Starr International, formerly one of the largest shareholders in financial services giant AIG, sued for taking and illegal exaction resulting from the Government's bailout of American International Group, Inc. (AIG). Starr's lawsuit in the U.S. Court of Federal Claims 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 violating 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.

The Government moved to dismiss, arguing that Starr had failed to state a legally cognizable claim or a claim over which the CFC has jurisdiction. The CFC disagreed, holding that Starr had sufficiently alleged a taking requiring just compensation and an illegal exaction.

Recently, AIG moved to have Starr's derivative shareholder claims dismissed. While that issue was being briefed, the Government also argued that Starr's direct claims should be dismissed based on "new material facts" showing that those direct claims were really derivative claims. The Government pointed to Starr's statement in a brief that the harm suffered by AIG's shareholders was "shared across all of the common stock on a ratable basis, share for share." In corporate law, if company's shares are diluted equally the claim is typically a derivative one. The Government also noted that Starr no longer owned any interest in AIG.

But the court held that these new facts did not alter its original analysis of the Government's motion to dismiss, stating "[i]n making the argument that Starr's class definitions reveal solely derivative claims, the Government selectively quotes the Court's [earlier] opinion and neglects to mention the overarching point to which the selected quotations lead: . . . Starr's claim is of the 'species' considered 'both derivative and direct in character.'" The court also noted that "[a]lthough the Treasury Department's divestment is a new fact, it is not material to the Court's determination that Starr has standing to advance its direct claim."

Finally, the Government also argued that Starr's claim for an illegal exaction should be dismissed because (among other reasons) Starr did not pay money or convey stock directly to the Government. The court rejected that argument, too, holding that "because the Government extracted from the public shareholders, and redistributed to itself, a portion of the economic value and voting power embodied in the minority interest," Starr had stated a cognizable illegal exaction claim.

The decision can be read here (http://www.uscfc.uscourts.gov/sites/default/files/WHEELER.STARR062613.pdf).