

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re INSURANCE BROKERAGE)	Civil Action No. 2:04-cv-5184, 2:05-
ANTITRUST LITIGATION)	cv-1079 and 2:05-cv-5533 (FSH)(PS)
)	
APPLIES TO ALL ACTIONS)	MDL No. 1663
)	
_____)	Hon. Faith S. Hochberg
)	
In re EMPLOYEE BENEFIT)	
INSURANCE BROKERAGE)	
ANTITRUST LITIGATION)	
)	
APPLIES TO ALL ACTIONS)	
)	
_____)	

ORDER APPROVING SETTLEMENT

WHEREAS, Class Plaintiffs¹ and the Gallagher Defendants entered into a Stipulation; and

WHEREAS, the Court entered a **[DATE]**, 2006 Order (the “Preliminary Approval Order”) preliminarily certifying the putative Settlement Class in this Action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordering individual and publication notice to Settlement Class Members, scheduling a Fairness Hearing for **[DATE]**, 2007, and providing Settlement Class Members with an opportunity to object to the Settlement; and

¹ Unless otherwise specifically defined herein, the capitalized terms in this Order Approving Settlement have the same meaning as attributed to them in the Stipulation of Settlement Between Class Plaintiffs and Arthur J. Gallagher & Co. Defendants dated December 29, 2006 (the “Stipulation”).

WHEREAS, the Court held a Fairness Hearing on **[DATE]**, 2007 to determine whether to give final approval to the Settlement Agreement; and

WHEREAS, the Court is contemporaneously issuing a Judgment under Fed. R. Civ. P. 54(b) that, among other things, certifies the Settlement Class, approves the Settlement and dismisses the Settlement Class Members' claims with prejudice as to the Gallagher Defendants;

NOW THEREFORE, based on the submissions of the Settling Parties, on the argument of counsel at the Fairness Hearing, and on this Court's Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. **Incorporation of Settlement Documents** – This Order Approving Settlement (the "Order") incorporates and makes a part hereof:

- a. the Stipulation; and
- b. Exhibits A through M to the Stipulation.

The Stipulation and all Exhibits thereto shall be referred to collectively as the "Settlement Agreement."

2. **Jurisdiction** – The Court has personal jurisdiction over all Settlement Class Members (as defined below) and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the Settlement and the Plan of Allocation, grant final certification of the Settlement Class for settlement purposes and dismiss the Action with prejudice as to the Gallagher Defendants; *provided however*, that such jurisdiction to enforce the Settlement and this Order shall not constitute a basis for or give rise to personal jurisdiction over any of Gallagher Entities whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist.

3. **Final Settlement Class Certification** – The Settlement Class this Court preliminarily certified as an opt-out Settlement Class is hereby finally certified for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Settlement Class is all individuals or entities within the “Commercial Class” or the “EB Class”. The “Commercial Class” means all Persons who, had a Commercial Settlement Class Policy Purchase,² *provided further* that “Commercial Class” does not include: (a) such Persons who submit valid and timely requests for exclusion from the Settlement Class in accordance with the procedures set out in Section 8.1 of the Stipulation, who are set forth on Exhibit A; (b) such Persons who settled an actual or threatened lawsuit or other proceeding with the Gallagher Entities, or any of them, and released Gallagher from any further claims concerning their Commercial Settlement Class Policy Purchase, who are set forth on Exhibit B; (c) such Persons who have elected to receive monetary payments pursuant to the Illinois Regulatory Settlements *provided however*, that such Persons who have elected to receive monetary payments pursuant to the Illinois Regulatory Settlements shall be Settlement Class Members respecting their Settlement Class Policy Purchases that are not eligible to receive relief under the Illinois Regulatory Settlements, with respect to which the Gallagher Defendants shall waive enforcement of the release provided in the Illinois Regulatory Settlements (the “Regulatory Release”) to the extent that such Persons participate in the Settlement Class with respect to such purchases, *provided further* that the Gallagher Defendants reserve the right to

² “Commercial Settlement Class Policy Purchase” means all the insurance Brokerage and any related administrative, advisory or claims services provided by the Gallagher Entities (defined in Section 1.34 of the Settlement Agreement) or any other Broker Defendant to any Settlement Class Member during the Class Period where the coverage or services incept, begins or renews during the Class Period pursuant to a contract, policy, agreement, arrangement or understanding where the insurance or reinsurance: (a) involved an insured or Policyholder (defined in Section 1.41 of the Settlement Agreement) thereof, any of which was either domiciled in or resident in, or had any other significant contact with, the United States, its territories or possessions; (b) involved a contract, policy, agreement, arrangement or understanding entered into in the United States, its territories or possessions; (c) involved a contract, policy, agreement, arrangement or understanding subject to federal law or to the law of any of the states of the United States, its territories or possessions; or (d) provide coverage for an insurable exposure in the United States, its territories or possessions.

enforce the Regulatory Release in its entirety as to any Persons who has elected to receive monetary payments pursuant to Illinois Regulatory Settlements to the extent such Persons seek relief from the Gallagher Defendants outside of the Stipulation for Commercial Settlement Class Policy Purchases that are not eligible to receive relief under the Illinois Regulatory Settlements; (d) such Persons who are Defendants (including their officers and directors); (e) any Persons in which the Gallagher Defendants, or any of them, has or had a controlling interest during the Class Period and the legal representatives, heirs, executors, successors or assigns of any such excluded Persons; and (f) any director or officer of the Gallagher Defendants, or any of them, during the Class Period (the “Excluded Persons”). The “EB Class” is defined as all Persons within the “Employer Class” or the “Employee Class”. The Employer Class is defined as all Persons that: (a) were employers providing EB Insurance pursuant to a plan governed by ERISA, exclusive of Excluded Persons; or (b) were employers, including governmental or religious employees, or associations or groups of Persons providing EB Insurance, exclusive of Excluded Persons; and (c) have paid in full or in part for an EB Settlement Class Policy Purchase.³ The Employee Class is defined as all Persons that: (a) were employees in the United States receiving EB Insurance from a plan governed by ERISA, exclusive of Excluded Persons; and/or (b) were employees, including governmental or religious employees or members of associations or groups

³ “EB Settlement Class Policy Purchase” means the purchase or renewal of EB Insurance, or reinsurance thereof and related administrative, advisory or claims services, obtained through engaging the services of the Gallagher Entities or any other Broker Defendant where the coverage or services under such EB Insurance, or reinsurance thereof incept, begins or renews during the Class Period pursuant to a contract, policy, agreement, arrangement or understanding where the EB insurance, or reinsurance thereof (a) involved an insured or Policyholder thereof, any of which was either domiciled in or resident in, or had any other significant contact with, the United States, its territories or possessions; (b) involved a contract, policy, agreement, arrangement or understanding entered into in the United States, its territories or possessions; (c) involved a contract, policy, agreement, arrangement or understanding subject to federal law or to the law of any of the states of the United States, its territories or possessions; or (d) provided coverage for an insurable exposure in the United States, its territories or possessions.

providing EB Insurance, exclusive of Excluded Persons; and (c) have paid in full or in part for an EB Settlement Class Policy Purchase.

4. **Issue for Certification** – The issue that the Court is deciding on a class-wide basis is whether the terms of the Settlement are fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e)(1)(C) and governing law construing that Rule. In making that determination, the Court also has considered – as discussed in paragraph 6 below – whether proper notice of the Settlement was given under Fed. R. Civ. 23(c)(2)(B) and 23(e)(1)(B) to the Settlement Class and any other relevant Persons so that the Settlement Agreement’s terms will have binding effect, as discussed in paragraph 9 below.

5. **Adequacy of Representation** – Class Plaintiffs and Class Counsel have fully and adequately represented the Settlement Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4).

6. **Notice** – The Court finds that the distribution of the Mailed Notice, the publication of the Published Notice, the distribution of the Proof of Claim Form, and the postings of the Website Notice and the notice methodology were all implemented in accordance with the terms of the Settlement Agreement and this Court’s Preliminary Approval Order. The Court further finds that the Mailed Notice, Published Notice and Proof of Claim Form were simply written and readily understandable, and that the Mailed Notice, Published Notice, Proof of Claim Form and Website Notice and the notice methodology: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and the claims in the Action, their rights to object to the Settlement, including the award of Attorneys’ Fees and Expense and Incentive Award Petition, and to appear at the Fairness Hearing, and their right to exclude

themselves from the Settlement Class, (iii) were reasonable and constituted due, adequate and sufficient notice to all Persons entitled to notice, and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law.

7. **Final Settlement Approval** – The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Settling Parties and the Settlement Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Plan of Allocation** – The Plan of Allocation is approved as a fair and reasonable method to allocate the Settlement Fund among Settlement Class Members, and the Settling Parties, through the Court-approved – Settlement Administrator, are directed to implement and administer the Plan of Allocation in accordance with its terms and provisions.

9. **Binding Effect** – The terms of the Stipulation of Settlement and of this Order and the accompanying Judgment shall be forever binding on Class Plaintiffs and all Settlement Class Members, as well as their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns as to all claims and issues that have or could have been raised in this Action.

10. **Release** – The Release as set forth in Section 16 of the Settlement Agreement (and as set out in Exhibit C) is expressly incorporated herein in all respects. The Release shall be effective as of the Effective Date.

11. **Permanent Injunction** – All Settlement Class Members (and their heirs, executors and administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns), any Person claiming by or through a Settlement Class Member, and any Person representing any or all Settlement Class Members, are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any Released Claims. All Persons are permanently enjoined from organizing any Settlement Class Members for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include claims that are based upon, arise out of or relate to any Released Claims, or by seeking class certification in a pending action) any other lawsuit that is based upon, arises out of or relates to any Released Claims.

12. **Bar Order**

- a. Any and all Settlement Class Members are permanently barred, enjoined and restrained from commencing, prosecuting or asserting any Released Claim against the Gallagher Defendants.
- b. All Persons, including without limitation all Non-Settling Defendants who are, have been, could be, or could have been alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with the Released Parties or any of them respecting the Released Claims or any of them, are hereby, to

the maximum extent permitted by law, barred and permanently enjoined from making, instituting, commencing, prosecuting, participating in or continuing any claim, claim-over, cross-claim, action, or proceeding, however denominated, regardless of the allegations, facts, law, theories or principles on which they are based, in this Court or in any other court or tribunal, against the Released Parties or any of them with respect to the Released Claims, including without limitation equitable, partial, comparative, or complete contribution, set-off, indemnity, assessment, or otherwise, whether by contract, common law or statute, arising out of or relating in any way to the Released Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged, satisfied, and made unenforceable to the maximum extent permitted by law, and no such claim may be commenced, maintained, or prosecuted against any Released Party. Any judgment or award obtained by a Settlement Class Member against any such Non-Settling Defendant or third party shall be reduced by the amount or percentage, if any, necessary under applicable law to relieve Company or any Released Party of all liability to such defendants or third parties on such barred claims. Such judgment reduction, partial or complete release, settlement credit, relief, or setoff, if any, shall be in an amount or percentage sufficient under applicable law as determined by the Court to compensate such Non-Settling Defendants or third parties for the loss of any such barred claims against Company or any Released Party. Nothing in this paragraph shall be construed to bar any Person who is

alleged to be a joint tortfeasor, co-tortfeasor, co-conspirator, or co-obligor with any of the Released Parties from instituting, commencing, prosecuting, or participating in any claim, claim-over, cross-claim, action, or proceeding, however denominated, against a Released Party in any litigation in which claims against the Released Party are not released and discharged pursuant to this Order.

13. **No Admissions** – Neither this Order and the accompanying Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other documents referred to in this Order or the accompanying Judgment, nor any action taken to carry out this Order and the Judgment is, may be construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding, or may be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any Person, including but not limited to the Gallagher Defendants, or as a waiver by the Gallagher Defendants of any applicable defense. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not under any circumstances be construed as, offered as, received as, used as or deemed to be evidence of, an admission or concession as to the Gallagher Defendants' denials or defenses and shall not be offered or received in evidence in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding against any Settling Party hereto for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the accompanying Judgment and the Settlement Agreement; *provided however*, that this Order, the accompanying Judgment and the

Settlement Agreement may be filed in any action against or by the Gallagher Defendants or other Releasees to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

14. **Enforcement of Settlement** – Nothing in this Order or the accompanying Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

15. **Attorneys' Fees and Expenses** – Class Counsel are hereby awarded Attorneys' Fees and Expenses in the amount of _____, which amount the Gallagher Defendants shall pay or cause to be paid in accordance with the terms of the Settlement Agreement.

16. **No Other Payments** – Paragraph 15 of this Order covers, without limitation, any and all claims for Attorneys' Fees and Expenses, costs or disbursements incurred by, Class Counsel or any other counsel of record representing Class Plaintiffs or Settlement Class Members in this Action, or incurred by Class Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to this Action, the Settlement, the administration of the Settlement Agreement and/or the Released Claims except to the extent otherwise specified in this Order and the Settlement Agreement.

17. **Incentive Awards** – Class Plaintiffs are hereby awarded \$_____ each, which amount the Gallagher Defendants shall pay or caused to be paid in accordance with the terms of the Settlement Agreement.

18. **Findings of Fact and Conclusions of Law** – The Settling Parties are directed to jointly prepare proposed findings of fact and conclusions of law in support of the Court's Judgment and this Order.

19. **Retention of Jurisdiction** – The Court has jurisdiction to enter this Order and the accompanying Judgment. Without in any way affecting the finality of this Order and the accompanying Judgment, this Court expressly retains exclusive and continuing jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement, and of this Order and the accompanying Judgment, and for any other necessary purposes, including, without limitation:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order or the Judgment (including, without limitation, whether a Person is or is not a Settlement Class Member, and whether claims or causes of action allegedly related to this Action are or are not barred by the Judgment or Release);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Judgment approving the Settlement Agreement, dismissing all claims with prejudice, and permanently enjoining Settlement Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this Settlement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court’s retention of continuing jurisdiction; *provided* however that nothing in this paragraph 19 shall constitute a basis for nor give rise to personal jurisdiction over any of the Gallagher Entities subsidiaries whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist.

20. **Rule 11 Findings** – The Courts finds that the Complaints were filed as to the Gallagher Defendants on a good faith basis and in accordance with Rule 11 of the Federal Rules

of Civil Procedure based upon all publicly available information. The Court finds that all Settling Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

21. **Dismissal of Action** – This Action, including all individual claims and Settlement Class Members claims resolved by it, is hereby dismissed with prejudice as to the Gallagher Defendants against Class Plaintiffs and all other Settlement Class Members, without fees or costs to any Settling Party except as otherwise provided in this Order and the accompanying Judgment.

22. **Entry of Judgment** – Because it is in the best interests of the Settlement Class Members that the Settlement Amount be disbursed as soon as possible and because the Settlement Agreement resolves all claims as to the Gallagher Defendants, the Court finds that there is no just reason to delay the Judgment regarding the Settlement Agreement. Accordingly, the Court expressly directs that the Judgment regarding the Settlement Agreement be entered as to less than all parties and all claims in the Action pursuant to Federal Rule of Civil Procedure 54(b).

SO ORDERED this _____ day of 2007.

HONORABLE FAITH S. HOCHBERG
UNITED STATES DISTRICT COURT JUDGE

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