



**GRANTED**

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

TEACHERS' RETIREMENT SYSTEM OF :  
LOUISIANA, :

Plaintiff, :

v. : C.A. No. 20106-VCS

MAURICE R. GREENBERG, EDWARD E. :  
MATTHEWS, HOWARD I. SMITH and :  
C.V. STARR & CO., INC., :

Defendants, :

and :

AMERICAN INTERNATIONAL GROUP, INC., :  
a Delaware corporation, :

Nominal Defendant. :

**ORDER**

WHEREAS, on March 30, 2007, Nominal Defendant American International Group, Inc. ("AIG") produced a log identifying documents withheld from its document production on privilege grounds in response to discovery requests served in the above-captioned action;

WHEREAS, on April 30, 2007, Defendant Howard I. Smith moved to compel the production of certain documents designated as privileged by AIG (the "Motion") and Defendants Maurice R. Greenberg and Edward E. Matthews (together with Smith, the "Individual Defendants") joined in the Motion;

WHEREAS, during argument held on June 13, 2007, the Court noted that, under Delaware law, as former directors of AIG, the Individual Defendants were "essentially within the

AIG family” for purposes of the Motion (Tr. at 139:23-24) and that, as such, the sharing of certain privileged materials with the Individual Defendants would not constitute a waiver of AIG’s privilege and should not be construed as such by the Individual Defendants, or by any other individual or entity seeking to utilize AIG’s disclosure of privileged materials as evidence of waiver in this or any other proceeding;

WHEREAS, the Court also recognized that the sharing of certain privileged materials with former AIG directors arises out of their substantive right under Delaware law to rely on advice of counsel as set forth in 8 *Del. C.* § 141(e) (“Section 141(e)”) (Tr. at 95-96);

WHEREAS, the Court also noted that the fact that this case was a derivative action brought on behalf of AIG also had relevance, insofar as there is a community of interest among the plaintiffs as derivative plaintiffs and AIG, which might justify disclosure of privileged materials to the derivative plaintiffs, *see Garner v. Wolfenbarger*, 430 F.2d 1093 (5<sup>th</sup> Cir. 1970), and its progeny, and that such disclosure under *Garner* and its progeny would not waive the privilege as to plaintiffs or prosecuting authorities in other types of cases with interests not aligned with AIG;

WHEREAS, the Court further stated that there exist “legitimate concerns about waiver and confidentiality” (Tr. at 139:16-17) and since the Court was “conscious of the need to protect the Company’s privilege and to limit [the Individual Defendants’] access” to privileged materials (Tr. at 133:10-11), the Court delineated numerous “limitations that are designed to ensure . . . AIG’s privilege” is protected from any future arguments of waiver in this proceeding, any collateral proceeding or any other proceeding in which the parties may be involved (Tr. at 139:21-22); and

WHEREAS, the production of documents by AIG to the Individual Defendants pursuant to this Order shall not constitute a waiver of AIG's attorney-client privilege, because, under Delaware law, the Individual Defendants, as former directors of AIG, are entitled to access to certain of AIG's privileged documents generated during their tenure as directors of AIG by virtue of their status as former directors and/or to support their Section 141(e) defense;

IT IS HEREBY ORDERED that the Motion is GRANTED as follows:

1. Within 5 days of the entry of this Order, AIG shall produce to counsel for the Individual Defendants the following documents:

(a) All documents from or to outside or in-house counsel for AIG concerning legal advice provided to AIG that, on their face, appear to have been directed or provided to, or generated by, the Individual Defendants, including the documents listed on AIG's privilege log as P-6, P-9, P-13, P-26, P-27, P-36, P-58, P-66, P-68, P-89, P-433, P-440, P-445, P-446, P-461, P-635, P-650, P-653, P-657 and P-808.

(b) All documents from or to outside or in-house counsel for AIG concerning legal advice provided to AIG that, on their face, appear to have been directed or provided to members of the Board of Directors of AIG (the "Board") other than the Individual Defendants, including the documents listed on AIG's privilege log as P-50, P-652, P-655, P-656 and P-700.

(c) All documents from or to outside or in-house counsel for AIG that, on their face, directly concern this action or the related investigation of the Special Litigation Committee, including the documents listed on AIG's privilege log as P-16, P-17, P-37, P-50, P-359, P-360, P-652, P-655, P-656, P-661 and P-700.

(d) All documents identified on AIG's privilege log that request or reflect legal advice from outside or in-house counsel for AIG concerning protocols for handling the types of transactions or business relationships being challenged in this litigation.

(e) All documents identified on AIG's privilege log that reflect or request legal advice from outside or in-house counsel for AIG concerning the transactions or business relationships being challenged in this litigation, to the extent that such documents fairly indicate on their faces, in substance or context, that any of the Individual Defendants (or the Board) may have directly or indirectly relied upon, and/or that it was intended that any of the Individual Defendants (or the Board) would directly or indirectly rely upon, the legal advice reflected or requested therein.

(f) To the extent that any documents on AIG's privilege log not specifically identified above fall within the above categories, or to the extent that AIG has withheld from production any additional documents that fall within the above categories but has not yet identified them on its privilege log, any such documents shall likewise be produced in accordance with this paragraph. To the extent that AIG locates any additional documents in the future that fall within the above categories, they shall promptly be produced to counsel for the Individual Defendants.

(g) AIG shall produce a supplemental privilege log reflecting any additional privileged documents it has located to date but not yet identified within 5 days of the entry of this Order.

2. Within 20 days of the entry of this Order, counsel for the Individual Defendants will participate in a meet-and-confer with counsel for AIG wherein counsel for the Individual Defendants will set forth, for each Individual Defendant, a "reasoned articulation" of the

“legitimate basis” for the “scope” of the Individual Defendants’ Section 141(e) defense. (Tr. at 133:1-14). The substance of the discussions to be had and documents exchanged during the meet-and-confer shall be designated “Confidential” pursuant to the Confidentiality Order in this action.

3. Within 10 days following the meet-and-confer described in paragraph 2 above, AIG shall produce any privileged documents that fall within the scope of the Individual Defendants’ Section 141(e) defense, whether or not such documents are identified on AIG’s privilege log, to the extent that such documents were not already produced pursuant to paragraph 1 above. To the extent that AIG locates any additional privileged documents in the future that fall within the scope of the Individual Defendants’ Section 141(e) defense, they shall promptly be produced to counsel for the Individual Defendants.

4. If there are disagreements between the parties regarding the scope of the Individual Defendants’ Section 141(e) defense (as set forth in paragraph 2 above) or the scope of the documents to be produced by AIG consistent with the Individual Defendants’ Section 141(e) defense (as set forth in paragraph 3 above), then the parties may seek relief from the Court, and documents subject to any dispute shall be submitted to the Court for *in camera* review, to the extent the Court wants to conduct such a review.

5. Any production of privileged documents pursuant to this Order shall be limited to those documents generated during the time period the Individual Defendants served on the Board. Any documents produced pursuant to this Order shall only be disclosed to the Individual Defendants who were members of the Board at the time the documents were generated. After AIG has produced all privileged documents required to be produced by this Order, and after the Individual Defendants have identified to AIG the privileged documents upon which they intend

to rely for purposes of their Section 141(e) defense, the Individual Defendants shall confer about the production of such documents to Plaintiff's counsel. The Individual Defendants shall not disclose the privileged materials produced pursuant to this Order to any other party to this proceeding, including Plaintiff or Defendant C.V. Starr & Co., Inc., without the consent of AIG or further Order of the Court. The Individual Defendants may, with five (5) days advance notice to AIG to provide AIG the opportunity to object, use any privileged materials produced pursuant to this Order at the deposition or during the trial testimony of any person who, on the face of such documents, appears to have prepared or received the documents.

6. The documents produced to the Individual Defendants pursuant to this Order shall be designated "Confidential" vis-à-vis the Individual Defendants pursuant to the Confidentiality Order.

7. For the reasons set forth in the transcript of the June 13, 2007 argument and ruling, the fact of production of any privileged documents by AIG to the Individual Defendants in this action pursuant to this Order will not constitute a waiver of the privilege as it attaches to these documents in question, or be used by the Individual Defendants to argue that AIG has waived its privilege with respect to any privileged materials in this or any other proceeding.

8. C.V. Starr & Co., Inc., Starr International Company, Inc., as well as the Individual Defendants and any entity they control or with which they are affiliated, may not use the production of these privileged documents as the basis for an argument of waiver in any other proceeding.

9. The Individual Defendants are prohibited from utilizing any of the privileged documents produced by AIG pursuant to this Order in any other proceeding, unless such documents are also ordered to be produced in the other proceeding.

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Vice Chancellor

Court: DE Court of Chancery

Judge: Strine, Leo E

File & Serve reviewed Transaction ID: 15526303

Current date: 7/11/2007

Case number: 20106-VCS

Case name: CONF ORD AND PROTECT ORDER Teachers Retirement System of Louisiana vs American International Group

I have considered the concern raised about the Starr revision proposed by Mr. Bouchard. The approach taken by Mr. Bouchard is entirely reasonable and fairly implements the concern expressed by AIG.

/s/ Judge Leo E Strine