



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Plaintiff In \$100M AIG FCA Suit Gets Ray Of Hope At 2nd Circ.

By **Pete Brush**

Law360, New York (April 6, 2017, 6:20 PM EDT) -- Second Circuit Judge Raymond J. Lohier Jr. said Thursday that allegations that AIG knowingly overstated the value of New York insurance assets in loan-reduction talks with the federal government looked plausible, giving a glimmer of hope to a former employee of the insurance giant who's trying to revive a False Claims Act suit.

Judge Lohier's comments came as former AIG human resources director Alex Grabcheski sought to persuade a three-judge panel to breathe life into his suit claiming the insurer overstated its value by at least \$100 million when it got \$25 billion of bailout debt reduction via agreements with the Federal Reserve Bank of New York in 2009.

Grabcheski says U.S. District Judge George B. Daniels abused his discretion when he threw out the case in April 2016, giving **no leave to amend**, despite plausible allegations that AIG brass knew the \$61 billion company was selling insurance illegally in New York via a subsidiary known as the Group Management Division.

That knowledge subjected it to civil and tax liabilities that weren't factored in when AIG got the debt relief, Grabcheski's counsel told the panel, asserting those allegations were plausibly alleged and should not have been dismissed with prejudice.

Judge Lohier seemed to agree.

"We can quibble about it," the judge told AIG counsel William A. Burck of Quinn Emanuel Urquhart & Sullivan LLP. "But it is a fair inference from the allegations."

Burck replied that AIG had a "good faith" belief that it was compliant with New York insurance laws and that the rejected complaint contains "no allegation" of a knowing misrepresentation.

If that was a hopeful sign for the plaintiff, the panel appeared skeptical on the notion that the alleged \$100 million misrepresentation was material to AIG's \$25 billion deal with the Federal Reserve.

"I believe we've sufficiently pleaded materiality," Grabcheski's counsel Max F. Maccoby of Butzel Long PC told the panel. "I don't think that's chump change."

But Burck called the \$100 million figure "more than a red herring," saying it was a large number on its face but that it pales against the real numbers in the transactions.

"AIG paid back everything it was loaned by the government with a premium," Burck said.

Burck also noted that Judge Daniels undertook the materiality question at length during oral argument and rejected it, and asked the circuit to respect his discretion.

Judges Raymond J. Lohier Jr., Robert D. Sack and Debra Ann Livingston sat on the panel for the Second Circuit.

Grabcheski is represented by Max F. Maccoby of Butzel Long PC.

AIG is represented by William A. Burck of Quinn Emanuel Urquhart & Sullivan LLP.

The appeal is Grabcheski v. AIG et al., case number 16-1516, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Brian Baresch.

All Content © 2003-2017, Portfolio Media, Inc.