Wall Street’s legal offensive

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Recent months have seen a series of court rulings reversing penalties imposed on Wall Street in the aftermath of the 2008 financial crash and eviscerating previously existing financial regulations.

On April 3, a US appeals court upheld a December ruling overturning the conviction of two hedge fund executives on insider trading charges. The ruling laid down a novel and narrow definition of insider trading intended to make it virtually impossible to obtain convictions against people who use inside information to rig markets for their own gain.

One month later, a judge ruled that JPMorgan Chase did not have to pay billions of dollars in fines related to fraudulent mortgage-backed securities sold by Washington Mutual, which JPMorgan purchased in 2008.

On Monday, in a ruling likely to have even more far-reaching consequences, a federal judge declared that the Federal Reserve broke the law in September 2008 when it took control of the majority of the stock of the insurance giant American International Group (AIG) and ousted its top management, in return for an $85 billion loan, which soon ballooned to nearly $185 billion.

These rulings are part of an accelerating legal offensive by the American financial aristocracy not only to exonerate itself for criminal actions that triggered the worst economic crisis since the Great Depression, but to assert the untrammeled domination of private capital over the public interest.

It is approaching seven years since the bankruptcy of Lehman Brothers on September 15, 2008 and the government bailout of AIG the following day. The net result of the policies carried out in the ensuing years by Democratic and Republican administrations alike, backed by Congress and the courts, is a massive increase in the wealth of the richest one percent of the population, a further concentration of power among a handful of Wall Street banks, and legal impunity for financial malefactors who are responsible for untold human suffering.

Not one leading banker has been prosecuted, let alone jailed. Rather, financial gangsters are being shielded by the government and vindicated by the courts. Maurice Greenberg, the former CEO of AIG and a major stockholder in the company, who filed the suit that was decided on Monday, is one of the more notorious examples of this breed.

Judge Thomas Wheeler of the US Court of Federal Claims declared in his ruling that the government “carefully orchestrated its takeover of AIG in order to... maximize the benefits to the government and to the taxpaying public.” An unpardonable crime.

(In point of fact, the government bailout of AIG had nothing to do with protecting the interests of the “taxpaying public.” It was driven entirely by a desire to rescue the financial elite and protect its wealth and power).

“The government’s unduly harsh treatment of AIG… was misguided and had no legitimate purpose,” wrote Wheeler. He added that the Fed "possessed the authority in a time of crisis to make emergency loans to distressed entities such as AIG,” but that “there is nothing in the Federal Reserve Act or in any other federal statute that would permit a Federal Reserve Bank to take over a private corporation and run its business as if the Government were the owner.”

The *Wall Street Journal* hailed the ruling as a “historic victory” for AIG and the “free market.” The newspaper declared that the decision marked the beginning of the “long way back from 2008” and the “government’s retreat to more normal boundaries.”

It quoted a law professor as calling the ruling “a harsh lesson for the government to think twice about interfering in the private sector and the free market.”

In the years leading up to Monday's ruling, Greenberg's multi-million dollar legal campaign had been widely ridiculed as quixotic, with one commentator referring to it as "an absurdist comedy… worthy of the Marx Brothers or Mel Brooks."

In 2012, a New York judge threw out a companion lawsuit by Greenberg against the New York Federal Reserve "with prejudice," in a ruling that denounced Greenberg's suit as implausible "on its face."

Greenberg had been forced out as chairman and CEO of AIG in 2005 after federal regulators revealed that the company was engaged in fraud and tax evasion on a massive scale. AIG paid $1.6 billion to settle multiple charges of accounting fraud and Greenberg paid $15 million to settle Securities and Exchange Commission fraud charges against himself.

AIG played a central role in the 2008 financial crisis. In the decade prior to the crash, major banks made a fortune by bundling poor quality home loans into mortgage-backed securities, which were insured through derivatives contracts with AIG and similar outfits and given top ratings by credit rating agencies such as Moody's and Standard and Poor's.

When the housing market began to decline in 2006-2007, an enormous share of mortgage-backed securities went into default, triggering demands for bond insurers to make good the losses of their clients. AIG faced tens of billions of dollars in claims from its counterparties and was on the verge of collapse in September 2008 when it was rescued by the government.

AIG's bankruptcy would have triggered the collapse of major Wall Street banks and financial institutions, all of which were highly implicated in the sub-prime Ponzi scheme, together with leading banks around the world.

The Federal Reserve and Treasury ultimately lent $182.3 billion to AIG, which passed the money onto its counterparties, including the largest Wall Street banks, at 100 cents on the dollar, securing a "backdoor bailout" of the financial system two weeks before Congress authorized the $750 billion Troubled Asset Relief Program (TARP).

As a condition for disbursing bailout funds, the regulators proposed to the company's board of directors that the Federal Reserve receive 79.9 percent of AIG'S (then-worthless) stock, and charged an interest rate of 12 percent.

Just months after AIG's bailout, in March 2009, the company became the object of public outrage when it was revealed that it was using taxpayer funds to pay $450 million in bonuses to executives at its London-based financial products unit, which was primarily responsible for the company's $99.3 billion loss in 2008.

While the ruling by Judge Wheeler did not award Greenberg damages, it agreed with the basic thrust of his arguments. The judge lamented that the government would be allowed to "avoid any damages, notwithstanding its plain violations of the Federal Reserve Act."

The 2008 crash and subsequent developments have revealed certain fundamental realities about American society. All of the official institutions, including the presidency, the courts, Congress and the financial regulators, have worked single-mindedly to shield the banks and the financial elite and enable them to grow even richer.

So-called "democracy" in America is a façade. The reality is a plutocracy—the rule of the rich. Such a situation can be ended only through the revolutionary action of the working class in the fight for socialism.