No. 17-

IN THE

# Supreme Court of the United States

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Petitioner,*

*v.*

CITIGROUP INC.,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

May a Mexican depositor rely on North American Free Trade Agreement (hereinafter "NAFTA") as the source of a duty flowing from a United States bank to its depositors in Mexico?

Pursuant to Supreme Court Rule 14, Mario Alberto Lopez Garza hereby petitions for a writ of certiorari.

## OPINIONS BELOW

Appendix A at 1a - Opinion of the United States Court of Appeals for the Third Circuit, filed on February 2, 2018 is unreported.

Appendix C at 17a – Opinion of the United States District Court for the District of Delaware, filed on December 9, 2016 is unreported.

Appendix E at 22a – Opinion of the United States District Court for the District of Delaware, filed on June 29, 2016 is unreported.

## STATEMENT OF JURISDICTION

Mario Alberto Lopez Garza petitions from the Third Circuit's non-precedential opinion issued under Third Circuit L.A.R. 34.1(a) on February 2, 2018, in the case captioned Mario Alberto Lopez Garza, the Executor of the Estate of Hans Jorg Schneider Sauter v. Citigroup Inc., No. 16-4332.

This Court has jurisdiction under 28 U.S.C. §1332 and this petition is timely under Supreme Court Rule 13.

## RELEVANT TREATY AND STATUTORY PROVISIONS

NAFTA became the law of the United States effective January 1, 1994.

The section of NAFTA that sets forth the expectation of equal treatment is found in Chapter XIV, and is entitled art. 1405, ¶ 2. The text of that Article reads in full, "Each Party shall accord to financial institutions of another Party and to investments of investors of another Party in financial institutions treatment no less favorable than that it accords to it own financial institutions and to investment of its own investors in financial institution, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institution and investments."

19 U.S.C. § 3312 (b)(2), entitled "Legal Challenge," reads in relevant part, "[n]o State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in any action brought by the United States for the purpose of declaring such law or application invalid."

19 U.S.C. § 3312 (c), entitled "Effect of Agreement with Respect to Private Remedies," reads in relevant part, "No person other than the United States (1) shall have any cause of action or defense under (A) the Agreement or by virtue of Congressional approval thereof, . . ."

## STATEMENT OF THE CASE

After entering into NAFTA, Mexico changed its banking laws in order to allow American banks to conduct business in Mexico. In so doing, Mexico relied on NAFTA's provisions that place all NAFTA depositors on equal footing. As a result of NAFTA and Mexican action

implementing NAFTA, Citi was able to operates banks in Mexico, using both the names "Banamex" and "Citibank." The Mexican decree allowing CitiGroup Inc. ("Citi") to operate in Mexico makes Citi operations expressly subject to NAFTA as follows: "The banking and credit services . . . shall be subject to . . . Chapter XIV, Financial Services set forth in the North American Free Trade Agreement, the Credit Institutions Act, the Rules and Regulations government the establishment of Foreign Financial Institution Subsidiaries . . .." See Paragraph 8.

Appellant is the Executor of an Estate of a deceased Mexican citizen, Hans Jorg Schneider Sauter, who was a depositor in Citi's Mexican banking operations. Appellant Mario Alberto Lopez Garza was duly appointed by the Mexican Probate Court to serve as the Executor of the Estate. Mr. Garza obtained documentation that purports to establish that the decedent had depository accounts with U.S.$300,000,000.00 in one account, and MEX$780,046,970.50 in another account.

A Mexican probate judge issued 13 orders between March 4, 2013 and April 7, 2014, directing Citi's Mexican banking operations (Banamex) to turn over the funds to the Estate, or come forward with evidence sufficient to demonstrate fraud and defeat the Estate's claim to the funds. But the bank refused to turn over the funds and refused to come forward with accounting records to establish the fraud. Instead, the bank claimed the Mexican probate court lacked the judicial power to order it to turn over the funds.

At that point, Mr. Garza brought suit in the United States, seeking an accounting of records in Citi's

possession that would reveal the legitimacy or lack thereof of the Estate's documentation regarding the decedent's bank accounts. Mr. Garza argued, among other things, that the Mexican decree incorporating NAFTA Section 1405, ¶ 2, should be read to allow Mexican depositors to bring suit against Citi in the United States.

The District Court (D. Del.) and the Court of Appeals for the Third Circuit disagreed, and held that NAFTA did not have any impact on the legal analysis. The District Court cited 19 U.S.C. § 3312(b)(2) and 3312 (c)(2012) and reasoned that "the fact that defendant's indirect subsidiary operated in Mexico subject to NAFTA is not dispositive of the issue at bar, . . .. *See* Appendix B at 19a. The Court of Appeals upheld this reasoning, finding that the only party with legal obligations to the Estate was the Mexican subsidiary, not Citi itself. *See* Appendix A at 9a and 10a. The Court also cited 19 U.S.C. § 3312(c) as a reason to find that NAFTA cannot be the source of any duty flowing from Citi to a Mexican depositor. *Id.*

## ARGUMENT

By ignoring the impact of NAFTA on this dispute, the Court of Appeals permitted Citi to retain -- wrongfully -- hundreds of millions of dollars that belong to a Mexican estate. This Court needs to correct the lower court's inappropriate reliance on 19 U.S.C. § 3312 (c). That statute has no bearing here, where the Estate of a Mexican depositor is bringing suit directly against the bank Citi that improperly refused to turn over banking records and instead engaged in the fraudulent retention of funds that should have been turned over during the probate proceedings to the Estate.

NAFTA allows Citi to operate banks in Mexico. But as one of the conditions of doing so, Citi has to treat it Mexican depositors in the same fashion as its American depositors. This requirement of full parity is set forth in the text of Article 1409, "[e]ach Party shall accord to financial institutions of another Party and to investments of investors of another Party in financial institutions treatment no less favorable than that it accords to it own financial institutions and to investment of its own investors in financial institution, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institution and investments."

All of the agencies regulating Citi in the United States (Department of the Treasury, Office of Thrift Supervision, Federal Reserve System, Federal Deposit Insurance Corporation, Securities and Exchange Commission) "have long expected financial institutions to develop and maintain robust control infrastructures that enable them to identify, evaluate and address the risks associated with their business activities." *See* Joint Appendix ("J.A.") at 210. And financial institutions such as Citi operating in more than one country are required to maintain "a set of formal, written, ***firm-wide policies and procedures*** that are designed to allow the institution to identify, evaluate, assess, document and ***control*** the full range of credit, market, operational, legal and reputations risks associated with these transactions." *Id.* at J.A. 211 (emphasis added).

Yet the lower courts refused to allow the estate of a Mexican depositor to bring suit in the United States against the bank that is headquartered in New York and operates in Mexico. Instead, the lower courts held that

the only path to bringing suit was to adduce a quantum of evidence sufficient to "pierce the corporate veil" under Delaware law. But that application of a state veil piercing doctrine misapprehends the legal status of Citi in Mexico, which rests on the Mexican decree and NAFTA. Citi should be able to be sued both in its home jurisdiction and in Mexico for its misconduct.

Permitting direct action implements NAFTA without contravening any United States law. Although 19 U.S.C. § 3312 (c) does not permit private parties to rely upon NAFTA to create new causes of action, that statute has no bearing here. The Estate's cause of action for an accounting is not a new action, but arises from Citi's duty flowing through NAFTA.

The lower courts failed to credit Citi's direct legal presence in Mexico, erroneously relying upon Section 3312(c). Given that Citi affirmatively chose to operate in Mexico, as is permitted by NAFTA and Mexican law implementing NAFTA, and financially benefitted from doing so, Citi should not be permitted to rely on non-applicable state law doctrines to hide from its Mexican depositors.

## CONCLUSION

This Petition should be accepted by the Court, as the dispute raises an important legal issue of whether a Mexican depositor may rely on NAFTA as the source of a duty flowing from a United States bank to its depositors making deposits in its Mexican banking operations.

Respectfully submitted,

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# APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED FEBRUARY 2, 2018**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-4332

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Appellant,*

v.

CITIGROUP INC.

September 27, 2017, Submitted under
Third Circuit L.A.R. 34.1(a)
February 2, 2018, Opinion Filed

On Appeal from the United States District Court
for the District of Delaware
(D. Del. Civ. No. 1-15-cv-00537)
District Judge: Honorable Sue L. Robinson.

Before: AMBRO, KRAUSE, *Circuit Judges*,
and CONTI,* *Chief District Judge.*

* Honorable Joy Flowers Conti, Chief Judge of the United States District Court for the Western District Court Pennsylvania, sitting by designation.

*Appendix A*

**OPINION**[**]

KRAUSE, *Circuit Judge.*

This appeal concerns a transnational dispute over hundreds of millions of dollars allegedly due the estate of Mexican national Hans Jorg Schneider Sauter ("the Estate"), for which Appellant Mario Alberto Lopez Garza serves as executor. The Estate filed in the District Court a one-count complaint ("the Complaint") demanding an accounting by Appellee Citigroup Inc. on the premise that Citigroup controls the bank hosting the accounts with the disputed funds. Whatever complexities there may be in the peripheries of this litigation, the questions before us in the Estate's appeal are straightforward: (1) did the District Court err when it granted Citigroup's motion for judgment on the pleadings; and (2) did the District Court abuse its discretion when it refused to grant leave to amend, both before dismissing the Complaint and later in denying the Estate's motion for reconsideration? Answering both questions in the negative, we will affirm.[1]

## I.

According to the Complaint, Schneider Sauter was a Mexican citizen and businessman involved in currency

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** This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1. We separately address Citigroup's cross-appeal, which concerns only the District Court's order granting in part Citigroup's motion for relief under Fed. R. Civ. P. 41(d).

trading and real estate. Apparently Mexican authorities believed that Schneider Sauter was engaged in illicit activity, and he served time in a Mexican prison. After Schneider Sauter died in 2008, Garza was appointed by a probate court in Mexico to serve as executor of the Estate.

Through his investigation of assets available to the Estate, Garza allegedly uncovered three documents indicating that substantial funds—no less than $300,000,000—were on deposit in accounts held in Schneider Sauter's name at Banco Nacional de Mexico S.A. integrante del Grupo Financiero Banamex ("Banamex"), Citigroup's "full-service bank subsidiary" in Mexico. JA 44. After Garza obtained several orders from the Mexican probate court directing Banamex to turn over to the Estate all funds in the Schneider Sauter accounts, Banamex instituted collateral *amparo* proceedings to challenge the legal authority of the probate court.[2]

Stymied in the Mexican court system, the Estate brought the Banamex litigation to the United States courts, first by filing suit in the Southern District of New York, and then by filing the Complaint in the District of Delaware. The only defendant named in the Complaint was Citigroup. Citing the North American Free Trade Agreement ("NAFTA"), Dec. 17, 1992, *reprinted in* 32

2. As the Ninth Circuit Court of Appeals has explained it, "the *amparo* is a highly complex legal institution . . . somewhat similar to *habeas corpus* and, *inter alia*, is the means to review and annul unconstitutional judicial decisions." *United States v. Fowlie*, 24 F.3d 1059, 1064 (9th Cir. 1994) (emphasis in original). Citigroup represents that the *amparo* proceedings are still pending.

I.L.M. 296-456, 605-800 (1993), the Expedited Funds Availability Act ("the EFAA"), 12 U.S.C. §§ 4001-4010, and Mexican law, the Estate alleged that Citigroup possesses information regarding the Banamex accounts because it "is required . . . to oversee, control and supervise the activity of its subsidiary banks." JA 46. A single count in the Complaint demanded an "accounting" that would permit Garza to "ascertain all transfers of funds into and out of the bank accounts formerly belonging to the decedent." JA 47.

Citigroup answered the Complaint and then filed a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) or, in the alternative, for a stay of all federal litigation pending resolution of the proceedings in Mexico. In its Rule 12(c) motion and oral argument before the District Court, Citigroup argued under Delaware law that an accounting is strictly a remedy and, thus, cannot be pleaded as a stand-alone claim. In any event, Citigroup contended, the Estate failed to sufficiently plead the fiduciary relationship between Schneider Sauter and Citigroup necessary to support an accounting action. In response, the Estate urged the District Court that the Complaint stated a viable demand for an accounting and, alternatively, that leave to amend should be granted.

The District Court granted Citigroup's motion and dismissed the Complaint with prejudice. The District Court agreed with Citigroup that the Estate's "failure to plead any underlying substantive cause of action or fiduciary relationship renders its claim for an accounting legally invalid on its face under Delaware law." JA 19. It

concluded that the Complaint revealed no basis to impute to Citigroup any duty that Banamex—as host of the accounts with the disputed funds—might owe the Estate. Deeming the Estate's pleading defects to be incurable, the District Court denied leave to amend on futility grounds.

The District Court also denied reconsideration, rejecting the Estate's arguments that it should have been granted leave to amend with unspecified "additional facts," JA 284, and that NAFTA provided a basis for a fiduciary relationship between the Estate and Citigroup. This appeal followed.

## II.[3]

On appeal, the Estate argues, first, that the District Court erred in granting a motion for judgment on the pleadings because the Complaint adequately stated a claim for an accounting, and, second, that even if the Complaint were in any way defective, the District Court

3. The District Court had subject matter jurisdiction under 28 U.S.C. § 1332(a)(2). We have appellate jurisdiction under 28 U.S.C. § 1291. We review the District Court's order granting Citigroup's motion under Rule 12(c) de novo, *see In re Fosamax (Alendronate Sodium) Prod. Liab. Litig. (No. II)*, 751 F.3d 150, 165 n.11 (3d Cir. 2014), and "may affirm on any grounds supported by the record." *Maher Terminals, LLC v. Port Auth. of N.Y. & N.J.*, 805 F.3d 98, 105 n.4 (3d Cir. 2015). The District Court's order denying the Estate's motion for reconsideration is reviewed for abuse of discretion, *see Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 753 (3d Cir. 2016), as is its refusal to grant leave to amend. *See U.S. ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 486 (3d Cir. 2016).

"should have granted the Estate an opportunity to amend [it]." Appellant's Br. at 39.[4] Neither argument is persuasive.

## A. The District Court's Ruling on the Motion for Judgment on the Pleadings.

A party may move for judgment on the pleadings after the pleadings are closed so long as the timing of the motion does not delay trial. Fed. R. Civ. P. 12(c). "A motion for judgment on the pleadings based on the defense that the plaintiff has failed to state a claim is analyzed under the same standards that apply to a Rule 12(b)(6) motion." *Revell v. Port Auth. of N.Y. & N.J.*, 598 F.3d 128, 134 (3d Cir. 2010). Accordingly, judgment on the pleadings is proper where the plaintiff's factual allegations, taken as true and viewed in the light most favorable to the plaintiff, are not sufficient to state "a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

The federal pleading standard guides our assessment of whether the Estate's Complaint sets forth a viable claim under applicable state law. "As a federal court sitting in

4. As a threshold matter, the Estate asserts that the District Court misapplied the Rule 12(c) standard when it failed to accept the veracity of certain allegations in the Complaint. *Cf. Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). However, there is no indication that the District Court failed to accept as true all well-pleaded allegations in the Complaint. In any event, accepting those allegations as true, we reach the same conclusion as the District Court on de novo review.

diversity, we 'are required to apply the substantive law of the state whose laws govern the action.'" *Norfolk S. Ry. Co. v. Basell USA Inc.*, 512 F.3d 86, 91 (3d Cir. 2008) (quoting *Robertson v. Allied Signal*, 914 F.2d 360, 378 (3d Cir. 1990)). Here, the District Court chose to apply the law of Delaware, and the parties do not contest that choice on appeal.

Delaware law provides a right to an accounting in specified situations, only one of which is potentially relevant here, *i.e.*, "where a fiduciary relationship exists between the parties and a duty rests upon defendant to render an account." *Pan Am. Trade & Inv. Corp. v. Commercial Metals Co.*, 33 Del. Ch. 425, 94 A.2d 700, 701 (Del. Ch. 1953). Citigroup contends that, even assuming an accounting demand can be maintained under Delaware law as a stand-alone claim,[5] the Estate failed to sufficiently plead the requisite fiduciary relationship. We agree that no such relationship is apparent from the facts in the Complaint, and the District Court therefore properly granted Citigroup's motion for judgment on the pleadings.

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5. The Delaware Supreme Court characterizes an accounting as an "equitable remedy." *See, e.g., Rebstock v. Lutz*, 39 Del. Ch. 25, 158 A.2d 487, 489 (Del. 1960). And the Delaware Code does the same. *See* Del. Code Ann. tit. 12, § 3581(b)(4) (2017). The Delaware Supreme Court has not yet addressed whether a demand for an accounting may be pleaded as a stand-alone form of action, but we need not predict how this state law issue ultimately will be resolved because, even assuming an accounting demand can be pleaded without a companion claim, the Estate's Complaint was properly dismissed on Rule 12(c) grounds.

The thrust of the Estate's main argument for recognizing Citigroup as a fiduciary flows from a critical assumption built into the Complaint: that there is a duty owed by Banamex to Schneider Sauter as its depositor. From that relationship, the Estate would extrapolate a duty to Citigroup on the ground that Banamex is allegedly a "subsidiary bank[]." JA 46. The problem with this theory is that, under Delaware law, "the relation between a bank and a mere general depositor of funds is that of debtor and creditor, and is in no sense of a fiduciary nature." *Tharp v. St. Georges Tr. Co.*, 27 Del. Ch. 216, 34 A.2d 253, 255 (Del. Ch. 1943); *cf. Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47, 53, 23 V.I. 450 (3d Cir. 1988) ("Creditor-debtor relationships such as that between the Bank and Paradise rarely are found to give rise to a fiduciary duty."). And if Schneider Sauter is not owed a fiduciary duty by Banamex, then *a fortiori* there is no such duty that can be imputed to Citigroup as Banamex's alleged corporate parent. *See Greco v. Univ. of Delaware*, 619 A.2d 900, 903 (Del. 1993) (imputing liability requires underlying liability).

The Estate's arguments to the contrary are unavailing. Even if the Estate were correct that it is owed a fiduciary duty from Banamex, that duty could not pass to Citigroup without piercing the legal veil that generally shields a parent corporation from the acts of its subsidiaries. *See United States v. Bestfoods*, 524 U.S. 51, 61, 118 S. Ct. 1876, 141 L. Ed. 2d 43 (1998). "Persuading a Delaware court to disregard the corporate entity," however, "is a difficult task," *Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1183 (Del. Ch. 1999) (citation and internal quotations omitted), and,

as Citigroup correctly points out, the factual allegations in the Complaint, taken as true, reveal not "Citigroup's control of Banamex's day-to-day operations or a complete disregard of the corporate form between the two entities," but instead "the expected level of supervision by a parent company of its foreign subsidiary." Appellee's Br. at 28. Thus, the District Court properly determined that the Complaint lacked factual allegations necessary to support veil-piercing under Delaware law. *See Outokumpu Eng'g Enters., Inc. v. Kvaerner EnviroPower, Inc.*, 685 A.2d 724, 729-30 (Del. Super. Ct. 1996) (discussing alter-ego and agency theories of liability for corporate parent).

The Estate is no more successful with its argument that the sources of law cited in the Complaint—from jurisdictions other than Delaware—show Citigroup owed a fiduciary duty to Schneider Sauter *directly*, rather than through the conduit of Banamex. The NAFTA provision cited in the Complaint imposes obligations on parties to the treaty with respect to their treatment of foreign financial institutions and investors in those institutions; it does not impose new obligations on banks to their customers. *See* 32 I.L.M. at 657-63; *cf. LeClerc v. Webb*, 419 F.3d 405, 412 n.12 (5th Cir. 2005) (individual citizen of Canada was not a "beneficiary of NAFTA").[6] For its part, the EFAA merely requires that "depository institution[s]"

6. Moreover, contrary to the Estate's argument in the District Court that NAFTA permits it "to bring suit in the United States against the party that has sought and obtained Mexican permission to operate in Mexico, namely Citi," JA 284, federal law expressly disclaims the availability of a private right of action under NAFTA. *See* 19 U.S.C. § 3312(c).

make available for prompt withdrawal their customers' deposited funds. *See Bank One Chicago, N.A. v. Midwest Bank & Tr. Co.*, 516 U.S. 264, 267, 116 S. Ct. 637, 133 L. Ed. 2d 635 (1996). It thus has no bearing here, insofar as the Complaint alleged that the disputed funds had been deposited into accounts with Banamex, not Citigroup. Finally, the Estate posits that Mexican law "require[s] banks to turn over funds immediately to an Estate in the event of the death of an account holder," JA 45, but conclusory legal assertions need not be credited without supporting factual allegations in reviewing a motion under Rule 12(c), *see Iqbal*, 556 U.S. at 679, and, even if credited, the Mexican law described by the Estate would appear to impose an obligation only on the bank holding the decedent's funds—again, Banamex, not Citigroup.

In sum, even accepting as true the factual allegations in the Complaint and considering the various sources of law to which it cites, the Estate failed to plead a viable accounting action against Citigroup under Delaware law. The District Court thus did not err when it granted Citigroup's motion for judgment on the pleadings.

**B. The District Court's Denial of Leave to Amend.**

In arguing that leave to amend should have been granted, the Estate attacks both the District Court's pre-judgment denial of leave to amend and its refusal to reconsider. We perceive no error in either of those rulings.

The Estate requested leave to amend, as an alternative to dismissal, in its opposition to Citigroup's Rule 12(c)

motion and at oral argument on the motion. It later argued in support of reconsideration that the District Court erred when it dismissed the Complaint with prejudice "rather than granting Plaintiff an opportunity to amend." JA 283. At none of those junctures, however, did the Estate proffer a proposed amended complaint or even describe with any detail the substance of the putative pleading.[7] Our precedent is clear that district courts act within the bounds of their discretion when they reject undeveloped requests for leave to amend that, like the Estate's, are unaccompanied by a proposed amended pleading. *See, e.g., Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007); *Lake v. Arnold*, 232 F.3d 360, 374 (3d Cir. 2000). For that reason alone, the District Court did not abuse its discretion when it refused to grant leave to amend before judgment or upon the Estate's motion for reconsideration.

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7. Indeed, the Estate did not submit a proposed amended complaint until the filing of its reply brief in support of reconsideration, a submission the District Court was well within its discretion to refuse to consider. *See* D. Del. LR 7.1.5(a) (2010). Although the District Court signed off on a stipulation between the parties permitting the Estate to file a reply in this case, its willingness to consider the Estate's rebuttal to arguments raised in Citigroup's responsive briefing was not an open invitation to submit an amended complaint at that late stage and does not excuse the Estate's untimely submission. Moreover, the District Court's Local Rules require that a party seeking leave to amend attach to his request *two* documents: "[t]he proposed pleading as amended" and "[a] form of the amended pleading which shall indicate in what respect it differs from the pleading which it amends, by bracketing or striking through materials to be deleted and underlining materials to be added." D. Del. LR 15.1 (2010). The Estate failed to attach the latter document to its reply.

A proper motion for reconsideration under Fed. R. Civ. P. 59(e) must be based on one of three grounds: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) (per curiam). None pertain here. The Estate's motion for reconsideration provided nothing in the way of new or overlooked law or facts to impugn the District Court's ruling that amendment would be futile. And, in fact, the District Court, going beyond what was required in this case, carefully considered the Estate's argument that a fiduciary relationship existed between the Estate and Citigroup, as well as the extra-pleading evidence offered in support of that argument, before it granted Citigroup's Rule 12(c) motion and denied the Estate's motion for reconsideration. The District Court's thorough analysis confirms that there was no error—much less "clear error" or "manifest injustice"—in its conclusion on reconsideration that leave to amend would be futile because the Estate could not adequately plead a plausible claim for relief. *See Twombly*, 550 U.S. at 570.

The cases cited by the Estate are not to the contrary. In *United States ex rel. Customs Fraud Investigations v. Victaulic Co.*, 839 F.3d 242 (3d Cir. 2016), the district court granted the defendant's Rule 12(b) motion "with prejudice, without any discussion of why [the relator-plaintiff] should not be afforded the opportunity to amend its complaint to solve any perceived deficiencies." *Id.* at 247. By contrast, the District Court here explained in its opinion why it was granting Citigroup's motion with prejudice and denying leave to amend. Additionally, in *Victaulic*, after the

relator-plaintiff's complaint was dismissed, it promptly filed a motion for leave to amend that included "a proposed First Amended Complaint." *Id.* Here, however, the Estate, in moving for reconsideration after dismissal, merely alluded to unspecified "additional record evidence" that it obtained "[b]ased on ongoing investigation," JA 284, and it failed to submit a timely proposed amended pleading.

*Newark Branch, NAACP v. Town of Harrison, New Jersey*, 907 F.2d 1408 (3d Cir. 1990), is even farther afield. In that case, the district court mistakenly believed "that it no longer had the power to entertain amendments once the original complaint had been dismissed" for lack of standing. *Id.* at 1416. We vacated the district court's order denying leave to amend because: (1) an adverse judgment, even one based on a determination that the case is non-justiciable, is not a complete impediment to amendment; and (2) the NAACP's post-judgment motion for leave to amend was accompanied by a "proposed amendment" that was "not facially meritless." *Id.* at 1417. In contrast, the District Court here did not misunderstand the scope of its power to grant leave to amend and, again, the Estate failed to accompany its requests for such relief with a properly formulated proposed amended pleading.

In the last case cited by the Estate on this point, *Grayson v. Mayview State Hospital*, 293 F.3d 103, 114 (3d Cir. 2002), we held that, notwithstanding the enactment of the Prison Litigation Reform Act, 42 U.S.C. § 1997e, *et seq.*, pro se plaintiffs proceeding in forma pauperis "who file complaints subject to dismissal under Rule 12(b)(6) should receive leave to amend unless amendment would

be inequitable or futile." *Id.* at 114. The applicability of the sua sponte amendment rule, however, is cabined to cases like *Grayson*; "[i]n non-civil rights cases, the settled rule is that properly requesting leave to amend a complaint requires submitting a draft amended complaint." *Fletcher-Harlee*, 482 F.3d at 252-53.[8]

In sum, under applicable precedent and the standard for motions under Rule 59(e), the District Court did not abuse its discretion in refusing to grant leave to amend and denying reconsideration.

**III.**

For the foregoing reasons, the District Court's orders dismissing the case and denying reconsideration will be affirmed.

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8. In addition to *Victaulic, Newark Branch, NAACP*, and *Grayson*, the Estate's opening brief cited non-precedential opinions of this Court. As we have pointed out on multiple occasions, however, such opinions "'are not regarded as precedents that bind the court because they do not circulate to the full court before filing.'" *In re Grand Jury Investigation*, 445 F.3d 266, 276 (3d Cir. 2006) (quoting 3d Cir. I.O.P. 5.7 (2002)); *accord Watson v. Rozum*, 834 F.3d 417, 427 (3d Cir. 2016).

**APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED FEBRUARY 2, 2018**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-4332

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Appellant,*

v.

CITIGROUP INC.

On Appeal from the United States District Court
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District Judge: Honorable Sue L. Robinson

Submitted under Third Circuit L.A.R. 34.1(a)
on September 27, 2017

Before: AMBRO, KRAUSE, *Circuit Judges*,
and CONTI,* *Chief District Judge*

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* Honorable Joy Flowers Conti, Chief Judge of the United States District Court for the Western District Court Pennsylvania, sitting by designation.

*Appendix B*

**JUDGMENT**

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 27, 2017. On consideration thereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered December 9, 2016, by and the same is hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Patricia S. Dodszuweit
Clerk

Dated: February 2, 2018

## APPENDIX C — MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED DECEMBER 9, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civ. No. 15-537-SLR

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Plaintiff,*

v.

CITIGROUP INC.,

*Defendant.*

December 9, 2016, Decided
December 9, 2016, Filed

### MEMORANDUM

At Wilmington this 9th day of December, 2016, having reviewed plaintiffs motion for reconsideration of the court's entry of judgment in favor of defendant, as well as the papers submitted in connection therewith,[1] the court denies the motion (D.I. 60) for the reasons that follow:

1. The court notes that D. Del. LR 7.1.5(a) does not contemplate a reply being filed by the movant in response to the opposition and, therefore, the court does not rely on plaintiff's reply. (D.I. 64)

*Appendix C*

1. **Standard of review**. As related in D. Del. LR 7.1.5(a), "[m]otions for reargument[2] shall be sparingly granted." A motion for reargument is the "functional equivalent" of a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). *See Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1352 (3d Cir. 1990) (citing *Fed. Kemper Ins. Co. v. Rauscher*, 807 F.2d 345, 348 (3d Cir. 1986)). The standard for obtaining relief under Rule 59(e) is difficult to meet. The purpose of a motion for reargument is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1998). A court should exercise its discretion to alter or amend its judgment only if the movant demonstrates one of the following: (1) an intervening change in the controlling law; (2) a need to correct a clear error of law or fact or to prevent manifest injustice; or (3) availability of new evidence not available when the judgment was granted. *See id.* It goes without saying, therefore, that a motion for reargument or to alter or amend judgment that advances the same arguments already thought through and rejected by the court - rightly or wrongly - should be denied. *See, e.g., Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010); *Savage v. Bonavitacola*, 2005 U.S. Dist. LEXIS 5073, 2005 WL 730679 (ED. Pa. Mar. 29, 2005), at *1 (citing *Glendon Energy Co. v. Boroough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993)); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990).

2. Also called motions for reconsideration.

2. **Analysis**. Plaintiff at bar asserts two grounds for his motion: (1) the court erred by dismissing with prejudice, rather than granting plaintiff an opportunity to amend; and (2) the court erred by not "fully" considering the impact of the North American Free Trade Agreement ("NAFTA") on this lawsuit. With respect to the first ground, the court noted in its opinion that leave to amend should be freely given unless it would be futile to do so. (D.I. 58 at 10, *citing Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)). The court found that amendment would be futile under the circumstances of record, that is, plaintiff could not establish the requisite relationship between the Estate and defendant that would support an imposition of a duty to account on defendant. The court declines to reconsider its decision in this regard.

3. With respect to NAFTA, the court notes that plaintiff failed to raise NAFTA as a possible source of the requisite relationship until oral argument, and then NAFTA was only briefly mentioned. (D.I. 57 at 23:21-24; 25:4-9) The fact that defendant's indirect subsidiary operates in Mexico subject to NAFTA is not dispositive of the issue at bar, and plaintiff never explained how a treaty (NAFTA) that provides no private cause of action vitiates the corporate form and the state law related thereto. *See* 19 U.S.C. §§ 3312(b)(2) and 3312(c)(2012). The court declines to reconsider its decision[3] on this basis.

4. Finally, plaintiff has failed to demonstrate that reconsideration should be granted to prevent manifest

3. *See* D.I. 58 at 7 n.8.

injustice. Plaintiff is a party to probate *(amparo)* proceedings in Mexico. The fact that plaintiff would rather pursue his claims in the United States does not justify his conflating defendant with its indirect subsidiary in Mexico, absent a legal basis to do so. Plaintiff has presented none that are legally cognizable.

5. **Conclusion**. For the reasons stated, plaintiffs motion for reargument (D.I. 60) is denied. An appropriate order shall issue.

/s/ Sue L. Robinson
United States District Judge

## APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED DECEMBER 9, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civ. No. 15-537 -SLR

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Plaintiff,*

v.

CITIGROUP INC.,

*Defendant.*

**ORDER**

At Wilmington this 9th day of December 2016, consistent with the memorandum issued this same date;

IT IS ORDERED that plaintiff's motion for reargument (D.I. 60) is denied.

/s/ Sue L. Robinson
United States District Judge

## APPENDIX E — MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED JUNE 29, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civ. No. 15-537-SLR

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Plaintiff,*

v.

CITIGROUP INC.,

*Defendant.*

June 29, 2016, Decided
June 29, 2016, Filed

### MEMORANDUM

At Wilmington this 29th day of June, 2016, having reviewed Citigroup Inc.'s motion for judgment on the pleadings (D.I. 40), and the papers filed in connection therewith; the court issues its decision based on the following reasoning:

*Appendix E*

1. **Background.**[1] On June 25, 2015, plaintiff Mario Alberto Lopez Garza ("Garza") initiated this instant lawsuit, as executor of the Estate of Hans Jorg Schneider Sauter (the "Estate"), against Citigroup Inc. ("Citigroup") seeking an accounting to determine whether Citigroup has information with respect to funds that may belong to the Estate. (D.I. 1) The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

2. Garza resides in Jalisco, Mexico and serves as the executor of the Estate of Hans Jorg Schneider Sauter, a Mexican national who died in Mexico in 2008. (D.I. 1 at ¶¶ 2-3) Citigroup is a global bank incorporated in the State of Delaware, with its principal place of business in New York, New York. (*Id.* at ¶ 4) Banco Nacional de Mexico, S.A. integrante del Grupo Financiero Banamex ("Banamex") is a wholly-owned, indirect subsidiary of Citigroup. (D.I. 11 at ¶ 5)

3. After the death of Mr. Schneider Sauter, the Estate initiated probate proceedings in Mexico to collect and account for decedent's assets deposited in Banamex. (D.I. 1 at ¶ 13) The Mexican probate proceedings were halted when Banamex filed new litigation under the "amparo" process, which is a process designed to resolve the

1. The court presents only the background needed for the dispute at bar. A fuller recitation of the background of the present litigation is presented in the memorandum opinion on Citigroup's motion for costs and a stay pursuant to Federal Rule of Civil Procedure 41(d). (D.I. 16)

presence or absence of constitutional violations.[2] (D.I. 49 at 5) After the Mexican probate proceedings were halted, the Estate brought suit in the United States District Court for the Southern District of New York against Citigroup, Banamex, and Banamex USA ("New York litigation"). *(Id.)* The Estate voluntarily dismissed the New York litigation without prejudice after the court denied its motion seeking leave to file a proposed second amended complaint.[3] *Estate of Sauter v. Citigroup Inc.*, Civ. No. 14-05812 LGS, 2015 U.S. Dist. LEXIS 68942, 2015 WL 3429112, at *3 (S.D.N.Y. May 27, 2015). The Estate subsequently filed the instant complaint, claiming that Citigroup, Banamex's indirect corporate parent, must account for the funds Mr. Schneider Sauter allegedly deposited at its foreign subsidiary. (D.1. 1 at ¶¶ 17-19)

4. **Standard.** The court reviews a Rule 12(c) motion for judgment on the pleadings based on an allegation that the plaintiff has failed to state a claim "under the same standards that apply to a Rule 12(b)(6) motion." *Ferrell v. Cmty. Mgmt. Servs., LLC*, 2011 U.S. Dist. LEXIS 48818, 2011 WL 1750452, at *1 (D. Del. May 6, 2011) (citing *Revell v. Port Auth. of N. Y. & N.J.*, 598 F.3d

2. Specifically, Banamex initiated the amparo proceedings to determine whether the Probate Judge had the authority to order Banamex to turn over either the Estate's funds it allegedly possessed or documents to defeat the Estate's claim to the funds. (D.I. 1 at ¶¶ 13-14)

3. On the basis that amendment would be futile. (D.I. 42, ex C at 7:2-19) The court asked if the Estate would be willing to dismiss the action with prejudice as it found the opposing parties' motion to dismiss "meritorious". (*Id.* at 10:13-14)

128, 134 (3d Cir. 2010)). That is, the court must accept all factual allegations in a complaint as true and take them in the light most favorable to the plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002). A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (interpreting Fed. R. Civ. P. 8(a)) (internal quotations omitted). A complaint does not need detailed factual allegations; however, "a plaintiff's obligation to provide the 'grounds' of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 545 (alteration in original) (citation omitted). The "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id.* Furthermore, "[w]hen there are well-ple[d] factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Such a determination is a context-specific task requiring the court "to draw on its judicial experience and common sense." *Id.*

5. **Analysis.** Citigroup's motion for judgment on the pleadings is premised on its argument that Garza fails to state a claim for the relief of an accounting when it has

alleged no substantive claim entitling the Estate to that remedy. (D.I. 41 at 1-2) According to Citigroup, Garza has also failed to allege any relationship between the Estate and Citigroup that supports any duty by Citigroup to provide an accounting. *(Id.* at 2) Under well-accepted Delaware law, "[a]n accounting is an equitable remedy that consists of the adjustment of accounts between parties and a rendering of a judgment for the amount ascertained to be due to either as a result." *Albert v. Alex. Brown Mgmt. Servs., Inc.*, Civ. No. 762-N, 2005 Del. Ch. LEXIS 133, 2005 WL 2130607, at *11 (Del. Ch. Aug. 26, 2005). In other words, an accounting "reflects a request for a particular type of remedy, rather than an equitable claim in and of itself." *Stevanov v. O'Connor*, Civ. No. 3820-VCP, 2009 Del. Ch. LEXIS 62, 2009 WL 1059640, at *15 (Del. Ch. Apr. 21, 2009); *see also Addy v. Piedmonte*, Civ. No. 3571-VCP, 2009 Del. Ch. LEXIS 38, 2009 WL 707641, at *23 (Del. Ch. Mar. 18, 2009) (explaining that an accounting is "dependent on the viability and outcome of the underlying causes of action"); *Rhodes v. Silkroad Equity, LLC*, Civ. No. 2133-VCN, 2007 Del. Ch. LEXIS 96, 2007 WL 2058736, at *11 (Del. Ch. July 11, 2007) ("An accounting is not so much a cause of action as it is a form of relief. Here, the demand for accounting is inherently dependent on the Court's decision on the fiduciary duty claims.").

6. Garza asserts that "the law makes clear that an accounting is an appropriate cause of action to plead, and the appropriate remedy to seek, when 'the accounts are all on one side, but there are circumstances of great complication, or difficulties in the way of adequate relief at

law.'" (D.I. 49 at 7-8) In *Kirschner v. West Company*, 300 F.2d 133 (3d Cir. 1962), the Third Circuit explained that, "[a] prayer for an accounting will not, in itself, render a complaint cognizable in equity . . . . [t]here must be some equitable ground for relief in addition to the mere demand for an account." *Id.* at 135-36 (citations omitted). The Third Circuit concluded that the legal remedies were adequate because there was a contractual relationship between the parties. *Id.* at 136 The court in *Barkauskie v. Indian School District*, 951 F. Supp. 519 (D. Del. 2011), likewise characterized an accounting as "an equitable remedy which arises from the defendant's possession of money which he is obliged to surrender, due to some particular relationship between himself and the plaintiff." *Id.* at 543; *see Am. Air Filter Co. v. McNichol*, 527 F.2d 1297, 1300 (3d Cir. 1975). For instance, "[a] fiduciary relationship is a relationship in which one person reposes special trust in another, or . . . which a special duty exists on the part of one person to protect the interests of another." *Barkauskie*, 951 F. Supp. at 543-44. Contrary to Garza's interpretation of the case as an example of a Delaware court allowing an accounting to be a stand-alone claim, defendant's claim for an accounting arose out of its fiduciary relationship with plaintiff and plaintiff's alleged breach of that fiduciary relationship. *See id.* In the case at bar, Garza's failure to plead any underlying substantive cause of action or fiduciary relationship renders its claim for an accounting legally invalid on its face under Delaware law.

7. Garza suggests that New York, rather than Delaware, law regarding accounting should apply in the instant case because it believes Citigroup's conduct in New York is at

issue.[4] (D.I. 49 at 7 n.2) However, applying New York law does not cure Garza's complaint because, under New York law, a fiduciary relationship must be alleged to sustain a freestanding claim of an accounting. *See Haughton v. Cognisight, LLC*, 953 F. Supp. 2d 478, 491 (W.D.N.Y. 2013) ("to make out such a claim [for accounting], plaintiff must allege (1) a fiduciary relationship with defendants (2) involving the entrustment of money or property, (3) that no other remedy exists, and (4) that plaintiff demanded and was refused an accounting") (citing *In re Mary* XX, 33 A.D.3d 1066, 822 N.Y.S.2d 659 (App. Div. 2006)).

8. In the complaint, Garza alleges that Citigroup has records and information in its possession that could establish whether Banamex holds the Estate's funds, but alleges no duty that would require Citigroup to provide these records and information to the Estate.[5] (D.I. 1 at

4. Garza similarly suggests that Mexican law may be more applicable than Delaware law. (D.I. 49 at 7 n.2.) However, because Garza fails to cite any Mexican law that would allow the Estate to bring a cause of action for an accounting against Citigroup in the United States, the court declines to address this suggestion.

5. The complaint states that Mexican law requires banks to turn over funds immediately to an estate upon an accountholder's death, and alleges that Citigroup possesses records and information regarding the Estate's funds with Banamex. (D.I. 1 at ¶¶ 10, 15) Garza asserts that these allegations sufficiently allege Citigroup's duty to turn over the records and information regarding the Estate's funds with Banamex. (D.I. 57 at 19:11-20) The court finds no logical connection between these two allegations, as Garza fails to allege how a Mexican law requiring a bank to turn over a deceased accountholder's funds compels a bank's indirect corporate parent to turn over records and information regarding those funds in the United States.

¶ 15) Similarly, Garza alleges that Citigroup receives earnings on the deposits made through Banamex and that Citigroup's board of directors offers guidance in the activities of the Mexico operations. (*Id.* at 11 ¶ 9) However, Garza does not allege that Citigroup possesses the Estate's funds or that Citigroup controlled the activities of the Mexico operations. (*Id.*) In the briefing, Garza never specifically alleges any type of relationship, let alone a fiduciary relationship, between Citigroup and the Estate. (D.I. 49) In Garza's reply brief, he intimates (rather than argues) that the relationship between the Estate and Banamex should extend to Citigroup because Citigroup has oversight and control over the compliance and risk management procedures of its global operations,[6] which include Banamex. (*Id.* at 6) At oral argument,[7] Garza suggested that, because Citigroup is required to implement a comprehensive global anti-money laundering provision, it has an obligation to ensure that its banking operations in Mexico are not being used for money laundering. (D.I. 57 at 24:8-25:9) Garza goes on to assert that, because the funds the Estate seeks were the subject of a money laundering investigation, Citigroup (not Banamex) is responsible for the duties and recordkeeping regarding the Estate's funds. (*Id.* 25:4-10)

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6. Stating that Mexican and U.S. federal regulations and regulatory guidelines require Citigroup to implement and oversee comprehensive global risk management and compliance procedure. (D.I. 49 at 3-6) Moreover, Citigroup's Mexican operations "were run by senior executives who served in dual capacities in the Mexican banking operations as well as officers in Citi[group]'s global headquarters . . . in New York." (*Id.* at 4)

7. Upon questioning by the court.

9. This attenuated chain of reasoning is insufficient to show a fiduciary relationship between a global holding company and one of its subsidiary bank's accountholders. None of the sources of authority[8] cited by Garza support the notion that, because Citigroup is required to implement and oversee its subsidiaries compliance procedures, Citigroup's corporate structure is altered in such a way that would allow an individual Banamex accountholder to reach Citigroup, absent any corporate veil piercing theory.[9]

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8. Specifically, Garza cites Citigroup's memorandum regarding the impact of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and a set of interagency regulatory guidelines put forth by various federal regulatory agencies, which only require that Citigroup implement internal controls and risk management procedures in its subsidiaries. (D.I. 49, ex C-D) Additionally, Garza generally cites to Chapter XIV of the Financial Services of North American Free Trade Agreement, Articles 48-51 and 61 of Mexico's Law of Credit Institutions, and the Expedited Funds Availability Act, 12 U.S.C., Sections 4001-4010 as sources of law requiring Citigroup to maintain records and information regarding money laundering activity in its subsidiary banks. (D.I. 1 at ¶ 15) To the extent possible, the court has reviewed these sources of authority and has found no language or provisions that would specifically support either a relationship between Citigroup and the Estate or Citigroup's liability for Banamex's actions in the instant case.

9. As Garza's claim for an accounting fails to satisfy the minimum requirements of an accounting claim under New York law, it is unnecessary for the court to conduct a choice-of-law analysis and look beyond Delaware law. *See Pig Imp. Co. v. Middle States Holding Co.*, 943 F. Supp. 392, 396 (D. Del. 1996) (explaining that choice-of-law analysis is not required when laws of affected jurisdiction do not conflict).

10. A parent company is not liable for the actions of a subsidiary solely because of the parent-subsidiary relationship. *See United States v. Bestfoods*, 524 U.S. 51, 61, 118 S. Ct. 1876, 141 L. Ed. 2d 43 (1998). A finding of liability requires piercing the corporate veil. *Id.* Prior case law establishes two distinct tests for determining when piercing the corporate veil is appropriate: (1) the alter ego test;[10] or (2) the agency test. *See, e.g., Pearson*, 247 F.3d at 484-86; *C.R. Bard Inc.*, 997 F. Supp. 556, 559-60 (D. Del. 1998); *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 265-72 (D. Del. 1989). In order for a parent corporation to be liable under the agency test, there must be a "close connection between the relationship of the corporations and the cause of action," focusing on "the arrangement between the parent and the subsidiary, the authority given in that arrangement, and the relevance of that arrangement to the plaintiff's claim." *Ethypharm S.A. France v. Bentley Pharmaceuticals, Inc.*, 388 F. Supp. 2d 426 (D. Del. 2005) (quoting *C.R. Bard Inc. v. Guidant Corp.*, 997 F. Supp. 556, 560 (D. Del. 1998)).

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10. The Third Circuit alter ego test is "an inquiry into whether the debtor corporation is little more than a legal fiction" and "courts have refused to pierce the veil even when subsidiary corporations . . . accept administrative support from the parent, and have a significant economic relationship with the parent." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 485 (3d Cir. 2001) (citations omitted). In order to prevail on an alter ego theory of liability, "plaintiffs must essentially demonstrate that in all aspects of the business, the two corporations actually functioned as a single entity and should be treated as such." *Id.* (citations omitted). The court finds the alter ego test to be inapplicable, as Banamex is not "merely a façade for the operations" of Citigroup, but a legitimate, indirect subsidiary of Citigroup. *See Id.*

11. Garza did not allege a corporate veil piercing theory in its briefing or at oral argument; rather, it alleges that Citigroup has implemented and generally oversees the compliance and risk management policies in its subsidiaries. (D.I. 1 at ¶ 15) Garza does not cite any documents or regulations demonstrating that this general supervision would provide Citigroup with direct control over the deposits of Banamex's accountholders. *See e.g. C.R. Bard, Inc.*, 997 F. Supp. at 561 (finding that a subsidiary company was not an agent for a holding company because the subsidiary was responsible for making its own day-to-day decisions).

12. In its briefing and at oral argument, Garza points to *Oklahoma Firefighters Pension & Retirement Systems v. Citigroup Inc.*, Civ. No. 9587-ML, 2015 Del. Ch. LEXIS 119, 2015 WL 1884453 (Del. Ch. April 24, 2015), to support compelling Citigroup to produce records relating to Banamex. (D.I. 49 at 3; D.I. 57 at 22:11-19) However, *Oklahoma Firefighters* and the instant action are not analogous, as *Oklahoma Firefighters* is a derivate suit directed against Citigroup's board of directors for breach of fiduciary duty in connection with events at Banamex and another Citigroup subsidiary; i.e., a legally recognized fiduciary duty existed. *See* 2015 Del. Ch. LEXIS 119, 2015 WL 1884453, at *10-11. Furthermore, the Chancery Court's ruling compelling Citigroup to produce records relating to Banamex was related to the shareholders' statutory demand to investigate possible breaches of fiduciary duty by Citigroup's board in

connection with Banamex.[11] 2015 Del. Ch. LEXIS 119, [WL] at *1. The evident fiduciary relationship between the opposing parties, the nature of the legal proceeding, and the significantly lower burden of proof in the *Oklahoma Firefighters* case makes it inapposite to the present action. Therefore, Garza's incorporation of and reliance on the reasoning of the Chancery Court in *Oklahoma Firefighters* is unpersuasive.[12]

13. Should the court conclude (as it has) that an accounting cannot be a freestanding claim under Delaware law, Garza requests leave to amend because he "is able to plead the elements cited as necessary by Citigroup (special relationship, debt owed)." (D.I. 49 at 9) Leave to amend a complaint shall be freely given when justice requires. *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir.

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11. A "Section 220" demand is the right of a "stockholder . . . to inspect for any proper purpose . . . [t]he corporation's . . . books and records," and requires a stockholder only to establish a credible basis, the "lowest burden of proof," that the demand "is based on more than mere suspicion and conjecture." *Okla. Firefighters*, 2015 Del. Ch. LEXIS 119, 2015 WL 1884453, at *5 (citation omitted); 8 Del. C. §220(b)(1). The Chancery Court encourages stockholders to pursue Section 220 demands in order to allow stockholders to make "intelligent decision[s] about whether or not to sue" and prevent them from filing premature complaints that cannot survive a motion to dismiss. *Okla. Firefighters*, 2015 Del. Ch. LEXIS 119, 2015 WL 1884453, at *5 (citation omitted).

12. In *Oklahoma Firefighters*, the Chancery Court itself stated that "the record would not likely support fiduciary duty claims capable of surviving a motion to dismiss," and that it "does not ignore the corporate separateness of Citigroup and Banamex." 2015 Del. Ch. LEXIS 119, [WL] at *5-6.

2000). Amendment is not automatic, but should be granted absent a showing of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). Futility of amendment occurs when the complaint, as amended, does not state a claim upon which relief can be granted. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997).

14. As explained above, Garza has failed to adequately allege a special relationship between the Estate and Citigroup. The court, having reviewed the laws and regulations cited by Garza as the sources of connection between Citigroup and the Estate, finds no legal or factual basis from which Garza can aver a special relationship between the Estate and Citigroup. Because Garza cannot establish the requisite relationship between the Estate and Citigroup that would support an imposition on Citigroup of a duty to account, it would be futile to allow Garza to amend his complaint. *See Am. Air Filter* Co., 527 F.2d at 1300-01; *Barkauskie*, 951 F. Supp. at 543.

15. **Conclusion.** For the foregoing reasons, Citigroup's motion for judgment on the pleadings (D.I. 40) is granted.[13] Citigroup's motion to stay discovery pending resolution of Citigroup's rule 12(c) motion for judgment on the pleadings

13. As such, the court declines to address Citigroup's alternative argument for a stay pending proceedings in Mexico.

(D.I. 43) is denied as moot. An appropriate order shall issue.

/s/ Sue L. Robinson
United States District Judge

## APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED JUNE 29, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civ. No. 15-537-SLR

MARIO ALBERTO LOPEZ GARZA, THE EXECUTOR OF THE ESTATE OF HANS JORG SCHNEIDER SAUTER,

*Plaintiff,*

v.

CITIGROUP INC.,

*Defendant.*

### ORDER

At Wilmington this 29th day of June 2016, consistent with the memorandum issued this same date;

IT IS ORDERED that:

1. Citigroup's motion for judgment on the pleadings (D.I. 40) is granted.

2. Citigroup's motion to stay discovery pending resolution of Citigroup's rule 12(c) motion for

judgment on the pleadings (D.I. 43) is denied as moot.

/s/ Sue L. Robinson
United States District Judge