

10-1658-cv
In re: Am. Int'l Grp. Inc. Derivative Litig.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 17th day of March, two thousand eleven.

5
6 PRESENT: DENNIS JACOBS,
7 Chief Judge,
8 PIERRE N. LEVAL,
9 REENA RAGGI,
10 Circuit Judges.

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12 - - - - -X

13
14 IN RE: AMERICAN INTERNATIONAL GROUP, INC. 10-1658-CV
15 DERIVATIVE LITIGATION

16
17 - - - - -X

18
19 FOR APPELLANT: ALBERT M. MYERS, Kahn Swick & Foti, LLC,
20 Madisonville, Louisiana (Brian J.
21 Robbins, Felipe J. Arroyo, and Robbins
22 Umeda LLP, San Diego, California, Thomas
23 G. Amon, New York, New York, on the
24 brief).

25
26 FOR APPELLEE: JOSEPH S. ALLERHAND (Stephen A. Radin,
27 Robert F. Carangelo, Stacy Nettleton,
28 Robert V. Spake, Jr., on the brief), Weil
29 Gotshal & Manges LLP, New York, New York.

1
2 Appeal from a judgment of the United States District
3 Court for the Southern District of New York (Swain, J.).
4

5 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
6 **AND DECREED** that the judgment of the district court be
7 **AFFIRMED.**
8

9 Louisiana Municipal Police Employees Retirement System
10 ("Louisiana Municipal") appeals from a judgment of the
11 United States District Court for the Southern District of
12 New York (Swain, J.), dismissing its shareholder derivative
13 action brought against nominal defendant, American
14 International Group, Inc., and against individual current
15 and former officers and directors.
16

17 Louisiana Municipal asserts claims of breach of
18 fiduciary duty, waste of corporate assets, contribution, and
19 unjust enrichment. Louisiana Municipal also asserts
20 violations of the Securities Exchange Act of 1934 ("Exchange
21 Act") Section 20(a), 15 U.S.C. § 78t(a); Exchange Act
22 Section 10(b), 15 U.S.C. § 78j(b); and Rule 10b-5,
23 promulgated under the Exchange Act, 17 C.F.R. § 240.10b-5.
24

25 The district court dismissed Louisiana Municipal's
26 complaint for failure to make a demand on the relevant board
27 of directors of AIG. Fed. R. Civ. P. 23.1. We assume the
28 parties' familiarity with the underlying facts, the
29 procedural history, and the issues presented for review.
30

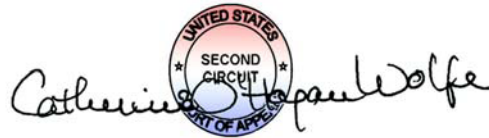
31 Having conducted the requisite review of the record,
32 see Scalisi v. Fund Asset Mgmt., L.P., 380 F.3d 133, 137 (2d
33 Cir. 2004), we affirm the dismissal of Louisiana Municipal's
34 complaint for substantially the reasons stated in the
35 district court's thorough and well-reasoned opinion. In re
36 Am. Int'l Grp., Inc. Derivative Litig., 700 F. Supp. 2d 419
37 (S.D.N.Y. 2010) (Swain, J.).
38

39 Under applicable Delaware law, "directors are entitled
40 to a presumption that they were faithful to their fiduciary
41 duties," and a shareholder seeking to bring a derivative
42 suit bears the burden of "overcom[ing] that presumption."
43 Beam v. Stewart, 845 A.2d 1040, 1048-49 (Del. 2004)
44 (emphasis omitted). Louisiana Municipal has not alleged
45 with sufficient particularity that demand on the board would
46 have been futile. See Brehm v. Eisner, 746 A.2d 244, 254
47 (Del. 2000). Accordingly, the failure to make a pre-suit

1 demand is not excused. See Wood v. Baum, 953 A.2d 136, 140
2 (Del. 2008).

3
4 Having considered all of Louisiana Municipal's
5 arguments presented on appeal, we hereby **AFFIRM** the judgment
6 of the district court.

7
8 FOR THE COURT:
9 CATHERINE O'HAGAN WOLFE, CLERK

10
11
The image shows a handwritten signature in cursive that reads "Catherine O'Hagan Wolfe". To the right of the signature is a circular seal. The seal is divided into two halves: the top half is red with the words "UNITED STATES" in white, and the bottom half is blue with the words "SECOND CIRCUIT" in white. The words "COURT OF APPEALS" are written in a smaller font around the bottom edge of the seal.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: March 17, 2011
Docket #: 10-1658 cv
Short Title: In Re: American International

DC Docket #: 07-cv-10464
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Swain

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
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CITY)
DC Judge: Swain

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature