IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STARR INTERNATIONAL COMPANY, INC., Individually and on Behalf of All Others Similarly Situated, and derivatively on behalf of AMERICAN INTERNATIONAL GROUP, INC.,	:	
Plaintiff,	:	
v.	:	No. 11-00779C (TCW)
THE UNITED STATES OF AMERICA,	:	
Defendant,	:	
and AMERICAN INTERNATIONAL GROUP, INC., a Delaware corporation,	:	
Nominal Defendant.	:	

REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

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REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Plaintiff respectfully submits this Reply to Defendant's Opposition to Plaintiff's Motion for Class Certification and Appointment of Class Counsel.

INTRODUCTION

Although the United States does not contest that Starr has established that a class action is superior to other methods of adjudication of this dispute, it begins its argument with the misstatement that class action suits in the Court of Federal Claims are "generally disfavored." Def.'s Opp. to Pl's Mot. for Class Cert., Dkt. 88 (Feb. 1, 2013) at 3 ("Opp."). Relying on cases that predate the 2002 revisions to R.C.F.C. 23, the Government ignores this Court's clear statement that "[i]f the proposition that class actions are 'disfavored' was ever valid, it certainly is no longer so now." *Barnes v. United States*, 68 Fed. Cl. 492, 502 (2005); *see also Adams v. United States*, 93 Fed. Cl. 563, 574 (2010) ("As a threshold matter, class actions are not 'disfavored' in the United States Court of Federal Claims.").[1]

This approach pervades the Government's Opposition. Although Starr's claims are plainly common to tens of thousands of AIG shareholders, each of whom was similarly situated to Starr at the time the Government took or illegally exacted value from them, the Government disregards settled principles of class action jurisprudence and improperly attempts to impose burdens that are not required at the class certification stage. For example, the Government repeatedly invokes *Wal-Mart Stores Inc. v. Dukes*, 131 S.Ct. 2541 (2011), without addressing the fundamental distinctions to that decision

[1] The United States concedes that Starr has met the numerosity and adequacy of counsel components of the CFC Rule 23 class certification standard. Opp. at 7.

previously defined by this Court in *Geneva Rock Prods., Inc. v. United States*, 100 Fed. Cl. 778, 784-787 (2011). The Government fails to recognize that the burden of demonstrating compliance with R.C.F.C. 23 is quite limited and is met where, as here, "the overall question of liability is 'more substantial' than the individualized calculation of damages" and "can be resolved through generalized proof." *Id.* at 789.

The Government also relies on *Rasmuson v. United States*, 91 Fed. Cl. 204 (2010), where class certification was denied because numerosity – an element not even contested here – was not established, *id.* at 217, and *Christopher Village, LP v. United States*, 50 Fed. Cl. 635 (2001), a case pre-dating the current version of R.C.F.C. 23 that was "completely rewritten and reissued in 2002 (and subsequently amended in 2004)." *King v. United States*, 84 Fed. Cl. 120, 122 (2008). Under applicable legal precedent, this action readily satisfies the requirements of R.C.F.C. 23.

In short, the Government's opposition to class certification in this action relies upon strawmen in lieu of actual disputed points and misstates the burdens applicable at the class certification stage. Where "[t]he court's determination of the common issues of law and fact . . . has been addressed, in part, in the court's decision denying defendant's motion to dismiss," reference to that decision is proper to frame the common questions of law and fact for class certification. *Id*. at 125. Moreover, the threshold for commonality "is 'not high'" and is met "'when there is at least one issue whose resolution will affect all or a significant number of class members.'" *Adams*, 93 Fed. Cl. at 575. Here, "[t]here can be little question that the government acted on grounds applicable to the entire class in the case" because in each class "'there is at least one issue whose resolution will affect

all or a significant number of the putative class members,'"[2] and thus class certification is warranted. *Geneva Rock*, 100 Fed. Cl. at 788-89. The Government does not, and cannot, dispute that the central issue concerning the unitary course of conduct by the Government as to the respective classes of shareholders of whether that conduct constituted an illegal exaction or taking, is subject to generalized proof applicable to each class as a whole.

The two classes at issue have been well-defined and satisfy all the Rule 23 requirements to certify a class. Plaintiff and its expert adequately defined the date and time period for the Credit Agreement Class to ensure that all class members are similarly situated and meet all the commonality and typicality requirements. Similarly, the Stock Split Class is defined around a separate and specific event that this Court has already found involved a cognizable property interest.

The Government's opposition primarily rests on selective quotation of the deposition of Plaintiff's expert Prof. Gordon Rausser. In doing so, the Government ignores the support for Starr's motion articulated in Prof. Rausser's expert report and elsewhere in his deposition, and asserted in Plaintiff's Amended Complaint and briefing.

Finally, the Government attempts to manufacture conflicts and individual issues that do not exist, while relitigating merits issues denied at the motion to dismiss stage without either new arguments or evidence.

[2] Indeed, the Government appears to concede that "the governmental action may be the same as applied to all class members…." Opp. at 11.

ARGUMENT

I. The Credit Agreement Class Has Been Adequately Defined And Is Valid As Alleged

The Government asserts that commonality and typicality requirements with respect to the Credit Agreement Class have not been met because the class is purportedly "defined in an ambiguous manner" and "does not identify when in the day the class begins or ends" Opp. at 11; *see also id.* at 8. The Government's argument appears to be that because Starr has yet to identify the precise time of the Class's commencement, it has inadequately defined the class. The Credit Agreement class starts at the time on September 16, 2008 when the Term Sheet was announced and ends at the time on September 22, 2008 when the Credit Agreement was executed. This time does not vary from class member to class member, and as Prof. Rausser made clear in his report: "The definition of this Class thus deliberately excludes any common stockholders who may have purchased shares with knowledge of the Term Sheet or of the Credit Agreement, or who managed to sell their stock between those two events." Rausser Report at ¶ 13; Rausser Dep. at 82:9-83:1. As set forth in Starr's motion, all of the Credit Agreement Class members are similarly situated and the claims alleged affect each member in exactly the same way. Thus, the predominance prong is satisfied with respect to the commonality and typicality requirements.

II. The Stock Split Class Satisfies All Rule 23 Requirements

The Government contends that because the overwhelming majority of shareholders voted yes to Proposal 4 in the proxy, while "[o]nly 8.5% of the common shares voted against the reverse stock split," Allen Report ¶ 73, the Stock Split Class

members are not similarly situated. Opp. at 13-14. This argument fails, however, for several independently sufficient reasons.

First, contrary to the Government expert's unsupported assertion, Allen Report ¶ 77, Starr did not vote against Proposal 4 but rather voted in favor of it. Based on the Government's own calculations, Starr is similarly situated to the overwhelming majority of putative class members. For this reason alone, the Government's tentative assertion that it "may" assert this defense, Opp. at 13-14, does not provide a basis for denying class certification.[3]

Second, the votes of individual class members on Proposal 4 are beside the point. The taking that occurred was the right to a separate class vote. No individual shareholder could relinquish that right. As this Court has previously recognized, the essence of the Stock Split Class claim is that the Government effectuated a taking of the common shareholders' right to a separate class vote. *Starr Int'l Co. v. United States*, 106 Fed. Cl. 50, 68-69 (2012). Moreover, because it did so in a materially misleading manner, any individual shareholder vote is irrelevant. Compl. ¶¶ 97-98. Given the misleading nature of the proxy, even the shareholders who voted no are similarly situated.

Furthermore, any argument about consent is irrelevant because the Common Stock shareholders were never presented with the question of whether their stock could be diluted without approval by the Common Shareholders voting as a class. There can be no shareholder consent where there was inadequate or misleading information in the proxy and the outcome of the vote was predetermined by permitting the Government to

[3] The Government has not specified the defenses it intends to raise or that any defense presents a unique issue at trial. *McDonough v. Toys "R" Us, Inc.*, 638 F. Supp. 2d 461, 476 (E.D. Pa. 2009) ("To defeat class certification, a defendant must show some degree of likelihood a unique defense will play a significant role at trial.").

vote its majority voting interest on Proposal 4. *See Rosser v. New Valley Corp.*, No. 17272, 2000 WL 1206677, at *7 (Del. Ch. Aug. 15, 2000).

Third, any defenses the Government may have with respect to individual shareholders are dwarfed by the "more substantial" and "central legal questions of this case," including common liability and damages issues, *Geneva Rock*, 100 Fed. Cl. at 789 ("The central legal issues of this case . . . can all be resolved through generalized proof"); *see also Chesemore v. Alliance Holdings, Inc.*, 276 F.R.D. 506, 513 (W.D. Wisc. 2011) ("Typicality under Rule 23(a)(3) should be determined with reference to the [defendant's] actions, not with respect to particularized defenses it may have against certain class members."); *Zeffiro v. First Penn. Banking & Trust Co.*, 96 F.R.D. 567, 570 (E.D. Pa. 1983) ("an alleged defense may affect the individual's ultimate right to recover, but it does not affect the presentation of the case on the liability issues for the plaintiff class, that defense should not make a plaintiff's claim atypical").

Finally, Rule 23 is meant to afford courts discretion in managing litigation. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 184-85 (1974); Rule 23(c)(4) ("When appropriate, an action may be brought or maintained as a class action with respect to particular issues."). The Court may draw further distinctions among class members in the future if it so desires. *Marisol A. v. Giuliani*, 126 F.3d 372, 379 (2d Cir. 1997).

III. Prof. Rausser Properly Assessed And Analyzed The Evidence To Determine The Two Classes

Throughout its brief, the Government attacks Prof. Rausser's analysis and assessment of the evidence, claiming that he made "no effort to identify, assess, or analyze what evidence will be necessary to establish liability, just compensation, or even impact to the class members." Opp. at 7. The Government's arguments – using out of

context snippets from his deposition – give no weight to Prof. Rausser's report and disregard the nature of his role in this case.

First, Prof. Rausser is neither serving as a liability nor damages expert, as such, his role is narrower than the Government's briefing suggests. Opp. at 7. Contrary to the Government's position, Prof. Rausser may accept the Complaint's liability allegations as true and does not have to perform his own investigation of the allegations at this stage. *See Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 163 (C.D. Cal. 2002) ("At this stage in the proceeding, an expert report should not be excluded merely on the basis that it assumes the substantive allegations of the complaint rather than relying upon actual data that may yet to be discovered."). Similarly, a class certification expert report does not have to present a completed damages theory, especially in a takings and illegal exaction case where the need for complicated damages modeling is unlikely to be as important. *See In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 268 (D.D.C. 2002).

Second, the Government's attempts to discredit Prof. Rausser's review of the evidence ignores his identification of common evidence, such as "[t]he terms of the Credit Agreement, the facts that led up to its execution, and the manner in which the Government utilized its provisions to take over control of AIG," which "are the same as to each and every member of the Credit Agreement Class. Valuation of the property rights taken from these Class members therefore depends only on common evidence." Rausser Report ¶ 14. It equally discredits the hundreds of documents and other materials that Prof. Rausser reviewed in arriving at his opinions. Rausser Dep. at 37:8-38:7; 73:10-17; 95:18-96:1; 99:18-21; Rausser Report, Ex. C. As Prof. Rausser explained: "The

Government actions alleged in the complaint at each relevant point in time were directed at the common shareholders collectively, rather than at any common shareholder standing alone. The conduct alleged was either a wrongful taking from all common shareholders, or a wrongful taking from none of them." Rausser Report ¶ 11. The Government does nothing to refute this fundamental point.

Third, although no damages theory need be presented at the class certification stage, Prof. Rausser notes that "[b]ecause every share is valued at the same market price – corresponding to each of the two plaintiff Classes – members of any one of the two Classes will have suffered the same per share damage. Therefore, evidence pertaining to liability and impact is common to the members of the two proposed Classes." *Id.* ¶ 12. Moreover, in his deposition, Prof. Rausser repeatedly explained his conclusion that "[e]ach of the actions taken by the Government had an effect that was shared across all of the common stock on a ratable basis, share for share." Rausser Dep. at 67:10-68:8, 184:8-185:7; *see also* Rausser Report ¶¶ 19-20.

Issues concerning the calculation of damages, or individual variations with respect to damages, are not addressed at the class certification stage where, as here, liability involves "outcome-determinative" questions of law and fact common to the class. *King*, 84 Fed. Cl. at 126 (noting that even where "the eventual award 'will ultimately require individualized fact determinations [that] is insufficient, by itself' to defeat class certification" and that "[a]t a later date, if required, the court can determine a formula for calculating individual damages"); *see also Adams*, 93 Fed. Cl. at 575-76; *Singleton v. United States*, 92 Fed. Cl. 78, 84 (Fed. Cl. 2010).

Countermanding the Government's repeated invocation of *Wal-Mart v. Dukes* to suggest some heightened burden of evidentiary proof as to the merits and damages at the class certification phase is *Geneva Rock*, which addressed *Wal-Mart* at length and discussed the fundamental distinctions salient here. *Geneva Rock*, 100 Fed. Cl. at 783-790 ("the chief concern in the *Wal–Mart* decision was the justiciability of the class action—an issue that is not present" when the case involves the "same government action" alleged to constitute a taking). Other post-*Wal-Mart* precedent, similarly ignored by the Government, is in accord. *See, e.g.*, *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537 (6th Cir. 2012) ("it 'is not always necessary to probe behind the pleadings before coming to rest on the certification question, because sometimes there may be no disputed factual and legal issues that strongly influence the wisdom of class treatment.'"); *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 678 F.3d 409, 417-18 (6th Cir. 2012).

Requiring proof as to the "ultimate question of liability" or as to the "damages methodology" to be used if liability is established is neither required nor appropriate at the class certification stage. *See, e.g.*, *Geneva Rock*, 100 Fed. Cl. at 789 (rejecting Government arguments based on damages as "even less relevant here" because "[i]f the [Government] did effect a taking, then the putative class members will be owed just compensation regardless of the specific property interest they held in the land.").

Finally, as to impact, Prof. Rausser has already explained that "[t]he actions taken by the Government altered the rights and expectations of the entire class of common stock and affected the value of all shares in precisely the same manner." Rausser Report ¶ 19. To show this, class members will all present evidence that "Government actions

had the result of wresting control over AIG and placing it under federal management, or of stripping voting rights that had been promised to stockholders, each of those actions impacted each common stockholder in precisely the same way." *Id.* Each significant analysis that the Government claims Prof. Rausser did not make is found in his report.

IV. There Is No Conflict Between The Two Classes

The Government asserts that a conflict exists between the two classes because of the Government's view that the two non-identical classes will split up the same pool of money damages. Opp. at 14-15. As support, the Government relies on its expert, Lucy Allen, who claims that both takings "stem from one Government action, the bailout of AIG" and hence there can be no distinction between the two events. Allen Report ¶¶ 38-39.[4] This is simply not the case.

First, the two distinct events that give rise to the two classes at issue are identified in Starr's motion: "First, 'pursuant to the Credit Agreement, signed September 22, 2008, the Government took 79.9% of the minority shareholders' 'equity interest,' consisting of dividends and liquidation value, as well as 79.9% of their 'first voting interest,' consisting of dividend and shareholder voting rights (but not yet common stock only voting rights). . . .' Second, 'the Government took 79.9% of the minority shareholders' common stock only voting rights by means of the reverse stock split on June 30, 2009.'" Mem. in Support of Pl's Mot. for Class Cert., Dkt. 81 (Dec. 3, 2012) at 2 ("Mem.") (citing *Starr*, 106 Fed. Cl. at 63-64); *see also Starr*, 106 Fed. Cl. at 71. There is no law,

[4] To bolster many of its claims, the Government relies on the expert report of Lucy Allen, who largely makes the same type of "conclusory" statements that she accuses Professor Rausser of making. Starr reserves the right to ask the Court for permission to supplement its reply or file other motions concerning Dr. Allen's report following her deposition, which was noticed for February 14, 2013.

and the Government cites none, that requires that two classes have 100% overlapping membership for no conflict to exist between them. Because each class seeks to remedy a separate action which effectively diluted and/or expropriated that class's economic and voting rights, there is no conflict in damages between the two classes. *See* Mem. at 13-14; Rausser Report ¶¶ 13-16.

V. There Is No Basis For Denying Class Certification As To The Classes' Illegal Exaction Claims

The Government attempts to relitigate its motion to dismiss argument that there is no valid illegal exaction claim asserted. Opp. at 6-7. The allegations in the Complaint speak for themselves. Compl. ¶¶ 65, 77-78. Because this argument speaks to the merits and applies equally to all class members, it cannot provide a basis for denying class certification. Moreover, an expert is unnecessary to state the obvious – the illegal exactions claim is based on the same events as the takings claim. The Government's argument distorts the testimony of Starr's expert to create the false impression that he was disclaiming an opinion as to whether the illegal exactions claim was subject to class resolution.

As made clear in Starr's Motion for Class Certification:

> All members of the Credit Agreement Class, including Starr, **raise takings and illegal exaction claims** that stem from the September 22, 2008 Credit Agreement and the 79.9% equity interest in AIG obtained by the Government through the Series C Preferred Shares commitment. . . . So too, all members of the Stock Split Class, including Starr, **raise takings and illegal exaction claims** based on the circumvention of those shareholders' "common stock only voting rights" to prevent the dilution of the Common Stock pool and the concomitant conversion of the Series C Preferred Shares to Common Stock.

Mem. at 9 (emphasis added). The Government's reliance on the response to a poorly worded deposition question asking Prof. Rausser whether he had opinions on the takings

claim as *opposed* to the illegal exaction claim does not undermine this. Opp. at 6-7. Prof. Rausser made clear in his report that he was asked to determine "whether the members within each proposed Class would have suffered the same impact from the Government's allegedly unlawful takings or illegal exactions pertinent to that Class." Rausser Report ¶ 7. Further examination of Prof. Rausser would have revealed that he did not believe that the two claims stood in *opposition* to one another and hence there was no need to consider them as such.

VI. The Government's Focus On The Derivative Claims Is Misplaced In This Motion For Class Certification

Although the Government states that it is not challenging the adequacy of counsel, Opp. at 7, it raises an issue of conflict "between the direct and derivative claims such that Starr's counsel should not represent both AIG derivatively and a direct class." Opp. at 15. In doing so, the Government completely ignores Starr's argument (and the cases cited therein) setting forth three factors that suggest no class conflict exists. Mem. at 12-13. The Government concedes that two of these factors are met – "the class members are not seeking relief from AIG itself and the direct and derivative claims are based upon the same events." Opp. at 15. Thus, the sole factor in dispute is whether one set of claims will reduce the likelihood or amount of recovery to the other set. Mem. at 12-13. As held by authority previously cited by Starr without response from the Government, this argument could not provide a basis for denying class certification. *See id*. at 13.

The Government does not identify any conflict other than to explain that "some current shareholders cannot partake in th[e] recovery because they did not buy their shares early enough to be class members." Opp. at 16. This is, of course, the nature of

direct and derivative claims, especially those dealing with equity dilution and corporate overpayment. The law is clear that where the end result of such a transaction "is an improper transfer – or expropriation – of economic value and voting power from the public shareholders to the majority or controlling shareholder," "the minority shareholders also suffered a harm that was **unique to them and independent of any injury to the corporation**." *Gentile v. Rossette,* 906 A.2d 91, 100, 103 (Del. 2006) (emphasis added). Furthermore, as stated in our previous briefing, only those prospective plaintiffs who view their interests as aligned with the class will opt in. Mem. at 14, n.6. Finally, the Government is well aware that Starr is seeking a 30(b)(6) deposition and document discovery from AIG and the United States concerning the AIG Board's decision in aid of Starr's further pursuit of the derivative claims.[5]

CONCLUSION

For the reasons discussed above and in Plaintiff's Motion for Class Certification, Starr respectfully requests that the Credit Agreement and Stock Split Classes be certified pursuant to R.C.F.C. 23(a) and (b) and that Starr's counsel be selected as counsel to those Classes.

[5] The Government appears not to understand the nature of the claims against it. Opp. at 13 ("Because Starr has failed to identify how it seeks to establish a taking, the Government's defense against this nebulous and undefined takings analysis may require individualized inquiry"). First, the allegations are set forth in this reply, Plaintiff's briefing, and the Complaint. Second, the Court of Federal Claims has already rejected the Government's contention that plaintiff's takings claim must fit neatly into a category. *Colonial Chevrolet Co., Inc. v. United States,* 103 Fed. Cl. 570, 575 (2012) ("Plaintiffs should have the opportunity to develop a case that may turn out to be unique" as they "may discover evidence pretrial that helps to develop a previously unknown taking theory.") (citing *Penn Cent. Transp. Co. v. City of New York,* 438 U.S. 104, 124 (1978)). Finally, the Government ignores Plaintiff's citation to *Singleton*, 92 Fed. Cl. at 84 ("While there may be individualized issues as to damages if the court ultimately finds liability for a taking, the determination of such damages on a plaintiff by plaintiff basis does not preclude class certification.").

Dated: February 11, 2013
New York, New York

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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STARR INTERNATIONAL COMPANY, INC.,
Individually and on Behalf of All
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derivatively on behalf of AMERICAN
INTERNATIONAL GROUP, INC.,

Plaintiff,

No. 11-CV-00779(TCW)

-against-

THE UNITED STATES OF AMERICA,

Defendant.

and AMERICAN INTERNATIONAL GROUP, INC.,
a Delaware corporation,

Nominal Defendant

- x

Videotaped oral deposition of GORDON RAUSSER, Ph.D., taken pursuant to notice, was held at the law offices of the Department of Justice, Commercial Litigation Branch, Civil Division, 1100 L Street NW, Washington, D.C., commencing, January 11, 2013, 10:07 a.m., on the above date, before Amanda Blomstrom, Certified Realtime Reporter, Certified Livenote Reporter, Registered Merit Reporter, Certified Shorthand Reporter, and Notary Public in the District of Columbia.

- - -

MAGNA LEGAL SERVICES
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A. At the time I was engaged?

Q. Yes.

A. There was an interview of me, a telephonic interview, and I believe there were interviews of other potential experts, and it was my understanding that they were looking for expertise with regard to class certification.

Q. Did you review the Amended Complaint in this case prior to being retained?

A. Yes.

Q. Did you agree with the definition of the class in the Amended Complaint?

A. At the time?

Q. Yes.

A. When? I didn't form any opinions about whether I agreed or disagreed. I simply read it as background information before the interview took place.

Q. How did you arrive at the class, the two classes that you have here in your report?

A. My staff at OnPoint Analytics and I looked at all of the information that existed, what I've

relied upon in my Exhibit C, and we had discussions with counsel about the appropriate definition with regard to each of the two classes that I've specified.

And as a result of that investigation, you have in my report the two classes that are the basis for my analysis and my opinions.

Q. You referenced discussion with counsel. Which counsel did you have the discussions with?

A. Boies Schiller, Alanna in particular, there may -- there may have been other people on the line, these were telephonic conversations, I don't recall who else was on the line.

Q. Did counsel discuss with you the appropriate definitions for the class?

MS. RUTHERFORD: Objection.

THE WITNESS: I'm sorry, I -- I don't understand that question given how I've responded to your earlier questions. This was an investigation that was done by myself and my staff with the open communications with counsel, and we jointly came to the determination of the classes that are defined in

to speak to.

THE WITNESS: Now -- now you're going to the decomposition of class-wide damages. I have not done an analysis of class-wide damages or its decomposition across members of the class.

BY MR. TODOR:

Q. Direct your attention to Paragraph 19 of your report.

A. I'm there.

Q. Okay. In the first sentence, you say "Each of the actions taken by the Government had an effect that was shared across all of the common stock on a ratable basis, share for share."

A. Correct.

Q. What do you mean by a "ratable basis, share for share"?

A. Namely, the variable driving the actual distribution of consequences is a function of the common shares held by members of the class.

Q. So if Starr held fewer shares at the time of the Stock Split Class than at the time of the Credit Agreement Class, isn't it true that on a

ratable basis, share for share, Starr's share of the recovery would be less for the Stock Split Class than for the Credit Agreement Class?

MS. RUTHERFORD: Objection. What recovery, what class? Why is this relevant?

BY MR. TODOR:

Q. Go ahead.

A. Assuming the universe is constant, yes.

Q. With respect to the two classes, would it also be true that for someone who held AIG stock at the time of the Credit Agreement Class but not at the time of the Stock Split Class, that person would receive recovery for an award based upon an alleged taking for the Credit Agreement Class but not for the Stock Split Class?

A. Yes.

Q. And would the opposite be true for the Stock Split Class but not at the time of the Credit Agreement Class?

A. Yes.

Q. Would a class member of the Credit Agreement Class who is not a member of the Stock

A. Because the information with regard to the Credit Agreement and any possible control by the government and/or takings without just compensation were not available to those, that information was not available to those common shareholders on September 16th but would be available on September 17th --

Q. Have you --

A. -- 18th, 19th, 20th, and 21st.

Q. Have you reviewed any press releases or news reports with respect to when the information regarding the term sheet was disseminated to the market?

A. I certainly reviewed press releases, as I indicated in my report. I've explained all of the information that I reviewed that appears in Exhibit C of my report, and there were press releases included.

Q. What information regarding the term sheet was disseminated to the market as of September 16th?

A. If you look at my Exhibit C, under the category "Articles, Books, and Treatises," you'll see an AIG press release that took place on -- first,

there was value that was foregone by members of the Credit Agreement Class.

Q. What was the value, if -- assuming that the taking that was alleged occurred?

A. Once again, now you're taking me into becoming a damage expert. I am not here as a damage expert. The value would go to the damage analysis. That's not something that I have done.

Q. Moving down, the third sentence in the paragraph, you state "The definition of this Class thus deliberately excludes any common stockholders who may have purchased shares with knowledge of the Term Sheet or of the Credit Agreement, or who managed to sell their stock between those two events."

Why did you exclude those who may have purchased shares with knowledge of the term sheet or Credit Agreement?

A. Because --

MS. RUTHERFORD: Objection; asked and answered.

THE WITNESS: Right. Right.

For the simple reason that they weren't

similarly situated.

BY MR. TODOR:

Q. Why did you exclude those who managed to sell their stock between those two events?

MS. RUTHERFORD: Objection; asked and answered.

THE WITNESS: For the simple reason that they wouldn't be similarly situated, and if you look at the sentence that you skipped across in Paragraph 13, it is, the class is "those shareholders who held" the stock on September 16th "and continued to hold" it "through the final execution of the Credit Agreement."

BY MR. TODOR:

Q. For clarity, if someone held the stock on the 16th, sold it on the 17th, bought it again on the 18th, would that person be a member of the class?

A. No.

Q. If someone didn't hold any stock on the 15th, bought it on the 16th, continued to hold it through the 22nd, would that person be a member of the class?

term sheet, to the item marked "Equity Participation."

A. Yes.

Q. And it states "Equity participation equivalent to 79.9% of the common stock of AIG on a fully-diluted basis. Form to be determined."

Did I read that correctly?

A. Yes, you did.

Q. Was the information regarding this term disseminated to the market on September 16th, 2008?

MS. RUTHERFORD: Objection; asked and answered.

THE WITNESS: Not that I recall.

(Exhibit No. 4 marked.)

BY MR. TODOR:

Q. You've been presented with a document marked as Rausser Exhibit 4.

Have you reviewed this document before?

A. Yes.

Q. What is this?

A. This is a Federal Reserve press release dated September 16th for release well after the

market closed on December 16th.

Q. Okay. And I'll turn your attention -- and is it your understanding that this document would have been disseminated to the market at or around 9:00 p.m. on September 16th, 2008?

A. Yes.

Q. And turning your attention to the last sentence of the press release, it states "The U.S. government will receive a 79.9 percent equity interest in AIG and has the right to veto the payment of dividends to common and preferred shareholders."

A. Yes.

Q. So in light of that, was information regarding the equity participation term in the term sheet of September 16th, 2008, disseminated to the market on September 16th, 2008?

A. It wo- --

MS. RUTHERFORD: Objection to form.

Go ahead.

THE WITNESS: Once again, coming back to our earlier discussion, given how I've defined the market on December 16th, it would have been after the

Q. And when did the government actually receive that equity interest?

A. In what form? They received the equity interest in terms of the preferred stock, but ultimately that stock was converted to common stock.

Q. When did the government receive the preferred stock?

A. In --

MS. RUTHERFORD: Objection; vague.

THE WITNESS: -- terms of --

MS. RUTHERFORD: Go ahead.

THE WITNESS: Yeah, it's very -- in terms of rights, they received it on September 22nd, in terms of rights. If you're asking mechanically when did they have the paper in their hand, I don't recall.

BY MR. TODOR:

Q. Okay. You reviewed the Stock Purchase Agreement as one of the documents considered in the case? In your report, you reference the stock --

A. Yes.

Q. -- purchase agreement. What date was the

why most common stockholders of AIG in this particular case?

A. Both.

Q. And in your report do you show any analysis of why that is true of AIG stockholders, apart from what you discussed here in Paragraph 18?

A. No.

Q. Turning your attention to Paragraph 19, this is a section headed "THE IMPACT OF THE GOVERNMENT'S ACTIONS WAS EXPERIENCED IN THE SAME WAY BY ALL MEMBERS OF THE TWO CLASSES."

That's first. And then the first sentence, and we had discussed this a little bit before, you say "Each of the actions taken by the Government had an effect that was shared across all of the common stock on a ratable basis, share for share."

A. Yes.

Q. And what analysis did you perform to reach that opinion?

A. Economic and financial logic that if there is a mark-to-market value with regard to the stock

and there is some change in the value of that stock, it's going to change the value for all stock. Arbitrage would dictate that all of the stock is going to move to a new mark-to-market value as a consequence of any wrongful conduct along the lines of what I have presumed in my specification of each of the two classes.

Q. So a -- a large shareholder such as Starr would suffer the same proportional loss as a small shareholder; am I correct about that?

A. On a per sh- --

MS. RUTHERFORD: Objection to form.

THE WITNESS: On a per share basis, yes. Not the same absolute loss.

BY MR. TODOR:

Q. Right, on -- on a per share basis.

The next sentence, you say "Whether Government actions had the result of wresting control over AIG and placing it under federal management, or of stripping voting rights that had been promised to stockholders, each of those actions impacted each common stockholder in precisely the same way."