

Shipping Co. Danaos Wins Dismissal Of Shareholder Suit

By **Kurt Orzek**

Law360, Los Angeles (July 03, 2013, 9:18 PM ET) -- A Marshall Islands high court on Wednesday approved a motion to dismiss with prejudice a shareholder derivative action against Greek shipping company Danaos Corp., saying allegations that the board of directors breached its fiduciary duty were flawed.

Associate Justice James H. Plasman said that the plaintiff, shareholder George R. Cockle, didn't have any authority in claiming that the Danaos board of directors did not act in good faith and wasn't properly informed about the market conditions and terms that would have been available in a broader offering of the company's stock issuance.

"The allegations ... [are] flawed, in that they amount to 'general and conclusory allegations' rather than particularized statements of fact necessary to support a determination that demand on the board was excused," the opinion said.

Danaos, founded in 1972, is an international shipping company that is headquartered in Greece but incorporated in the Marshall Islands, according to the company. Defendant John Coustas has served as the president, CEO and director of Danaos since 1998, according to court documents.

Cockle contended that the board of directors for Danaos — which does its operations through vessel-owning subsidiary companies — boosted the management fees paid to its parent company in February 2009. Cockle claimed Coustas controlled about 80 percent of the company's stock at the time of the transactions.

The suit accused Danaos' board members of breaching their fiduciary duties by approving management agreement changes and stock sales that allegedly hurt the company and its minority shareholders.

The court dismissed the original complaint in December but allowed Cockle to amend it, which he did in January, according to court documents.

Cockle said the board approved the hikes without sufficient information, but the court said Wednesday that the plaintiff hadn't put forth any particularized factual allegations raising a reasonable doubt as to the informational component of the board's actions or to the board's good faith.

Attorneys didn't immediately respond Wednesday to requests for comment.

Danaos is represented by Marc Sonnenfeld, Karen Pohlmann, Jason Wilson and Laura Hughes of Morgan Lewis & Bockius LLP.

The case is George R. Cockle Derivatively on Behalf of Danaos Corp. v. John Coustas et al., in the High Court of the Republic of the Marshall Islands. The case number was not immediately available.

--Editing by Katherine Rautenberg.

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