

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
5 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER
6 COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER
7 COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN
8 ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
9

10 At a stated term of the United States Court of Appeals for the
11 Second Circuit, held at the Thurgood Marshall United States
12 Courthouse, Foley Square, in the City of New York, on the 7th day
13 of March, two thousand and five.

14 PRESENT:

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17 Hon. John M. Walker, Jr.,
18 Chief Judge,
19 Hon. Richard J. Cardamone,
20 Hon. Barrington D. Parker,
21 Circuit Judges.
22

23 -----X
24
25 KIM SEVIER, individually and on behalf
26 of all others similarly situated,
27 HEIDI D. KNIGHT, individually and on
28 behalf of all others similarly
29 situated and ERIC M. PAYNE,
30

31 Plaintiffs-Appellees,

32 - v. -

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34
35 TIME WARNER, INC. and TIME WARNER
36 CABLE, INC.,
37

38 Defendants-Appellants.
39
40 -----X
41

No. 04-2651 (L)

1 **APPEARING FOR APPELLANT**

JAY COHEN (Stacey A. Shortall, on the brief), Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY

2 **APPEARING FOR APPELLEE**

BRIAN MURRAY, Murray, Frank & Sailer LLP, New York, NY (Eric J. Belfi and Gregory B. Linkh, Murray, Frank & Sailer, LLP, New York, NY; Roy A. Katriel, The Katriel Law Firm, Washington, DC; Mark Reinhardt, Reinhardt, Wendorf & Blanchfield, St. Paul, MN, on the brief)

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4 Appeal from the United States District Court for the
5 Southern District of New York (John E. Sprizzo, Judge).

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7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
8 **DECREED** that the case is **REMANDED** to the district court in order
9 for the parties to pursue a classwide settlement.

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11 Defendants-appellants Time Warner Inc. and Time Warner Cable
12 Inc. initially appealed from the April 23, 2004 order of the
13 United States District Court for the Southern District of New
14 York (John E. Sprizzo, Judge) denying appellants' motion to
15 compel arbitration. Familiarity with the facts and procedural
16 background is assumed.

17 Shortly before oral argument, the parties tentatively agreed
18 to a classwide settlement, for which they seek district court
19 approval, pursuant to Fed. R. Civ. P. 23(e). Pursuant to the
20 procedure outlined in United States v. Jacobson, 15 F.3d 19, 22
21 (2d Cir. 1994), we remand this case to the district court so that
22 the parties may seek approval of a classwide settlement. After
23 the district court has ruled on the Rule 23(e) settlement, either
24 party may restore jurisdiction to this panel within 30 days of
25 that order by letter to the Clerk's Office seeking review.

26 Accordingly, the case is **REMANDED**.

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29 FOR THE COURT:
30 Roseann B. MacKechnie, Clerk

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33 By: _____
34 Lucille Carr, Deputy Clerk

