

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

TEACHERS' RETIREMENT SYSTEM OF	§	
LOUISIANA and CITY OF NEW ORLEANS	§	No. 454, 2009
EMPLOYEES' RETIREMENT SYSTEM,	§	
derivatively on behalf of nominal defendant	§	Court Below:
American International Group, Inc.,	§	
	§	
Plaintiffs Below,	§	
Appellants,	§	
	§	
v.	§	Court of Chancery of the
	§	State of Delaware
PRICEWATERHOUSECOOPERS LLP,	§	
	§	
Defendant Below,	§	C.A. No. 769-VCS
Appellee.	§	

Submitted: December 15, 2010

Decided: January 3, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS** and **RIDGELY**,  
Justices, constituting the Court *en Banc*.

**ORDER**

This 3<sup>rd</sup> day of January, 2011, on consideration of the briefs and arguments of  
the parties, it appears to the Court that:

1) Teachers' Retirement System of Louisiana and City of New Orleans  
Employees' Retirement System (Derivative Plaintiffs) appeal a Court of Chancery  
decision dismissing their malpractice and breach of contract claims against

PricewaterhouseCoopers LLP. The trial court held that the claims are governed by New York law, and are barred under the doctrine of *in pari delicto*.<sup>1</sup>

2) On appeal, this Court certified the following question to the New York Court of Appeals:

Would the doctrine of *in pari delicto* bar a derivative claim under New York law where a corporation sues its outside auditor for professional malpractice or negligence based on the auditor's failure to detect fraud committed by the corporation; and, the outside auditor did not knowingly participate in the corporation's fraud, but instead, failed to satisfy professional standards in its audits of the corporation's financial statements?<sup>2</sup>

3) The New York Court of Appeals accepted the certified question, and issued an opinion holding that the *in pari delicto* doctrine would bar such a derivative claim.<sup>3</sup>

4) In their supplemental briefing, Derivative Plaintiffs argued that the *Kirschner* decision is not binding on the issue of imputation of wrongdoing, which, they claim, is a question of Delaware law.

5) We reject this argument for two reasons. First, Derivative Plaintiffs acknowledged in their Opening Brief that, under the facts of this case, imputation is a question of New York law. Second, in our certification request, this Court sought

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<sup>1</sup>*A.I.G., Inc. v. Greenberg*, 965 A.2d 763 (Del. Ch. 2009).

<sup>2</sup>*Teachers' Retirement System of Louisiana v. PricewaterhouseCoopers LLP*, 998 A.2d 280, 282-3 (Del. 2010).

<sup>3</sup> *Kirschner v. KPMG LLP et al.*, 2010 WL 4116609 at \*14 (N.Y.).

resolution of a “determinative question[] of New York law . . . .”<sup>4</sup> The *Kirschner* decision provided a determinative answer, which this Court must follow.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is, AFFIRMED on the basis of its February 10, 2009 decision.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>4</sup>N.Y. Comp. Codes R. & Regs. tit.22, § 500.27(a) (2010).