

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. BATTIS, United States District Judge.

Alan Rothstein and Mollye Rothstein, (collectively, the "Rothstein Objectors"<sup>1</sup>) have appealed this Court's Order of December 2, 2010, which certified a class, granted final approval to the settlement with Defendant PricewaterhouseCoopers LLP ("PwC"), and awarded attorneys' fees and reimbursement of expenses to settlement class representatives. (See Docket ##568, 572.) Now before the Court is Lead Plaintiff's Motion for an Appeal Bond Pursuant to Federal Rule of Appellate Procedure 7. For the reasons stated herein, Lead Plaintiff's Motion for Bond is GRANTED.

I. DISCUSSION

A. Propriety of an Appeal Bond

"In a civil case, the district court may require an appellant to file a bond or provide other security in any form

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<sup>1</sup>Objectors Marisa Rothstein and Sharyn Rothstein withdrew their appeals by motion filed with the Second Circuit on March 4, 2011. (Pl.'s Reply Mem. L., p. 1, n.1.)

and amount necessary to ensure payment of costs on appeal." Fed. R. App. P. 7. When deciding whether to require an appellant to post an appeal bond under Rule 7, a district court considers: "(1) the appellant's financial ability to post a bond, (2) the risk that the appellant would not pay appellee's costs if the appeal loses, (3) the merits of the appeal, and (4) whether the appellant has shown any bad faith or vexatious conduct." In re AOL Time Warner, Inc. Sec. & "ERISA" Litig., No. 02 Civ. 5575, 2007 WL 2741033, at \*2 (S.D.N.Y. Sept. 20, 2007). The Rothstein Objectors concede that an appeal bond is appropriate in this case. (Opp. Mem. L., pp. 1-4.)

B. Amount of Bond

"It is within the district court's discretion to determine the amount and nature of the bond." In re Initial Public Offering Sec. Litig., 728 F. Supp. 2d. 289, 292-93, n.11 (S.D.N.Y. 2010) (quoting 20 Moore's Fed. Prac. § 307.02) (citing Adsani v. Miller, 139 F.3d 67, 79 (2d Cir. 1998) ("A district court, familiar with the contours of the case appealed, has the discretion to impose a bond which reflects its determination of the likely outcome of the appeal."); Fed. R. App. P. 7, Adv. Comm. Note, 1979 Am. ("[T]he question of the need for a bond for costs and its amount [is] in the discretion of the court.").

Lead Plaintiff argues that this Court should impose an

appeal bond in the amount of \$215,000.00, which accounts for \$50,000.00 in taxable costs and \$165,000.00 in additional settlement administration costs attributable to delay. (Pl.'s Mem. L., pp. 4-5.) The Rothstein Objectors contend that delay costs may not be included in a Rule 7 bond, and that a bond of \$1,000.00 will be sufficient to cover taxable costs. (Opp. Mem. L., pp. 4-5.)

1. Delay Costs

The Second Circuit has not yet addressed whether costs resulting from delays in settlement administration may be included in a Rule 7 bond. The Second Circuit in Adsani found that "'costs' under Rule 7 may include the definition of 'costs' contained in the relevant substantive statute under which appeal is sought and are not limited by the enumeration of some 'costs' found in [Federal Rule of Appellate Procedure] 39." Adsani, 139 F.3d at 75, n.9 (finding that attorney's fees may be included in a Rule 7 bond when the underlying substantive statute had a fee-shifting provision).

The Court in Adsani distinguished between a bond for costs under Rule 7 and a supersedeas bond under Rule 8, noting that "a 'supersedeas bond' is retrospective covering sums related to the merits of the underlying judgment (and stay of its execution), whereas a 'cost bond' is prospective relating to the potential

expenses of litigating an appeal.” Adsani, 139 F.3d at 70, n.2.

Relying on authority involving the inclusion of delay costs in supersedeas bonds, Judge Sweet in In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 124 (S.D.N.Y. 1999), included delay costs in a Rule 7 bond. Id. at 128 (citing Morgan Guaranty Trust Co. of N.Y. v. Republic of Palau, 702 F. Supp. 60, 65 (S.D.N.Y. 1988)). Other courts, however, relying on the Second Circuit’s reasoning in Adsani that bonds under Rule 7 and Rule 8 serve distinct purposes, have found that delay costs may not be included in a Rule 7 bond. See In re Initial Public Offering Sec. Litig., 728 F. Supp. 2d 289, 296-97 (declining to award delay costs where no underlying statute provides for the inclusion of those costs, and noting that Rule 7 bonds and Rule 8 bonds “should not be confused”) (quoting Adsani, 139 F.3d at 70, n.2); In re AOL Time Warner, Inc. Sec. and “ERISA” Litig., No. 02 Civ. 5575 (SWK), 2007 WL 2741033 (S.D.N.Y. Sept. 20, 2007), at \*4 (“Given that the Second Circuit has been explicit in its distinction between supersedeas and appeal bonds . . . the Court is hesitant to apply Rule 8 jurisprudence in the Appellate Rule 7 context.”); see also In re Currency Conversion Fee Antitrust Litig., MDL No. 1409 (WHP), 2010 WL 1253741 (S.D.N.Y. Mar. 5, 2010) (“This court agrees with Judge Kram’s conclusion that Fed. R. App. P. 7 does not allow [delay] costs.”) (citing AOL Time

Warner, 2007 WL 2741033, at \*4 & n.4). This Court agrees with the weight of precedent in this District that delay costs may not be included in a Rule 7 bond.

2. Taxable Costs

The Parties do not dispute that an appeal bond under Rule 7 may include taxable costs specified in Federal Rule of Appellate Procedure 39(e), Second Circuit Rule 39, and 28 U.S.C. § 1920. Such costs include the costs involved in preparation and transmission of the record, transcripts, filing fees, photocopying, and binding. See Fed. R. App. P. 39(e); In re Currency Conversion Fee Antitrust Litig., 2010 WL 1253741, at \*\*2-3. The Rothstein Objectors contend that a bond in the amount of \$1,000.00 is sufficient security for Lead Plaintiff's taxable costs on appeal. Lead Plaintiff contends that \$50,000.00 is the appropriate amount, but has failed to present any supporting documentation that would allow this Court to conclude that \$50,000.00 is a good faith estimate of Lead Plaintiff's taxable costs on appeal. Lead Plaintiff shall provide this Court with documentation supporting its estimation within ten days of the date of this Order.

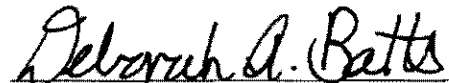
III. CONCLUSION

For the foregoing reasons, Lead Plaintiff's Motion for Bond is GRANTED. Lead Plaintiff shall provide this Court with documentation in support of its estimation of taxable costs within 10 days of the date of this Order, at which time this Court will set the amount of the bond.

SO ORDERED.

Dated: New York, NY

April 7, 2011

  
DEBORAH A. BATTIS  
United States District Judge