Court of Federal Claims Dismisses Multi-Billion Dollar Shareholder-Derivative Suit

The U.S. Court of Federal Claims recently dismissed a multi-billion dollar takings lawsuit brought as a shareholder derivative claim in *Starr International Co. v. United States*. Starr International sued in November 2011, challenging the Government's bailout of American International Group, Inc. (AIG) that began in 2008, when Starr was one of the largest shareholders of AIG common stock. Starr alleges that the Government's actions during the bailout—acquiring control of AIG and then orchestrating a "backdoor bailout" of AIG's business partners using AIG's assets—amounted to a taking under the Fifth Amendment's Just Compensation Clause and an illegal exaction violating the Fifth Amendment's Due Process Clause. Starr brought shareholder derivative claims for AIG and direct claims for Starr and two classes of AIG shareholders.

RCFC 23.1 requires a party bringing a shareholder derivative claim to either demand that the corporation itself sue or to demonstrate "the reasons for not obtaining the action or not making the effort," such as showing that a demand would have been futile.

When Starr first sued, the Government still controlled AIG, and the company was added to the lawsuit as a nominal defendant. During the next ten months, the Government sold its stock in AIG and by September 2012 had significantly reduced its shares in the corporation. Since the Government was no longer in control of AIG, Starr made the required demand on AIG's Board of Directors, asking them to authorize AIG's participation in Starr's lawsuit against the Government. The Board unanimously denied that request and moved to dismiss Starr's shareholder derivative claims for lack of standing.

Starr opposed the motion to dismiss, arguing that "the Board did not objectively and disinterestedly exercise its business judgment or due care in considering the demand," but rather was pressured into denying the request by Government threats and intimidation—meaning Starr could continue with its derivative claims. But the court did not agree, stating that although the court was "troubled that counsel for [the Government] made threatening statements to AIG's board members" when the Board was considering the lawsuit, the decision ultimately was "a rational business decision, in the good faith belief that [the] decision was in the best interest of the corporation." The Board considered the opinions of three law firms and the public relations effect of pressing the lawsuit. The court concluded that the Board "conducted the demand process in an informed, transparent, rational, and exemplary fashion." Because Starr could not bring the derivative suit, those claims were dismissed.

The opinion can be read here.