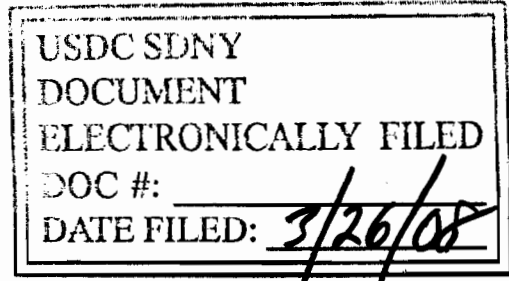


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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In re REFCO, INC. SECURITIES LITIGATION :  
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05 Civ. 8626 (GEL)

**ORDER**

Lead Plaintiffs Pacific Investment Management Company, LLC and RH Capital Associates LLC (“Lead Plaintiffs”) move for preliminary approval of a partial settlement agreement with defendant Joseph J. Murphy. (Doc. #494.) Various non-settling defendants<sup>1</sup> have objected to the settlement, arguing that since most of the funds are to be paid by an insurer that has not yet agreed to pay, the settlement is “illusory.” The Court having carefully considered the Second Amended Consolidated Class Action Complaint, the Lead Plaintiffs’ motion for preliminary approval of the settlement with Murphy, the Stipulation of Settlement between Lead Plaintiffs and Murphy, the non-settling defendants’ opposition to that motion, and the Lead Plaintiffs’ reply to that objection, the objection will be overruled and the motion for preliminary approval granted.

Essentially, the non-settling defendants’ arguments are a rehash of arguments made and rejected in connection with an earlier similar settlement with defendant Dennis A. Klejna, and they are rejected again for the reasons fully set forth in the Court’s Order of January 22, 2008, granting preliminary approval to that settlement. The settlement is the product of arms’ length negotiations, does not grant preferential treatment to class representatives or other segments of the class, and is plainly a reasonable settlement falling well within the range of possible approval. See In re Initial Public Offering Securities Litig., 226 F.R.D. 186, 191 (S.D.N.Y. 2005). As noted in connection with the earlier settlement, while it may very well develop that the settlement will fail if the insurers continue to refuse to pay, that is not a reason to withhold preliminary approval, at least given that the Lead Plaintiffs have agreed to defer notifying the class and scheduling a fairness hearing pending further settlements, so that no expense will be incurred by the class until and unless the Court at some future time determines that it is appropriate to take these steps.

Accordingly, it is hereby ORDERED that:

1. Preliminary Approval of Settlement – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate as to the Settlement Class members, subject to further consideration at the Settlement Hearing described below.

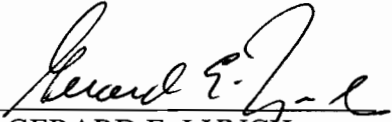
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<sup>1</sup> The non-settling defendants are Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O’Kelley, Scott A. Schoen, William M. Sexton, Philip Silverman, and Tone N. Grant.

2. Consideration of Other Matters Deferred – In the interests of conserving expenses to the class, the Court shall defer until a later date the preliminary approval of a proposed notice and notice procedures for the Settlement, preliminary certification of a class for purposes of the Settlement, and scheduling of a hearing for final approval of the Settlement.
3. Taxes – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court.
4. Settlement Fund – The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.
5. Termination of Settlement – This Order shall become null and void, and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class members, and Murphy, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the Effective Date does not occur, pursuant to the terms of the Stipulation; or (ii) the proposed Settlement is terminated or does not become effective for any other reason. In such events, the Stipulation shall become null and void and of no further force and effect.
6. Use of Order – This Order shall not be construed or used as an admission, concession or declaration by or against Murphy of any fault, wrongdoing, breach, or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Lead Plaintiffs, or the Settlement Class members, that their claims lack merit, that their damages are in any way limited, or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

SO ORDERED.

Dated: New York, New York  
March 26, 2008

  
GERARD E. LYNCH  
United States District Judge