IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STARR INTERNATIONAL COMPANY, INC., on its behalf and on behalf of a class of others similarly situated	)	
Plaintiff,	)	No. 11-779C (Judge Thomas C. Wheeler)
v.	)	
UNITED STATES,	)	Filed under seal
Defendant,	)	

DEFENDANT'S PRETRIAL PRELIMINARY STATEMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND REGULATIONS

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DEFENDANT'S PRETRIAL PRELIMINARY STATEMENT

In September 2008, on the brink of a financial crisis that threatened its survival, American International Group, Inc. (AIG) sought, and the Federal Reserve Bank of New York (the New York Fed or FRBNY) offered, financial assistance to rescue AIG from bankruptcy. AIG and FRBNY agreed that FRBNY would establish an $85 billion revolving credit facility in exchange for, among other things, AIG conveying 79.9 percent of its equity. Over the next two years, the New York Fed and the Government provided nearly $100 billion in follow-on assistance to AIG without any complaint or challenge. Now, Starr International Company, Inc. (Starr), on behalf of two classes of AIG's common shareholders, alleges that the rescue-loan agreement that AIG solicited constituted either a taking without just compensation or an illegal exaction.

Relying upon the Fifth Amendment's Takings and Due Process Clauses, Starr insists that it is entitled to a more economically rewarding rescue than the one to which AIG voluntarily agreed. Starr is wrong. In September 2008, AIG faced the consequences of risky, highly-leveraged investments gone bad. Neither the Constitution nor the Federal Reserve Act required

American taxpayers to rescue AIG and cushion the fall of its shareholders, much less to do so on terms even more favorable to Starr.

The first plaintiffs' class challenges the September 2008 rescue as a taking or an illegal exaction (the equity claim). The Court should reject these theories because the shareholders were not harmed by the rescue and because the agreement between AIG and FRBNY was legal, voluntary, and highly beneficial to AIG and its shareholders (indeed Starr itself concedes that it cannot prove it would have been better off absent the rescue). AIG willingly granted the equity stake because the company's board of directors believed FRBNY's offer was more beneficial to AIG than its only other option on September 16, 2008: disorderly bankruptcy.

The second plaintiffs' class asserts takings and illegal exaction challenges based upon the June 30, 2009 reverse stock split that AIG proposed and that its shareholders approved (the reverse stock split claim). Starr argues that the common shareholders, as of June 30, 2009, suffered a taking or illegal exaction because AIG put a 1:20 reverse stock split to a shareholder vote without holding a separate class vote for common shareholders. Starr's conspiracy theory posits that the reverse stock split was intended to deprive common shareholders of a vote on the conversion of preferred stock; in reality, the split had nothing to do with the conversion (or the exchange) of preferred stock. Instead, AIG proposed the split to increase the share's trading price and, thus, avoid having them de-listed by the New York Stock Exchange. In any event, the reverse stock split could not have been a taking or illegal exaction because (1) AIG's common shareholders had no right to a separate vote; (2) the reverse stock split was not a result of any Government action; and (3) the absence of a separate class vote did not injure the shareholders because those same common shareholders voted to approve the reverse stock split – thus the proposal would have passed even with a separate class vote.

Starr's case stems from a misperceived entitlement: Starr argues that in 2008, AIG had grown so large, with its investments so deeply intertwined with businesses and households, that when AIG faced an existential crisis in September 2008, AIG was entitled to dictate the terms of its own rescue. Starr contends that, because of AIG's size and the damage an AIG bankruptcy likely would have caused to the national economy, the Board of Governors and FRBNY *had* to make a rescue loan on the terms that Starr argues AIG *should have received*, no matter the policy implications or moral hazard or risk of loss to the taxpayers. Under Starr's theory, the Government was *required* not only to rescue AIG with better terms than the company could obtain from private parties in the marketplace, but also to confer an enormous windfall on the shareholders by ensuring that they gained every benefit from the taxpayers' loan.

Rescue loans made under Section 13(3) of the Federal Reserve Act, including the loan to AIG, are not entitlements — they are not provided to benefit the borrower at all, but provided only to protect and stabilize the United States economy; incidental benefits to the recipient of a Section 13(3) loan – like being rescued from bankruptcy (as AIG and its shareholders were) – are a side effect.

Neither the New York Fed nor the Board of Governors can impose a Section 13(3) loan on a potential borrower. If a company decides the conditions offered in a rescue loan are not favorable, the company may decline the assistance and pursue its own path. On September 16, 2008, AIG's duly elected Board of Directors thoughtfully and carefully considered the offered rescue terms, and then accepted those terms because, they believed, doing so was in the best interests of AIG and its shareholders. Indeed, the rescue benefited AIG's shareholders — the rescue increased the market price of AIG's common shares (including those held by Starr) so much so that the common shareholders' 20.1 percent equity stake in AIG *after* the rescue was worth more than their 100 percent equity stake *before* the rescue. This benefit cannot also be a punishment, as Starr claims it to be.

Only now, after having enjoyed the benefits of the successful rescue of AIG, does Starr complain that the American taxpayers were not generous enough and that they actually punished AIG by saving it from a value-destroying bankruptcy. Starr's entire case is built upon the mistaken premise that AIG and its shareholders were entitled to vastly better terms.

The Court should decline this invitation to second-guess the policy judgments of the Board of Governors, the New York Fed, and Treasury as to whether, when, and how to respond to AIG's financial needs in the midst of a historic crisis. It would be legal error here for the Court to substitute its judgment and require that AIG should have been offered other forms of assistance or should have been offered a rescue loan on different terms.

I. Starr Will Not Demonstrate Necessary Prerequisites For Its Equity Claims Because Starr Cannot Identify Any Shareholder Property Right That Was Taken Or Exacted, Or Any Economic Harm

Starr's pretrial filings fail to adequately identify the basic prerequisites necessary for the Court to properly consider Starr's ever-moving claims.

As a threshold matter, Starr's claims cannot "represent both an illegal exaction and an uncompensated Taking." Pl. Tr. Br. at 2. A taking must be authorized and within the scope of the law, and to find that a taking occurred, Starr must concede and the Court must assume the legality of the Government's actions. An illegal exaction, by contrast, must be *unauthorized* by the law. Although the Court held that Starr's takings claim must proceed on the assumption that the Government's conduct was lawful, Starr has not adhered to that requirement. Instead, Starr mixes the two claims' requirements and attempts to use these mutually exclusive legal theories to cover the plaintiffs' deficiencies of proof for each.

In any event, Starr continues to be vague and inconsistent about what exactly was "exacted" or "taken," even though the identification of the relevant property rights is a threshold issue for the claims raised here. For example, to avoid the framework of *Penn Central,* Starr asserts the Government directly appropriated the shareholders' property, but fails to identify any of the shareholders' property that was actually appropriated (or exacted); Starr, instead, argues that the Government's actions injured Starr's shares, which the company continued to own. Sometimes Starr describes its allegedly appropriated property as "shareholders' voting and equity interests," Pl. Concl. ¶ 14; alternatively, Starr states it is "79.9% of the Credit Agreement Class's equity," *id.* ¶ 98, or suggests the property allegedly taken was "the right to exclude others," *id.* ¶ 25, or "the economic and voting power" of its stock, *id.* ¶ 26. Starr is just as vague about the reverse stock split, stating in direct succession that the reverse stock split "appropriated equity and voting rights" but also that its claim is a "property interest in . . . voting dilution." *Id.* ¶¶ 211-212.[1]

Whatever Starr asserts as the property interest taken, neither the New York Fed nor the Government – nor the Credit Facility Trust (the Trust) – ever received the plaintiffs' stock. The shareholders owned, and could vote or transfer, the same number of shares before and after the alleged takings and exactions. That is, their equity was not appropriated. AIG's shareholders did not possess (either individually or collectively) a property interest in preventing AIG's board of directors from making decisions for the company that the board members were authorized to make, including decisions that affected the economic value of the shareholders' shares and the

[1] Starr's confused articulation of its property allegedly taken or exacted extends to its calculations of just compensation that exceed, by many multiples in the case of the stock split class, the entire market value of the shares even though only part of the property rights were allegedly taken.

relative power of each of those shares' voting rights. The shareholders never had either a contractual right or a right grounded in state law against the company to prevent it from issuing preferred shares and later exchanging them for common stock. None of the shareholders' rights was violated, and none of their property – however Starr ultimately defines it – was appropriated or exacted from them.

Last, Starr cannot demonstrate that any property it owned was actually harmed by the Government's actions, and certainly not in a manner that qualifies as a taking or exaction. Specifically, Starr must establish harm, caused by the Government's rescue, *distinct from any harm to AIG*. Given that AIG's only alternative to the rescue was bankruptcy, Starr recognizes the impossibility of demonstrating that the rescue injured AIG's shareholders. Thus, Starr argues against all precedent that it need not demonstrate that the Government's conduct reduced the value of Starr's property; under Starr's novel reading of takings and exaction law, the Government must demonstrate why Starr was *not* harmed. The burden of proof, however, cannot be shifted — and Starr's attempt to shift the burden highlights its inability to show harm.

For Starr to recover any award at all, it must establish (1) standing for a direct claim, (2) liability for a taking or illegal exaction, and (3) precisely what amount Starr would be due if a taking or exaction occurred. Starr cannot meet any of these burdens because the actual property that Starr owned – its stock, with all its attendant voting and other rights – actually *increased* in value as a result of the rescue loan. Thus, the Court should reject Starr's claims as twice inconsistent, both between the claims themselves, and again with the facts that will be proven at trial.

II. AIG's Business Practices And The Financial Crisis Brought AIG To The Brink Of Failure

When AIG sought assistance from the New York Fed and the Government in September 2008, the company was tumbling toward failure. AIG's enormous, complex investments exposed the company to gains or losses based on the success of mortgage-backed securities. These aggressive activities generated substantial profits for AIG before 2007, but in the 2008 financial crisis, the investments inflicted severe losses and triggered collateral calls that drained the company's liquidity. AIG's stock price plummeted.

In response to AIG's deteriorating financial condition, the New York Fed encouraged major financial institutions to organize a private-sector rescue of the company. The private sector's efforts generated a draft term sheet for a potential $75 billion loan to AIG, to be syndicated to 15 private lenders. The term sheet also provided for the lenders to receive a 79.9 percent equity interest in AIG as part of the loan's consideration. AIG understood that in any private-sector rescue, the lenders would ultimately be compensated, in part, through a grant of equity. Deterred by AIG's growing funding requests, the potential, private sector lenders ultimately declined to assist AIG, concluding that AIG's needs for cash far exceeded the company's value. Put simply, the risk in assisting AIG was too great for the private sector. When the private sector's efforts collapsed, AIG faced an imminent and disorderly bankruptcy.

III. FRBNY Provided AIG An Alternative To Bankruptcy, Which AIG Willingly Took

On September 16, 2008, with no private investors willing to invest in AIG quickly enough to avert bankruptcy, Federal officials responded to the company's request for assistance with an extraordinary offer. The Board of Governors authorized FRBNY, under Section 13(3) of the Federal Reserve Act, to offer AIG an $85 billion loan in exchange for a 79.9 percent equity stake in AIG and other consideration. At trial, the evidence will demonstrate that, with the benefit of advice from top legal and financial advisers, and input from AIG's senior management, AIG's board of directors carefully considered the New York Fed's offer, weighed it against the alternative of filing for bankruptcy, and concluded that accepting the proffered loan was in the best interest of the company and its shareholders. By voluntarily accepting the offer, AIG avoided the risks and chaos of an unplanned bankruptcy. AIG's board of directors agreed to the loan because the board concluded that 20 percent of something was better than 100 percent of nothing. Indeed, the common stock's value rose immediately after news of possible Federal assistance reached the market.

A. <u>AIG Voluntarily Accepted The Deal</u>

A threshold issue for Starr's Constitutional claims is proof of deprivation of property resulting from Government compulsion. There can be no deprivation of property under the Fifth Amendment where the allegedly taken or exacted property was part of a voluntary exchange, and Starr bears the burden of proving that AIG's agreement was not voluntary. Because the Government never interacted with Starr, Starr must demonstrate that the Government forced AIG – not Starr – to accept the agreement that Starr claims caused its property to be taken or exacted. Because even Starr's direct claims – as Starr itself has framed them – require a finding that AIG acted under duress, it is *AIG's* voluntariness, not Starr's, that determines the validity of Starr's claims.

Starr cannot demonstrate duress. Rather, the evidence demonstrates the opposite: AIG and its directors will testify that they freely chose FRBNY's offer over the alternative of bankruptcy. In making that choice, on September 16, 2008, AIG promised equity equivalent to 79.9 percent of its common stock as part of the consideration for an $85 billion credit facility.

The parties began immediate performance of the September 16 rescue deal as soon as AIG confirmed its agreement to the terms offered by FRBNY.

Even if, as Starr argues, the voluntariness inquiry should focus on September 21, 2008, the evidence will show that AIG's board voluntarily agreed to the Credit Agreement on that date, as well. On September 21, when they voted to approve the Credit Agreement, AIG's directors understood that they were implementing, rather than altering, the September 16 agreement. Accordingly, Starr's takings and exaction claims must fail regardless of the date.

The evidence will also debunk Starr's conspiracy theory that – in the middle of the worst financial crisis since the Great Depression – FRBNY or Government employees intentionally exacerbated AIG's weaknesses to undermine the company's ability to bargain for a more favorable rescue. The United States did not take any actions – or fail to take any actions to which AIG was entitled – to increase the Government's bargaining power over the failing company. Nor did the Government have any ability to force AIG's directors to accept the loan if they believed the deal did not benefit the company and its shareholders.

Because AIG was not coerced and the Government did not have or exert any control over AIG to force it to accept the September 2008 rescue, Starr also lacks standing to assert its claims as direct claims. This Court has characterized Starr's claims as "corporate overpayment" claims in recognition that it was AIG – and not its shareholders – that exchanged equity (and allegedly "overpaid" with equity) in the challenged transactions. *See* 9/27/13 Decision at 4. This Court has further held that Starr has a direct claim *only* if it can establish that "the Government used its [alleged] control of AIG to appropriate the economic and voting interests of the then-existing common stock shareholders." *Id.* at 5. At trial, Starr will not be able to satisfy its burden to prove the requisite exercise of control or causation.

Moreover, AIG and its shareholders ratified the rescue terms by waiting to receive the full benefit of the $85 billion loan, plus nearly $100 billion in additional Government assistance, before Starr challenged the rescue terms in late 2011. This negates a claim of duress.

B. Neither AIG Nor Its Shareholders Suffered An Economic Loss From The September 2008 Rescue

Similarly, Starr cannot satisfy its burden of proving that AIG's common shareholders would have been better off if the company had not received massive Federal assistance in September 2008. In particular, there is no evidence that in a bankruptcy – AIG's only alternative – the company's common shares would have been worth more than they were worth as a result of the rescue. Starr's failure to meet its burden to prove economic harm is independently fatal to its claims.

In fact, the rescue *benefited* AIG's shareholders. As soon as news of potential Federal assistance reached the market, the price of AIG's stock rose dramatically. The share price of AIG's common stock was higher at the end of the class period on September 22, 2008, and after the announcement of the terms of the Credit Agreement, than at the beginning of the class period on September 16, 2008. AIG's promise of a 79.9 percent equity stake did not reduce the number of shares held by each common shareholder, so Starr benefited as the price of its shares rose during the class period.

Starr urges the Court to consider the equity term in isolation from the rescue deal's other components. In particular, Starr notes that the $85 billion credit facility was secured to the satisfaction of the New York Fed – a condition that Starr misconstrues to mean the loan "posed no risk" – and then argues that AIG received only $500,000 in consideration for the Series C preferred stock. This Court has repeatedly held that, absent language to the contrary, every term in a contract supports every other term, and here the evidence of the parties' intent is unequivocal that the $85 billion loan was consideration for the equity. Indeed, AIG in its contemporaneous financial statements valued FRBNY's lending commitment as an asset worth $23 billion. Starr thus asks the Court to ignore the rescue loan's enormous benefit to AIG and its shareholders. Focusing on only selected terms of the rescue, rather than the value of Federal assistance as a whole, is flatly inconsistent with takings law as well as contract law. Starr cannot prove economic loss – as it must – by disregarding the rescue's benefits to AIG.

Even if Starr could identify (1) a relevant property interest, (2) Governmental compulsion, and (3) actual harm, Starr's taking claim would properly be subject to the *ad hoc* balancing test set forth in *Penn Central*, the anchor of which is a demonstration of economic impact. Starr's plan to forgo showing such impact renders its taking claims facially unsupportable.

The lack of economic harm also undermines Starr's standing to assert direct claims for "harm to the suing shareholders independent of any harm to AIG." June 26, 2013 Decision at 27 (quoting *Starr Int'l Co. v. United States*, 106 Fed. Cl. 50, 62 (2012)). Because the harm to shareholders claimed by Starr exceeds the total value of AIG's shares at the time of the alleged taking or exaction, Starr cannot be describing "harm to the suing shareholders," as it must. Specifically, Starr's expert intends to testify that the September 2008 rescue took $13.16 per share from each common shareholder — a remarkable feat given that AIG's shares opened at only $1.85 per share on September 16, 2008 (the beginning of the Credit Agreement Class period). Starr's expert will testify that the reverse stock split deprived common shareholders of $1.74 per share, even though AIG common shares opened at only $1.32 per share on June 30, 2009 (the beginning of the Stock Split Class period). Whatever Starr's experts are measuring, it cannot be "harm to the suing shareholders." Moreover, Starr's alleged harm also fails to demonstrate separate and independent harm to the shareholders, as required for its direct claim. Instead, the compensation Starr identifies is the compensation that would be due to AIG for any derivative claim for an alleged taking or illegal exaction of AIG's equity. Therefore, Starr has failed to identify any harm that would support direct standing, and its claims should be dismissed.

C. The Equity Term Of The September 2008 Deal Was Legal And Therefore Cannot Constitute An Illegal Exaction

The Court should reject Starr's exaction claims because the challenged action was fully authorized by statute. Section 13(3) provided express authority for loans to "be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe." 12 U.S.C. § 343 (2008). The Board of Governors, moreover, authorized the New York Fed to limit the proposed AIG loan by terms "such as" AIG's transfer of a 79.9 percent equity stake. In Section 129(a) of EESA, enacted just two weeks after the Section 13(3) loan to AIG, Congress confirmed that Section 13(3) authorized the receipt of equity "in exchange for" a loan.

In the face of this express authorization, Starr alleges that Section 13(3) did not authorize FRBNY to obtain equity, and that the Credit Facility Trust (the Trust) was a "sham" that demonstrates that the equity term was illegal. But Starr is wrong, both legally and factually. First, Starr conflates the legal authority to *condition* the loan on AIG's equity with the legal authority for FRBNY or the Treasury to *hold* shares in AIG. Section 13(3) clearly authorized the receipt of equity in exchange for a loan, and that is fatal to Starr's illegal exaction claim, regardless of whether FRBNY (or Treasury) had authority to hold AIG's equity.

The policy and technical question that FRBNY and the Treasury faced during the week of September 16, 2008, was what entity should *hold* an AIG equity stake; the creation of the Trust resolved this issue. But Starr could only ever potentially be harmed by AIG *granting* the equity, not by how (or by whom) the shares were held once granted. Quite simply, Starr was not injured by the Trust structure, and lacks standing to challenge it.

Even if Starr had standing, it cannot show injury from the allegedly illegal, equity term. Starr's exaction claim challenges the form of the equity consideration, but the rescue deal's economic substance did not depend on that form of consideration, as shown by the severability provision in which AIG promised to replace any illegal term with the closest, economic equivalent that is not illegal. Starr, thus, cannot sustain its illegal exaction claim on the theory that the Credit Agreement's equity term constituted an unlawful exercise of power.

In any event, Starr cannot demonstrate a prohibition on the Trust holding the equity, nor can Starr prove that the Trust was created or operated as a "sham." Although FRBNY and Treasury had legal authority to hold the equity, they decided not to hold it for policy reasons. The AIG shares were held by a legally valid trust and controlled by independent trustees. The trustees took their independence seriously, and specifically negotiated the parameters of that independence with FRBNY when the Credit Facility Trust Agreement was drafted.

D. <u>AIG Was Not Entitled To A Different Rescue</u>

Starr relies upon the legally irrelevant contention that the New York Fed and the Government should have offered other assistance to AIG. Although Starr remains vague about the timing and terms of its desired, alternative rescue, the components uniformly include (1) better terms for AIG, and (2) more risk and less compensation for the American taxpayer. To support its alleged entitlement to dictate the terms of AIG's rescue, Starr argues that other purported "peer" institutions – which in fact were fundamentally different from AIG – received more generous terms of governmental assistance during the crisis. Starr now goes so far as to contend that AIG suffered duress *because* other offers of assistance were made to other entities. This is simply an attempt to circumvent the Court's dismissal of Starr's equal protection arguments and does nothing to further Starr's remaining claims; there is no room in either a takings or illegal exaction analysis to consider whether or not one's neighbors received a better deal when contracting with the Government. Regardless, Starr cannot show that AIG was eligible for the assistance provided to other institutions or that that other assistance would have satisfied AIG's extraordinary and urgent financial needs.

IV. AIG Proposed The Reverse Stock Split For Reasons Unrelated To The Trust's And Treasury's Preferred Stock

Starr's reverse stock split claim relies upon an unfounded theory that, at the time the reverse stock split was proposed and voted on, its purpose was related to monetizing the Trust's and Treasury's preferred stock. Starr fabricates its theory from nothing. To the contrary, the evidence shows that AIG proposed the stock split to raise the market price of its common shares, and thus (1) avoid delisting, and (2) increase investor interest. Moreover, no one could have proposed the stock split to facilitate the exchange of the Trust's and Treasury's shares, because no one contemplated exchanging those shares until months later.

Starr cannot satisfy its burden of proving that AIG's common shareholders were deprived of any right to a separate class vote on the reverse stock split. Neither Delaware law nor statements made in the *Walker* litigation created any such right. Without this property right, Starr's takings and exaction claims must fail.

Even if Starr can establish a property interest that the vote be held in a certain way, Starr cannot prove that the Government compelled AIG to deprive the shareholders of those rights. AIG proposed the reverse stock split to benefit itself and its common shareholders by increasing the trading price of its common stock. Shortly before AIG began considering the reverse stock split, the New York Stock Exchange warned the company that its shares were at risk of being delisted because of their low trading price. AIG, alone, determined the details of the reverse stock split, including the 1:20 ratio and the decision to have it apply only to issued shares. Because AIG's actions are not attributable to the Government, Starr's claims fail for want of Government action. Starr's illegal exaction claim fails for the additional reason that Starr has not identified what statute's authority the Government allegedly exceeded to effect an exaction.

Moreover, Starr cannot satisfy its burden of proving economic loss, which it must. As Starr has admitted, the majority of AIG's common shareholders – including Starr – voted in favor of the reverse stock split. The reverse stock split benefitted AIG's common shareholders because it protected their stock from delisting and made the stock more attractive to investors. Thus, even if the reverse stock split proposal constituted Government action – and it did not – Starr offers no explanation of how AIG's shareholders were harmed by the absence of a formal, separate class vote. *See, e.g., A&D Auto Sales v. United States*, 748 F.3d 1142, 1157-58 (Fed. Cir. 2014).

Attempting to side-step its support for the reverse stock split, Starr argues that AIG should have proposed a reverse stock split that would have decreased the number of authorized shares as well as the number of issued shares. Starr's argument simply confirms that a separate class vote would not have changed the outcome. Regardless, the uncontroverted testimony by

AIG's corporate representative is that the company structured the split solely to avoid making the proxy more complicated.

Starr had no property right that required AIG to present the shareholders with *any* reverse-stock-split proposal, much less a specific, reverse-stock-split proposal that Starr claims it would have preferred. As with the Credit Class claims, Starr does not argue that it (or AIG) should have been free of Government interference, but instead complains that the Government (and AIG) did not behave in the way that Starr would have preferred. Disappointments such as these do not give rise to Constitutional violations.

Further, the reverse stock split caused no harm to the common shareholders, who held the same percentage of AIG's total equity and voting rights and the same percentage of the common equity and voting rights after the split as before. Faced with this insurmountable obstacle to any recovery from the stock split, Starr claims its economic loss stems from an entirely separate transaction that occurred a year-and-a-half later: the January 2011 recapitalization. But takings and illegal exactions occur at a single point in time, not over the span of months or years. Nothing links the reverse stock split to the recapitalization; if any property right was taken or exacted from Starr on June 30, 2009, Starr must articulate how it was injured on that date — independent of subsequent events. This, Starr cannot do.

Even the definition of the Stock Split Class belies any attempt by Starr to link the stock split and the recapitalization. Membership in the class only requires plaintiffs to hold stock through June 30, 2009. If the economic harm to the class did not occur until the recapitalization, there are almost certainly class members who sold their stock after the alleged taking or illegal exaction on June 30, 2009, and never experienced the loss that Starr claims occurred through the recapitalization.

CONCLUSION

Starr's case rests upon indistinct assertions of what was taken or exacted and how Starr was harmed. Starr conflates a proper takings analysis and a proper illegal exaction analysis, and can satisfy the elements of neither: Starr cannot demonstrate any property right of the shareholders that was taken or exacted, or any economic harm that might have resulted to the shareholders even assuming a property right; neither can Starr identify an unauthorized action on the part of the Government, or any Government action at all because AIG voluntarily agreed to the rescue it received. The New York Fed's rescue was not a taking or an illegal exaction; it was a historic and extraordinary rescue of a failing company by the American taxpayer. Starr's belated claim that the rescue was not generous enough must fail.

Respectfully submitted,

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