UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION

04 Civ. 8141 (DAB)

This Document Relates to:
ALL ACTIONS
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DEBORAH A. BATTS, United States District Judge.

On May 29, 2008, Defendants General Reinsurance Corporation ("Gen Re"), Richard Napier, and Ronald Ferguson (along with John B. Houldsworth, the "Gen Re Defendants"), filed a Motion for Judgment on the Pleadings in this matter arguing, inter alia, that Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc., 552 U.S. 148 (2008), precludes their liability to AIG shareholders as a matter of law. The Motion for Judgment on the Pleadings was suspended by the Honorable John E. Sprizzo on November 10, 2008, as requested in the Gen Re Defendants' joint November 3, 2008 letter. On January 12, 2009, this matter was reassigned to this Court. On February 25, 2009, Lead Plaintiffs filed a Motion for Preliminary Approval of a Class Settlement with Defendant Gen Re.

Subsequently, in its February 22, 2010 Class Certification Opinion, the Court denied class certification as to the Gen Re Defendants because it found that:

> . . . Lead Plaintiffs cannot establish class-wide reliance against the Gen Re Defendants for the . . . reason that they cannot show that the market was

> relying on any statement or action of the Gen Re Defendants. As the Court in In Re Salomon made clear, although "there is a private right of action under Section 10(b) against entities other than issuers," such an action must "satisfy each of the elements or preconditions for liability" such that the fraud-on-the-market presumption does not apply to a defendant whose "deceptive acts were not communicated to the public, as required by Basic." Here the Third Amended Complaint nowhere alleges that the Gen Re Defendants made a public misstatement with regard to AIG . . . nor do Lead Plaintiffs provide evidence of any such misstatement in their submissions in support of the Motion for Class Certification . . . . Lead Plaintiffs have not established or even pled that the Gen Re Defendants made any public misstatement or omission with regard to AIG.

In re American International Group, Inc., Sec. Litig., 265 F.R.D. 157, 174-75 (S.D.N.Y. 2001) (internal citations and quotations omitted). Accordingly, on March 4, 2010, the Court denied Lead Plaintiffs' February 25, 2009 Motion to Approve the Class Settlement with Gen Re as moot. Nevertheless, on June 23, 2010, Lead Plaintiffs and Gen Re filed a Joint Motion for Preliminary Approval of Class Action Settlement and for certification of a class against Gen Re for settlement purposes only.

On August 6, 2010, the Court issued an Order, noting that its finding in the February 22, 2010 Opinion that "Lead Plaintiffs have not established or even pled that the Gen Re Defendants made any public misstatement or omission with regard to AIG" was "indistinguishable" from a finding that Lead Plaintiffs could not make out the Section 10(b) and Rule 10b-5

elements of "a material misrepresentation or omission" as well as "reliance upon th[at] misrepresentation or omission" under the standard set forth by the Supreme Court in Stoneridge, 552 U.S. at 157.

Finally in its August 20, 2010 Order, the Court stated that the parties' attempts to distinguish between settlement and litigation classes based on the issue of manageability at trial were insufficient to cure Lead Plaintiffs' failure to meet the predominance requirement under Rule 23(b)(3), in light of In re Salomon's teaching that "a successful rebuttal" of proof of the elements of the fraud-on-the-market presumption "defeats certification by defeating the Rule 23(b)(3) predominance requirement." 544 F.3d 474, 485 (2d Cir. 2008) (internal citations and quotations omitted).

The Court is in receipt of Lead Plaintiffs' and Defendant Gen Re's September 3, 2010 letters, responding to the Court's August 20, 2010 Order. The parties, in these submissions, argue that settlement dispenses with manageability concerns and therefore obviates the need to prove that the elements of the fraud-on-the-market presumption are met at the class certification stage. Nowhere, however, do Basic Inc. v. Levinson, 485 U.S. 224 (1988), In re IPO Sec. Litig., 471 F.3d 24 (2d Cir. 2006), or In re Salomon Analyst Metromedia Litig., 544 F.3d 474

(2d Cir. 2008), state that a court may dispense with the requirement of proving the application of the fraud-on-the-market presumption when certifying a class for settlement purposes. Furthermore, when certifying a class for settlement in In re IPO, the very case on which Lead Plaintiffs and Gen Re rely for the proposition that a settlement class may be certified where issues of reliance would prevent certification of a litigation class, Judge Scheindlin performed the fraud-on-the-market analysis for purposes of determining whether the Rule 23(b)(3) predominance requirement was satisfied. See In re IPO Sec. Litig., 260 F.R.D. 81, 97-106 (S.D.N.Y. 2009) (certifying a settlement class where the elements of the Basic presumption were met and therefore the predominance requirement was satisfied); In re IPO Sec. Litig., 243 F.R.D. 79, 91-92 (S.D.N.Y. 2007) (same).

The parties further claim that class certification is appropriate where the factual and legal questions in the case are subject to generalized rather than individualized proof, even where a case would fail on the merits were the court to answer those questions. To support this proposition, Plaintiffs cite a recent case from the Seventh Circuit, Schleicher v. Wendt, __ F.3d __, No. 09-2154, 2010 WL 3271964 (7th Cir. Aug. 20, 2010) (finding during an analysis of the Rule 23(b)(3) predominance requirement that "[t]he chance, even the certainty, that a class

will lose on the merits does not prevent its certification."). Schleicher, however, explicitly distinguishes the Second Circuit's In re Salomon decision. Judge Easterbrook explained in Schleicher that while a plaintiff in the Seventh Circuit need only allege the materiality of the false or misleading statements or that there were "public misrepresentations," establishment of those elements is a precondition to certification in the Second Circuit. Id., * 7. Indeed, In re Salomon states that the district court must make a "definitive assessment" that the Rule 23(b)(3) predominance requirement has been met, and that a successful rebuttal of the fraud-on-the-market presumption "defeats certification by defeating the Rule 23(b)(3) predominance requirement." In re Salomon, 544 F.3d at 485 (emphasis in original) (citing In re IPO, 471 F.3d at 41).[1]

Based on this record and the standard for reliance set forth in Stoneridge, none of the Gen Re Defendants made any public statement or took any action regarding AIG stock that an

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[1]Although Lead Plaintiffs claim they need only prove that the relevant market was efficient to trigger the Basic presumption, the Second Circuit's decision in In re Salomon requires plaintiffs to show that "the alleged misrepresentation was material and publicly transmitted into a well-developed market." In re Salomon, 544 F.3d 474, 483 (2d Cir. 2008); see also In re IPO, 243 F.R.D. 79, 91-92 (S.D.N.Y. 2007) (noting while discussing the predominance requirement for certification of a settlement class that neither party disputed the public nature and materiality of the alleged misrepresentations).

individual AIG shareholder or shareholder class could rely on, which is fatal to any cause of action against the Gen Re Defendants by AIG shareholders. Accordingly, the Court dismisses Lead Plaintiffs' causes of action with respect to the Gen Re Defendants.

Further, the Court finds that it is appropriate to enter a partial final judgment in favor of the Gen Re Defendants under Federal Rule of Civil Procedure 54(b), which states that "[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Here, multiple Defendants are involved in Lead Plaintiffs' claims and the Court has now ruled on the rights and liabilities of the Gen Re Defendants. In this Circuit, if the resolved claims are not "inherently inseparable from" or "inextricably interrelated to," the remaining claims, then it is within the Court's discretion to determine that there is no "just reason for delay." S.E.C. v. Aragon Capital Management, LLC, 672 F.Supp.2d 421, 453 (S.D.N.Y. 2009) (quoting Ginett v. Computer Task Group, Inc., 962 F.2d 1085, 1092, 1096 (2d Cir. 1992)).

Here, the parties and the Court are in agreement that Lead Plaintiffs' claims against the Gen Re Defendants, unlike those

against the remaining Defendants, are entirely dependent upon the application of the holding in Stoneridge. Further, the Court's dismissal of the claims against the Gen Re Defendants, and any appeal of that dismissal, will have no effect on the viability of the remaining claims in this matter. Thus, the Court finds that Lead Plaintiffs' claims against the Gen Re Defendants are not inherently inseparable from or inextricably interrelated to Lead Plaintiffs' claims against the remaining Defendants. Accordingly, the Court certifies this matter for partial final judgment.

SO ORDERED.

Dated: New York, NY
September 10, 2010

Deborah A. Batts
DEBORAH A. BATTS
United States District Judge