

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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STARR INTERNATIONAL COMPANY, INC.,
Individually and on Behalf of All Others Similarly
Situated, and Derivatively on Behalf of AMERICAN
INTERNATIONAL GROUP, INC.,

:
:
: No. 11-CV-779

Plaintiff,

:
: (Judge T. Wheeler)

v.

THE UNITED STATES OF AMERICA,

:
:

Defendant,

:

and

:

AMERICAN INTERNATIONAL GROUP, INC.,
a Delaware Corporation,

:

Nominal Defendant.

:

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**NOMINAL DEFENDANT AMERICAN INTERNATIONAL GROUP, INC.’S
RESPONSE TO GOVERNMENT’S RENEWED MOTION TO DISMISS**

AIG submits this short response to the Government’s renewed motion to dismiss.

AIG notes at the outset its continuing appreciation of the Court’s understanding of the important role AIG’s Board must play with respect to the derivative claims in this unique action brought by Starr.

As the Court will recall, on August 20, 2012 AIG reported to the Court that Starr has now agreed to make a demand on AIG’s Board of Directors with respect to all derivative claims asserted in this action – the Stock Claims and the ML III Claims. The making of the demand by Starr is a significant change in the litigation landscape, and, as we reported to the Court, AIG’s Board has established an orderly and deliberative process pursuant to which the Board will consider the novel and complex issues raised by Starr’s demand. The process will

include written presentations addressing specific questions from AIG and written replies, and then oral presentations to the Board, by Starr and the Government (as well as the Federal Reserve Bank of New York, the defendant in a related action brought by Starr in the United States District Court for the Southern District of New York). This process is designed to ensure to the maximum extent possible that AIG's Board will have the information and time necessary to make an informed decision on the difficult issues raised by Starr's demand, under the unusual circumstances presented by this case, and in light of the fact that 9 of AIG's current 12 directors did not serve on AIG's Board during the events underlying this lawsuit. Dkt. No. 57. We can now also inform the Court that Starr has confirmed the formal demand with respect to all derivative claims asserted in this action will be made by no later than September 14, 2012.

AIG's August 20, 2012 report to the Court also stated, consistent with long established Delaware law and plain common sense, that Starr's agreement to make a demand moots the portion of the Government's March 1, 2012 motion to dismiss the derivative claims in this action based on Starr's failure to make a demand (Dkt. No. 30), because Starr will make the demand, and the demand will be acted on by AIG's Board. See Stotland v. GAF Corp., 469 A.2d 421, 423 (Del. 1983) ("it is clear that the issues of this appeal have been rendered moot by the demand made upon GAF's board").

In response to AIG's August 20, 2012 report to the Court, the Government has filed a renewed motion to dismiss Starr's derivative claims, stating that "[w]e disagree" with AIG's contention "that Starr's agreement to make a demand moots the portion of our motion to dismiss concerning demand." Gov't Motion at 3. But even the Government concedes that Stotland is directly on point and clearly holds that "the issue . . . whether demand would have been futile" is "rendered moot" when a demand is made. Gov't Motion at 4 (quoting Stotland,

469 A.2d at 423). Indeed, there is no need (and it would be wasteful and inefficient) for this Court to decide the demand issue briefed by the Government in its original motion to dismiss – whether AIG’s directors lack the independence required to consider a demand, and thus whether demand is excused. The independence of AIG’s directors and the need for a demand that Starr has agreed to make are simply not issues in this litigation at this time, and certainly should not be decided without briefing by AIG while Starr is in the very process of making a demand on all of the derivative claims.

In reality, the main subject of the Government’s renewed motion to dismiss appears to be whether Starr’s making of a demand warrants a dismissal or stay of the derivative claims in this action while AIG’s Board considers Starr’s derivative claims. AIG takes no position on this dispute between Starr and the Government.

From AIG’s perspective, the key point is that a demand will now be made on all the derivative claims, thus “implement[ing] ‘the basic principle of corporate governance that the decisions of a corporation – including the decision to initiate litigation – should be made by the board of directors or the majority of shareholders’” (Kamen v. Kemper Fin. Servs., Inc., 500 U.S. 90, 95 (1991) (citation omitted)). There is no conceivable need to decide now a motion to dismiss based on Starr’s failure to make a demand while the demand process, in fact, is being played out and leading to the assertion of a thoughtful position by AIG’s Board on all the asserted derivative claims after the Board has heard the demand and the presentations it will be receiving from all parties in this litigation with respect to the demand.

CONCLUSION

In sum, AIG disagrees with the Government’s contention that its original motion to dismiss based on Starr’s failure to make a demand has not been mooted by Starr’s demand,

and takes no position concerning the issues dividing Starr and the Government concerning the Government's renewed motion to dismiss based on the demand Starr has now agreed to make.

Dated: New York, New York
September 5, 2012

Respectfully submitted,

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