



# Hank Greenberg's AIG Case Might Not Be Open And Shut

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The scene is galling. Ousted AIG CEO Hank Greenberg, still stunningly wealthy by any standard, has [sued](#) the federal government for saving his company in the midst of a crisis when thousands of Americans were losing their jobs and their homes. It's hard to feel sympathetic. And yet, it's a core tenet of our country's political philosophy that rights are not dependent on sympathy.

Greenberg, through his company, Starr International, [claims](#) that the government took 80% of the equity in AIG without paying just compensation, which the Constitution guarantees in the Fifth Amendment's "takings" clause. The suit also alleges that the government, through the Federal Reserve Bank of New York, exceeded its legal authority in the way that it conducted the AIG bailout.

News of the lawsuit sparked outrage. "[Ingrate](#)" was perhaps the kindest word lobbed at Greenberg. And no wonder. American taxpayers forked over \$182 billion to AIG. Now the very man at the company's helm when it was making risky bets comes crying that he's owed \$40 billion more, that the government didn't do a good enough job in rescuing his company. "Unsympathetic" doesn't even begin to describe him. But in a crucial way, his case is indicative of the rule of law working as it should.

While the Starr case seemed like a longshot when it was filed in 2012, to the point of being called "[frivolous](#)," few still believe the case is open and shut. Although a companion case was quickly dismissed in District Court, this case went all the way to trial this past fall. Judge Thomas Wheeler in the Court of Federal Claims is expected to decide the case soon.

Ultimately, however, the court's ruling is less important than the fact that this case went to trial. The Fifth Amendment provides both the right against unjust takings by the government and the

right to due process before the government can take life, liberty or property. Due process does not mean that no one's property (or liberty) should be taken, but that the government must provide adequate justification for its action, through a defined and generally applicable process.

The truth is it is too easy for the government to justify almost any injustice. "What could we do?" is the refrain after any given crisis. The democratic process is an insufficient restraint because the weight of the injustice rarely falls on the majority. Our Founders knew this. Our constitutional rights are not only a bulwark against the tyranny of the government, but also against the tyranny of the majority. The Fifth Amendment does not prevent the government from taking private property for public use; it explicitly anticipates that such action may be necessary. But it ensures that the majority cannot simply appropriate the property of the few simply because it is for "public use." The majority, through taxes paid to the government, must pay "just compensation" to the owner.

The structure of our government provides another bulwark, as each branch of our federal government serves to check the power of the other two. The recent trial is important because it shows that the executive branch is not above the law. When it acts, it must be willing to account for and justify the legality of its actions before the other branches. The fact that the case went to trial means that high-ranking officials, including former Treasury secretaries Hank Paulsen and Tim Geithner, and former Federal Reserve chairman Ben Bernanke, were summoned to testify in support of their actions in the bailout.

The trial also shows that "it's a crisis" is not a justification for extra-legal power grabs. Even when (*especially* when) there is a crisis, the rule of law applies. Our laws have emergency powers built into them. The Federal Reserve Act includes a specific provision for actions that might be taken in "[unusual and exigent circumstances](#)." Whether Judge Wheeler finds that the AIG rescue was authorized by this provision is less important than the fact that the government must show that it was. Even in a crisis. Even in the greatest crisis since the Great Depression.

While justice for any individual is important, regardless of whether the individual rouses our sympathy, justice is never about any one individual. The assurance that the government will be held to account, that it cannot act above the law without repercussions, and that the branches of the federal government are faithfully adhering to our system of checks and balances are the assurances that bring stability and justice to all of us. If that assurance requires a lengthy trial and the risk of a \$40 billion judgment, that's a price worth paying.

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