

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**

GERARD E. LYNCH, District Judge:

Joseph P. Collins, a defendant both in this matter and in a related criminal case, has sought to amend the Confidentiality Order dated February 8, 2008, to provide that documents produced in discovery in this matter and designated confidential may be used at trial not only in this matter (as expressly permitted in the Confidentiality Order, at ¶ 10), but also in the criminal case. On March 30, 2009, the Court invited all parties to the Confidentiality Order to respond to the proposed amendment. On April 2, 2009, defendants Grant Thornton and Mark Ramler, writing on behalf of a number of the civil defendants, expressed objections, arguing that the proposed modification would risk unduly exposing confidential material to public view.

This argument is not persuasive. First, the modification sought, as understood by the Court, simply asks that the use of the documents at the criminal trial be permitted on the same terms as similar use is permitted, by the express terms of the Confidentiality Order, at the civil trial of this matter. Those terms were deemed adequate to balance the confidentiality of the material and the need of the parties to fairly litigate their civil dispute at trial, and there is no reason to believe that the same terms will not be adequate in the context of the criminal case. Second, if the need to defend the civil claims at trial warrants overriding the confidentiality of the materials to permit their use in evidence in open court, it follows a fortiori that the same balance must be struck in the even more significant forum of a criminal trial. It would be anomalous indeed if a defendant could use confidential discovery materials to defend himself against the risk of a money judgment, but could not use the same materials, subject to the same terms and safeguards, to protect himself against the risk of criminal conviction and the loss of his liberty.

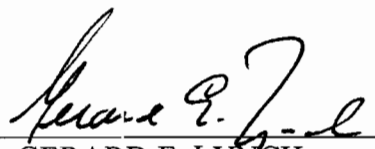
Mazur et al v. Refco, Inc. et al

Doc. 573

Accordingly, defendant Collins's application is granted, and the Confidentiality Order is modified to permit the use of discovery materials designated confidential in Collins's upcoming criminal trial, on the same terms and subject to the same conditions as the Confidentiality Order provides for the use of such materials in the civil trial of this matter.

SO ORDERED.

Dated: New York, New York  
April 3, 2009

  
GERARD E. LYNCH  
United States District Judge