

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	05 Civ. 8626 (GEL)
In re REFCO, INC. SECURITIES LITIGATION	:	
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**LEAD PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT WITH DEFENDANT JOSEPH J. MURPHY**

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Lead Plaintiffs Pacific Investment Management Company LLC and RH Capital Associates LLC (together, "Lead Plaintiffs") respectfully submit this memorandum of law in support of their motion for preliminary approval of the partial settlement of this securities class action as against defendant Joseph J. Murphy ("Murphy").

FACTUAL BACKGROUND

Commencing in October 2005, multiple securities class action complaints were filed against Refco Inc. ("Refco"), certain of its former officers and directors, and its auditor and underwriters. By Order dated February 8, 2006, the Court consolidated the class actions, appointed RH Capital Associates LLC and Pacific Investment Management Company LLC as Lead Plaintiffs, and appointed the law firms of Grant & Eisenhofer P.A. and Bernstein Litowitz Berger & Grossmann LLP as co-lead counsel ("Co-Lead Counsel") for the putative class.

On May 5, 2006, Lead Plaintiffs filed a First Amended Consolidated Class Action Complaint in this federal securities class action. In that Complaint, Lead Plaintiffs asserted claims against Murphy, a former Executive Vice President of Refco, Inc. ("Refco"), pursuant to Sections 11 and 15 of the Securities Act of 1933, and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Murphy and certain other defendants moved to dismiss the claims against them, which motions were denied in large part by Order dated April 30, 2007.

Following the Court's denial of the motions to dismiss, Co-Lead Counsel have engaged in extensive discovery, including the review and analysis of millions of pages of documents that have been produced by the defendants and various third parties. On December 3, 2007, Lead Plaintiffs filed a Second Amended Complaint which incorporates some of the facts obtained through discovery. The Second Amended Complaint asserts the same claims against Murphy that were asserted in the previously filed complaint.

In late 2007, following the announcement of a proposed settlement of this action as against defendant Dennis Klejna (“Klejna”), counsel for Murphy and Co-Lead Counsel engaged in arm’s-length settlement discussions, which culminated in the execution of a Stipulation and Agreement of Settlement Between Lead Plaintiffs and Defendant Joseph J. Murphy (the “Stipulation”) dated as of February 12, 2008. The Stipulation provides for a settlement of the action as against Murphy (the “Partial Settlement”) in exchange for the payment of \$7,900,000 in cash for the benefit of the Settlement Class. Murphy has agreed to pay \$350,000 of this amount from his personal funds, and to cause the remaining \$7,550,000 to be paid by the Directors & Officers liability insurers that issued insurance policies to Refco under which Murphy is an insured person. The parties recognize that it may be necessary for Murphy to institute litigation against the insurers in order to secure this payment, and Murphy has agreed to do so. Further, Murphy has agreed to provide Co-Lead Counsel with access to certain documents and financial information, and to provide reasonable cooperation in Lead Plaintiffs’ continued prosecution of claims against other parties.

Given the substantial monetary and non-monetary benefits to be provided by or on behalf of Murphy, Lead Plaintiffs believe the Partial Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Accordingly, Lead Plaintiffs respectfully request that the Court enter an order preliminarily approving the Partial Settlement.

ARGUMENT

The Partial Settlement represents a very favorable resolution of the Settlement Class members’ claims against Murphy, and warrants preliminary approval. Among other things, it provides meaningful monetary benefits to the Settlement Class from a defendant whom Lead Plaintiffs believe to bear responsibility for the damages suffered by the Settlement Class, but whom Lead Plaintiffs do not believe to be among the most culpable defendants in the case.

These benefits must be compared to the risk that a protracted period of litigation, including dispositive motion practice, trial and likely appeals – which could extend years into the future – might lead to no recovery, or a smaller recovery, against Murphy. Continued litigation with Murphy could also result in a continued drain on the insurance proceeds that are otherwise available to cover Settlement Class members’ claims against Murphy and other defendants.

When reviewing a proposed settlement in the context of preliminary approval, courts make a preliminary determination regarding the fairness, reasonableness, and adequacy of settlement terms. In making this preliminary determination, “[w]here the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.” *In re Initial Public Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (quoting MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41 (West 1995)); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

The Partial Settlement terms are well “within the range of possible approval.” *In re Initial Public Offering Sec. Litig.*, 226 F.R.D. at 191. The payment of \$7,900,000 as well as the non-monetary benefits to be provided by Murphy, when viewed in the context of the significant risks and uncertainties of continued litigation against Murphy, make the Partial Settlement extremely beneficial to the Settlement Class. Indeed, this Court has already preliminarily approved a similar settlement with defendant Klejna which provides for slightly less monetary consideration to the Settlement Class.¹ Moreover, the Partial Settlement was negotiated at

¹ Klejna agreed to make a personal payment to the Settlement Class of \$50,000, whereas Murphy has agreed to pay \$350,000. Each of them has agreed to cause the insurance carriers to pay \$7,550,000 on his behalf. Accordingly, the consideration in the Partial Settlement with Murphy is \$300,000 more than in the settlement with Klejna.

arm's-length by counsel who are experienced in complex securities litigation and who were acting in an informed manner, under the direction of Lead Plaintiffs who are sophisticated institutional investors. The Court should preliminarily approve the Partial Settlement as within the range of possible fairness, reasonableness and adequacy.²

CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court preliminarily approve the proposed Partial Settlement.

DATED: February 21, 2008

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² Because Lead Plaintiffs are in discussions with other defendants regarding potential settlements with those defendants, Lead Plaintiffs respectfully request that – as with the Klejna settlement – the Court grant preliminary approval and defer (i) consideration of a proposed notice and notice procedure, (ii) consideration of Lead Plaintiffs' request for preliminary certification of a settlement class, and (iii) scheduling of a final approval hearing.

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2008 the attached **Lead Plaintiffs' Notice of Motion for Preliminary Approval of Settlement with Defendant Joseph J. Murphy and Lead Plaintiffs Memorandum of Law in Support of Motion for Preliminary Approval of Settlement with Defendant Joseph J. Murphy** were filed electronically. Notice of this filing will be electronically mailed to all parties registered with the Court's electronic filing system.

/s/ James Sabella
James Sabella