

# Rescued by a Bailout, A.I.G. May Sue Its Savior

By *BEN PROTESS* and *MICHAEL J. DE LA MERCED*

Fresh from paying back a \$182 billion bailout, the American International Group has been running a nationwide advertising campaign with the tagline "Thank you America."

Behind the scenes, the restored insurance company is weighing whether to tell the government agencies that rescued it during the financial crisis: thanks, but you cheated our shareholders.

The board of A.I.G. will meet on Wednesday to consider joining a \$25 billion shareholder lawsuit against the government, court records show. The lawsuit does not argue that government help was not needed. It contends that the onerous nature of the rescue - the taking of what became a 92 percent stake in the company, the deal's high interest rates and the funneling of billions to the insurer's Wall Street clients - deprived shareholders of tens of billions of dollars and violated the Fifth Amendment, which prohibits the taking of private property for "public use, without just compensation."

Maurice R. Greenberg, A.I.G.'s former chief executive, who remains a major investor in the company, filed the lawsuit in 2011 on behalf of fellow shareholders. He has since urged A.I.G. to join the case, a move that could nudge the government into settlement talks.

The choice is not a simple one for the insurer. Its board members, most of whom joined after the bailout, owe a duty to shareholders to consider the lawsuit. If the board does not give careful consideration to the case, Mr. Greenberg could challenge its decision to abstain.

Should Mr. Greenberg snare a major settlement without A.I.G., the company could face additional lawsuits from other shareholders. Suing the government would not only placate the 87-year-old former chief, but would put A.I.G. in line for a potential payout.

Yet such a move would almost certainly be widely seen as an audacious display of ingratitude. The action would also threaten to inflame tensions in Washington, where the company has become a byword for excessive risk-taking on Wall Street.

Some government officials are already upset with the company for even seriously entertaining the lawsuit, people briefed on the matter said. The people, who spoke on the condition of anonymity, noted that without the bailout, A.I.G. shareholders would have fared far worse in bankruptcy.

"On the one hand, from a corporate governance perspective, it appears they're being extra cautious and careful," said Frank Partnoy, a former banker who is now a professor of law and finance at the University of San Diego School of Law. "On the other hand, it's a slap in the face to the taxpayer and the government."

For its part, A.I.G. has seized on the significance and complexity of the case, which is filed in both New York and Washington. A federal judge in New York dismissed the case, while the Washington court allowed it to proceed.

"The A.I.G. board of directors takes its fiduciary duties and business judgment responsibilities seriously," said a spokesman, Jon Diat.

On Wednesday, the case will command the spotlight for several hours at A.I.G.'s Lower Manhattan headquarters.

Mr. Greenberg's company, Starr International, will begin with a 45-minute presentation to the board, according to people briefed on the matter. Mr. Greenberg is expected to attend, they added.

It will be an unusual homecoming of sorts for Mr. Greenberg, who ran A.I.G. for nearly four decades until resigning amid investigations into an accounting scandal in 2005. For some years after his abrupt departure, there was bitterness and litigation between the company and its former chief.

After the Starr briefing on Wednesday, lawyers for the Treasury Department and the Federal Reserve Bank of New York - the architects of the bailout and defendants in the cases - will make their presentations. Each side will have a few minutes to rebut.

While the discussions are part of an already scheduled board meeting, securities lawyers say it is rare for an entire board to meet on a single piece of litigation.

"It makes eminent good sense in this case, but I've never heard of this kind of situation," said Henry Hu, a former regulator who is now a professor at the University of Texas School of Law in Austin.

It is unclear whether the directors are leaning toward joining the case. The board said in a court filing that it would probably decide by the end of January.

Until now, the insurance giant has sat on the sidelines. But its delay in making a decision, some officials say, has drawn out the case, forcing the government to pay significant legal costs.

The presentations on Wednesday come on top of hundreds of pages of submissions that the government prepared last year, a time-consuming and costly process. The Justice Department,

which assigned about a dozen lawyers to the case and hired outside experts, told a judge handling the matter that Starr was seeking 16 million pages in documents from the government.

"How many?" the startled judge, Thomas C. Wheeler, asked, according to a transcript.

Struck just days after the collapse of Lehman Brothers in September 2008, the bailout of A.I.G. proved to be among the biggest and thorniest of the financial crisis rescues. The company was on the brink of collapse because of deteriorating mortgage securities that it had insured through credit-default swaps.

Starting in 2010, the insurer embarked on a series of moves aimed at repaying its taxpayer-financed bailout, including selling major divisions. It also held a number of stock offerings for the government to reduce its stake, which eventually generated a roughly \$22 billion profit.

Overseeing that comeback was a new chief executive, Robert H. Benmosche, a tough-talking longtime insurance executive. Mr. Benmosche has won plaudits, including from government officials, for his managing of A.I.G.'s public relations even as he helped nurse the company back to financial health.

But he and the rest of A.I.G.'s board must now confront an equally pugnacious predecessor in Mr. Greenberg.

In the case against the government, Mr. Greenberg, through his lead lawyer, David Boies, contends that the bailout plan extracted a "punitive" interest rate of more than 14 percent. The government's huge stake in the company also diluted the holdings of existing shareholders like Starr, which at the time was A.I.G.'s largest investor.

"The government has been saying, 'We're your friend, we owned and controlled you and we let you go.' But A.I.G. doesn't owe loyalty to the government," a person close to Mr. Greenberg said. "It owes loyalty to its shareholders."

The government, Starr argues, used billions of dollars from A.I.G. to settle credit-default swaps the insurer had with banks like Goldman Sachs. The deal, according to the lawsuit, empowered the government to carry out a "backdoor bailout" of Wall Street.

Starr argued that the actions violated the Fifth Amendment. "The government is not empowered to trample shareholder and property rights even in the midst of a financial emergency," the Starr complaint says.

The Treasury Department declined to comment. A spokesman for the Federal Reserve Bank of New York, Jack Gutt, said, "There is no merit to these allegations." He noted that "A.I.G.'s board of directors had an alternative choice to borrowing from the Federal Reserve, and that choice was bankruptcy."

A federal judge in Manhattan agreed, dismissing the case in November. In an 89-page opinion, Judge Paul A. Engelmayer wrote that while Starr's complaint "paints a portrait of government treachery worthy of an Oliver Stone movie," the company "voluntarily accepted the hard terms offered by the one and only rescuer that stood between it and imminent bankruptcy."

The United States Court of Appeals for the Second Circuit recently agreed to review the case on an expedited timeline. The judge in the United States Court of Federal Claims in Washington, meanwhile, has declined to dismiss the case and continues to await A.I.G.'s decision.

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