



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 Dennis A. Klejna. (Doc. #439.) Lead Plaintiffs also seek preliminary certification of the class for settlement purposes, preliminary approval of the form and manner of notice to the class, and the scheduling of a final approval hearing. (*Id.*)

On December 21, 2007, an objection to the proposed settlement was filed by a group of non-settling defendants, each of whom is a former officer or director of Refco, Inc. and/or Refco Group Ltd., LLC.<sup>1</sup> (Doc. # 449.) They contend that since the agreement is conditioned on Klejna “caus[ing]” the payment of \$7,550,000 from various insurers who have already “indicated that they intend to refuse to pay” any portion of that amount, and since the settlement provides that if the insurers fail to make payment by April 15, 2008, Lead Plaintiffs have the unilateral right to terminate the agreement (Sabella Decl. in Response to Non-Settling Defendants’ Objection, Ex. C, at 7), granting Lead Plaintiffs’ motion for preliminary approval and related relief would be premature at this time and waste both judicial and class resources because Klejna will be forced to litigate against the insurers, and resolution of that litigation will almost certainly extend beyond the April 15, 2008, deadline for payment. Thus, according to the non-settling defendants, “the Proposed Settlement may very well be terminated before it can even become effective.” (Non-Settling D. Mem. 4.)

In reviewing Lead Plaintiffs’ motion for preliminary approval, the Court must make a preliminary determination regarding the fairness, reasonableness and adequacy of the settlement terms prior to allowing notice to be sent to the potential class. “Where the proposed settlement appears to be the product of serious, informed, non-collusive 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 Securities Litigation*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (internal quotation marks omitted).

Having carefully considered the arguments of all interested parties, the Court concludes that the proposed settlement satisfies the conditions for preliminary approval. At oral argument

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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, Tone N. Grant, Phillip R. Bennett, and Robert C. Trosten.

on January 18, 2008, counsel for Lead Plaintiffs indicated that no party or prospective class member has raised any suggestion that the proposed settlement terms are unfair or unreasonable. Indeed, given the considerable risks and uncertainties associated with litigation of this nature, the terms of the proposed settlement, including the contemplated payment of \$7,600,000 (\$50,000 from Klejna personally and \$7,550,000 from the insurers) and the non-monetary benefits to be provided by Klejna to Lead Plaintiffs, clearly fall "within the range of possible approval." *Id.* Moreover, given Lead Plaintiffs' representation that further settlements have already been reached in principle, or may soon be reached, with other defendants, Lead Plaintiffs have agreed to defer sending notice to the class and scheduling a fairness hearing on the Klejna settlement pending submission of additional motion(s) for approval of further settlements, thus largely obviating the concerns regarding waste of judicial and class resources raised by the non-settling defendants.

Accordingly, it is hereby ORDERED that Lead Plaintiffs' motion for preliminary approval of the proposed settlement agreement with Klejna is granted. In the interests of conserving the expense to the class, the Court will defer consideration of Lead Plaintiffs' request for preliminary certification of the class, preliminary approval of notice to the class, and the scheduling of a fairness hearing, pending submission of additional motion(s) for approval of further settlements that Lead Plaintiffs have advised have already been reached in principle, or may soon be reached, with other defendants, which may appropriately be addressed in a single notice and at a single hearing.

SO ORDERED.

Dated: New York, New York  
January 22, 2008

  
GERARD E. LYNCH  
United States District Judge