDMAN:   It's actually 300.   It's 425 together, so  
14      it's 300 million in the cash fund.   Yes, that's where the fees  
15      will come out.

16              THE COURT:   That's right.

17              MR. WALDMAN:   And then 125 million in additional  
18      payments that will raise the interest rates on the 360 Savings  
19      account.

20              THE COURT:   And that's for the current account holders.  
21      Is that correct?

22              MR. WALDMAN:   It's actually all the account holders as  
23      of the end date.

24              THE COURT:   Right.

25              MR. WALDMAN:   So they're being notified of this fact.

1 If they want to leave the account by the objection opt-out date,  
2 they may do so. If not, yes, they will be included.

3 THE COURT: Okay. As I understand it, we have --  
4 three-quarters of the accounts remain open, which is essentially  
5 almost 85 percent of the class damages. Is that correct?

6 MR. WALDMAN: That is correct. As of today.

7 THE COURT: So that portion should be a significant  
8 number of people, then. Is that right?

9 MR. WALDMAN: It's a super majority of the class, yes.

10 THE COURT: All right. What else do you want? I know  
11 you're using Epiq Class Action and Claims Solutions as the  
12 settlement administrator. Why don't you put on the rest of the  
13 terms, if there's any other material terms you want to put on  
14 the record.

15 MR. WALDMAN: Sure. You've got the monetary relief,  
16 which is the 300 million plus the additional 125 million in  
17 interest. In addition to that, I think it's fairly unique in  
18 this case that there will be no claims process. No class member  
19 has to file a proof of claim. They're automatically going to  
20 get their pro rata share of the settlement benefit, with one  
21 minor exception.

22 That exception is if a class member, a settlement class  
23 member, asks for a check and their account -- the amount to be  
24 distributed is under \$5, they would not get anything. However,  
25 they would still -- if they're still in the 360 Savings account,



1       they would continue to get the additional interest. And also,  
2       if they ask to be paid by an electronic payment, which the  
3       notice encourages all class members to do, even if their  
4       pro rata amount is under \$5, they will get paid.

5               THE COURT: Okay. Anything else?

6               MR. WALDMAN: And the last thing that's a feature of  
7       the settlement is the extensive comprehensive notice plan which  
8       is going out. As Your Honor can see from the papers, people are  
9       going to be notified by email, to the extent addresses exist.  
10      And Capital One does have a large percentage of the class that  
11      has direct email addresses. Everybody is going to get direct  
12      mailed the postcard notice, which has two features where it  
13      tells class members to look. One is a 1-800 number which they  
14      can call 24 hours a day, seven days a week, where they can get  
15      additional information. They can request a long form notice be  
16      mailed directly to them or have questions answered.

17              The postcard notice also directs settlement class  
18      members to the settlement website, which the settlement  
19      administrator will maintain. On the settlement website you have  
20      the long form notice which can be viewed or downloaded, as well  
21      as all of the Court's relevant orders, including the preliminary  
22      approval order, all of the briefs, and the settlement agreement  
23      and all the exhibits. Everybody can view them, they can look at  
24      them.

25              Additionally, we're also issuing press releases that

1 will go out to both regular media outlets and social media  
2 outlets. So it is quite the comprehensive program which will  
3 notify everybody about the terms of the settlement.

4 THE COURT: Well, it seems to me too that you-all have  
5 their contact information from Capital One. Like, this is a  
6 very discrete identifiable group of folks. Is that right?

7 MR. WALDMAN: That's correct. In fact, it's almost  
8 extraordinary. Because as I said, three-quarters of the  
9 accounts of 360 Savings are current accounts. They have all  
10 that information. Of the 25 percent of the accounts that's  
11 left, a good deal of those people went into the 360 Performance  
12 Savings account to get a higher rate of interest. So they have  
13 all those current addresses, email addresses, what have you. So  
14 it's a huge percentage of the class that they have current  
15 information.

16 THE COURT: I ask for two reasons. One, it's pretty  
17 clear to me the notice is going to be sufficient. But secondly,  
18 you don't envision any need for a cy-pres here, then? Because  
19 everybody is going to get their money, then. Is that --

20 MR. WALDMAN: That's correct. There is no cy-pres  
21 relief here. Everybody is getting money. If there's money left  
22 over just because checks have been mailed and they haven't been  
23 cashed, we have the option either, if there's enough money, we  
24 make a second distribution at plaintiffs' counsel's discretion.  
25 And if there's not that much money, we can put it into the

1 amount of money that will be distributed to the 360 Savings  
2 account holders in the form of higher interest rates.

3 THE COURT: That's fine. Okay.

4 MR. WALDMAN: So there will be no cy-pres relief.

5 THE COURT: All right. Anything else you wanted to  
6 add?

7 MR. WALDMAN: That's it for me.

8 THE COURT: Mr. Balser, anything else you want to add?

9 MR. BALSER: No, Your Honor.

10 THE COURT: All right. Well, I'm going to  
11 conditionally certify the class for settlement purposes as  
12 defined in the manner that's in the papers and the proposed  
13 order. We'll tweak the proposed order to deal with expanding  
14 the special master's duties here slightly.

15 There's one class here, then, to be certified. That  
16 class is defined to include all persons or entities who  
17 maintained a Capital One 360 Savings account at any time during  
18 the class period, which begins on September 18th of 2019 and  
19 runs through today, June 16th of 2025. This includes joint and  
20 co-holders of the 360 Savings accounts. This class does not  
21 include any of the following persons or entities:

22 Capital One, any entity in which Capital One has a  
23 controlling interest, and Capital One's officers, directors,  
24 legal representatives, successors, subsidiaries and assigns;  
25 two, any judge, justice, or judicial officer presiding over the

1 action as well as members of their immediate families and  
2 judicial staff; three, any individual who timely and validly  
3 opts out of the settlement.

4 So I find that this class meets the Rule 23  
5 requirements of numerosity, commonality, typicality, and  
6 adequacy. I also find that the settlement class meets the  
7 demands of Rule 23(b)(3), and that the questions of law or fact  
8 common to class members predominate over questions affecting  
9 individual members. Also, the class action is the superior  
10 method fairly and efficiently adjudicating this controversy.

11 As to class counsel, I'm going to appoint plaintiffs'  
12 counsel as class counsel under Rule 23(g). I find that both the  
13 effort that plaintiffs' counsel has undertaken thus far and  
14 plaintiffs' counsel's experience in class actions of this nature  
15 demonstrate their ability to represent the interests of the  
16 classes fairly and adequately. I therefore appoint the  
17 following law firms as class counsel: Wolf Popper, LLP and the  
18 Kaplan Law Firm.

19 I'm also going to appoint each of the following  
20 plaintiffs as representatives of the class: Scott C. Savett,  
21 Jay Sim, Amber Terrell, Angela Uherbelau - I'm not sure I said  
22 that right - Gwendolyn Wright, Elizabeth Zawacki, Sheryl Barnes,  
23 Alessandra Bellantoni, Ayal Brenner, Anthony Guest, Samuel Hans,  
24 Ronald Hopkins, Michael Krause, Steve Lenhoff, Jerry Magaña,  
25 Seth Martindale, Jennie Meresak, Gregory Mishkin, Andrew Molloy,

1 Jay Nagdimon, Neelima Panchang, Sailesh Panchang,  
2 Patrick Perger, Jr., Shantell Pitts, Howard Port, and  
3 Jane Rossetti.

4 I'm also going to preliminarily approve the class  
5 settlement. In doing so, the Court must determine the  
6 likelihood that it will be able to finally approve this  
7 settlement as being fair, reasonable, and adequate using the  
8 factors delineated in Rule 23 and in *In Re: Jiffy Lube*  
9 *Securities Litigation*, 927 F.2d 155, Fourth Circuit 1991. I'm  
10 going to address each of those factors now.

11 One, the plaintiffs and lead counsel have adequately  
12 represented the class, class representatives. And class  
13 counsel's litigation conduct has confirmed this. They've  
14 engaged in extensive discovery, reviewing roughly two million  
15 pages of discovery produced by Capital One, and engaged in  
16 expert work regarding Capital One's liability as well as motions  
17 practice. It was heavily briefed. Of course I issued a pretty  
18 big opinion on that. The plaintiffs' counsel prevailed almost  
19 entirely, not completely, over the motion to dismiss filed by  
20 the defendant.

21 Class counsel also expended significant time and effort  
22 engaging in difficult mediations, which leads to the next  
23 factor.

24 The settlement is the product of good faith informed  
25 and arm's length negotiations by experienced counsel. The

1 parties here extensively negotiated this settlement at arm's  
2 length since at least March of 2025. Their negotiations have  
3 involved numerous exchanges and settlement conferences involving  
4 our special master, Craig P. Seebald, who has done a great job  
5 here, and a private mediator that the parties selected from  
6 JAMS, Robert A. Meyer.

7 The history of this case also supports preliminary  
8 approval, as the parties were unsuccessful in their first  
9 efforts at mediation; they reached an agreement after a second  
10 all-day-long in-person mediation with Mr. Seebald and Mr. Meyer.  
11 This suggests that there was no collusion in this settlement.  
12 Likewise, the experience of counsel supports that I should  
13 approve this settlement. Each party was represented by highly  
14 skilled counsel with expertise in the field.

15 The settlement provides adequate relief to the class in  
16 light of the counterbalancing factors. The Court finds that the  
17 proposed settlement affords significant relief in the form of a  
18 total settlement amount of \$425 million. \$300 million will be  
19 used to make pro rata payments to individual settlement class  
20 members and 125 million will be used to pay additional interest  
21 payments to class members who continue to maintain 360 Savings  
22 accounts. Payments will be processed directly to members of the  
23 settlement class without the need to file any claims forms, as  
24 Mr. Waldman just laid out in detail.

25 Plaintiffs also faced risks in continuing to litigate

1 this case through trial. These cases [sic] include delayed  
2 certification, potential of the Court awarding summary judgment  
3 to Capital One, and significant appellate risk, given the number  
4 and diversity of legal issues at play and the various actions  
5 under the different bodies of state law.

6 I note that just because I denied largely the motion to  
7 dismiss, that doesn't mean that I would have denied a summary  
8 judgment motion. Those are different standards. And there were  
9 significant hurdles here that plaintiffs had to face in this  
10 case. Not a foregone conclusion that the plaintiffs would have  
11 prevailed, which I factored in largely. Because in a footnote  
12 in their motion for approval, plaintiffs indicate that the  
13 amount of damages represents roughly 14.8 percent of the  
14 potential damages, but note under Capital One's model it's  
15 57.2 percent.

16 I say that because usually a 14.8 percent recovery  
17 would be, I think, on the lower side. 57 percent, under the  
18 Capital One model, would be totally appropriate. But I think  
19 due to the unique and challenging issues in this case, I believe  
20 that the recovery here is appropriate, particularly what is  
21 going on for the active account members in what I'm calling the  
22 second tier and the additional 125 million.

23 All right. The next factor is the form and the manner  
24 of the proposed notice. That's going to be approved as well.  
25 I'm satisfied that the notice plan is reasonably calculated to

1 apprise the class of the pendency of the action, the proposed  
2 settlement, and the class members' rights to opt out of the  
3 settlement class, or they could object. The proposed notice  
4 plan will provide individual direct notice, again, using the  
5 manner that Mr. Waldman described in detail. I'm completely  
6 satisfied with the notice. I don't think there's any issues  
7 here about the quality of notice that will occur. I will have  
8 the special master oversee it just to make sure everything is  
9 okay. I don't want to have any drama here as well.

10 So I find that these procedures constitute the best  
11 notice practicable under the circumstances and they comply with  
12 due process and Rule 23. Epiq Class Action and Claims Solutions  
13 will be the settlement administrator. I'm approving them.

14 Now, let's talk about the timeline here. So I looked  
15 at what your timeline is, and it seems to me -- I thought there  
16 was a discussion about November 6th as the final approval  
17 hearing. I'm not wedded to that date. I'm a little worried  
18 about whether we can get everything done by that time.

19 Mr. Waldman, what do you want to do there?

20 MR. WALDMAN: Yeah, I can walk you through the dates.  
21 The dates actually came from discussions with the settlement  
22 administrator. They gave us everything they needed and then we  
23 agreed with defendants as to the time they needed. And we've  
24 done everything by relative dates, and by that I mean 21 days  
25 after this, 24 days before that. But if you actually want to go



1 through it, since you're --

2 THE COURT: No, I'm not pushing back on you, I'm just  
3 asking you, particularly you have the final approval date as I  
4 think you said 100 days after the notice begins. Does that get  
5 us to November 6th or do we need to go to December?

6 MR. WALDMAN: Actually, it's 100 days after the CAFA  
7 notice date, which is -- that's today.

8 THE COURT: Okay.

9 MR. WALDMAN: So it's at least 100 days from today.

10 THE COURT: So you still feel good about November 6th?

11 MR. WALDMAN: Yeah, we think it can be done. And  
12 everything was laid out, the settlement administrator approved  
13 it, defendants believe they can get everything. If anything  
14 happens, we'll certainly talk to Your Honor, and if we have to  
15 move it, we'll move it. But it looks like it will all happen.

16 THE COURT: That's fine. I didn't want to put undue  
17 pressure on you for no reason. I don't believe in doing things  
18 for artificial reasons.

19 So we'll stick to November 6th at 11:00 a.m., then?  
20 We'll do it here. Does that work for you as well, Mr. Balser?

21 MR. BALSER: Yes, Your Honor.

22 THE COURT: All right. So then I have the deadline for  
23 the notice to be sent is August 15th, the deadline to file the  
24 motions for attorneys' fees, expenses, service awards, and final  
25 approval is September 11th. Am I right about this?

1 MR. WALDMAN: That's exactly the dates we have.

2 THE COURT: Opt-out objection deadline October 2nd;  
3 certification of compliance and notice of plan requirements  
4 deadline is October 26th; excluded class members filing date,  
5 14 days before the final approval. The deadline to respond to  
6 objections or requests to intervene, that's all 14 days before  
7 the final approval.

8 And I'm going to just add a special master report  
9 10 days before, just to make sure we're all on the same page.

10 MR. WALDMAN: The only thing I'll note, Your Honor, is,  
11 while you are correct with your math to say the deadline for the  
12 settlement administrator's declaration is October 26th, that is  
13 a Sunday. I don't know if you want to push that to the 27th.

14 THE COURT: Yeah, that's fine. We'll make it  
15 October 27th.

16 Anything else? Any other changes you want to make?

17 MR. WALDMAN: No, everything else is exactly what we  
18 said.

19 THE COURT: All right. Is there anything else I need  
20 to do on this, then, from your perspective, Mr. Waldman?

21 MR. WALDMAN: Nothing from us.

22 THE COURT: Mr. Balser, anything else from you?

23 MR. BALSER: No, Your Honor.

24 THE COURT: Look, these are obviously complicated cases  
25 any time you do an MDL. I just want to tell you how much I

1 appreciate your hard work going into this. I know we're still  
2 going to have some wrinkles going forward. We'll deal with them  
3 as they come up. And I still want to see what happens with this  
4 New York case. If the case is assigned to me, I'll set it for a  
5 hearing after that and we'll kind of go from there. I'm a  
6 get-it-done kind of guy and that's what we want to do. Does  
7 that make sense?

8 All good. Everything else good? Everybody have a good  
9 day.

10 (Off the record at 2:55 p.m.)  
11  
12  
13  
14  
15

16 **CERTIFICATE OF OFFICIAL COURT REPORTER**  
17

18 I, Rebecca Stonestreet, certify that the foregoing is a  
19 correct transcript from the record of proceedings in the  
20 above-entitled matter.  
21  
22  
23

24     //Rebecca Stonestreet//    

25 **SIGNATURE OF COURT REPORTER**

    6/27/25    

**DATE**

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