Catch a Falling Starr

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Few Americans will forget September 2008 when the nation faced the impending failure of Lehman Brothers, which many believed would be the first domino to fall in a massive economic collapse resulting in an even larger Great Depression than that of the 1930s. Many in the financial community believed that without an immediate and massive cash infusion by the federal government, AIG--a giant, world-insurance conglomerate--would be the next major company to collapse. Within days of the Lehman Brothers' bankruptcy, the Federal Reserve Board of Governors approved a term sheet under which the federal government would provide an $85 billion loan to AIG.

The punitive terms of the loan, however, were unprecedented and ultimately resulted in the Starr International Company, Inc., the largest AIG shareholder, on behalf of itself and a class of other shareholders, suing in the U.S. Court of Federal Claims seeking damages. Starr claimed that the Government had usurped the shareholders' control of AIG by giving AIG no choice but to accept the loan terms or else face bankruptcy. Starr claimed that by nationalizing AIG the federal government had taken the shareholders' property interest without just compensation. Or, Starr further alleged, the federal government illegally exacted their property interest in violation of the due process clause of the Fifth Amendment.

Following the 37-day trial in Washington, D.C., the Court issued its ruling. The Court first concluded that the Government was liable for illegally exacting the shareholders' property, explaining that although the Government had the authority under the Federal Reserve Act to establish an interest rate for the $85 billion loan, that Act did not authorize the Government to acquire a borrowers' equity as consideration for the loan. But because the Government's actions were not authorized, the Court concluded that Starr's taking claim must fail because an element of a takings claim is that the challenged action was authorized.

Despite ruling in Starr's favor on liability for an illegal exaction, the Court awarded Starr no damages, concluding that although unauthorized the Government's intervention kept AIG out of bankruptcy. And had AIG filed for bankruptcy, its shareholders would most likely have lost 100% of their stock value:

> *Any time the Government saves a private enterprise from bankruptcy through an emergency loan, as here, it can essentially impose whatever terms it wishes without fear of reprisal. Simply put, the Government often may ignore the conditions and restrictions of [the Federal Reserve Act] knowing that it will never be ordered to pay damages. . . . The end point for this case is that, however harshly or improperly the Government acted in nationalized AIG, it saved AIG from bankruptcy.*

Read full 75-page decision here.