

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

IN RE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS	Case No. 14-5262
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PRELIMINARY STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court's October 21, 2014 Order, Appellants American European Insurance Company, Melvin Bareiss, Joseph Cacciapalle, John Cane, Francis J. Dennis, Marneu Holdings, Co., Michelle M. Miller, United Equities Commodities, Co., 111 John Realty Corp., Barry P. Borodkin, and Mary Meiya Liao (together, "Appellants") respectfully submit this preliminary statement of issues to be raised in this appeal.

Appellants seek review of the Memorandum Opinion and Order entered on September 30, 2014 by the United States District Court for the District of Columbia (Lamberth, J.), in which the District Court granted Defendants' motions to dismiss. Appellants also seek review of the Order entered on September 30, 2014 by the United States District Court for the District of Columbia (Lamberth, J.), in which the District Court denied as moot the *Fairholme* Plaintiffs' motion (which Appellants in this matter joined) for supplementation of the administrative

record, suspension of briefing on the Defendants' dispositive motions, and a status conference.

The issues to be raised on appeal are:

1. Whether the District Court erred in dismissing Appellants' claim under the Takings Clause of the Fifth Amendment to the United States Constitution;
2. Whether the District Court erred in holding that Appellants had failed to plead a cognizable property interest under the Fifth Amendment to the United States Constitution;
3. Whether the District Court erred in holding that the diversion, in perpetuity, of all Fannie Mae and Freddie Mac net profits to the Department of the Treasury on a quarterly basis ("Net Worth Sweep") had no economic impact on Appellants' dividend and liquidation preference rights, such that the Net Worth Sweep did not constitute a taking of a property interest under the Takings Clause of the Fifth Amendment to the United States Constitution;
4. Whether the District Court erred in holding that Appellants' Takings claim was not ripe for judicial review;
5. Whether the Housing and Economic Recovery Act's prohibition on judicial relief that would "restrain or affect" the Federal Housing

Finance Agency's ("FHFA") exercise of its powers and functions "as conservator" precludes any of the relief Appellants have requested in this action. *See* 12 U.S.C. § 4617(f);

6. Whether the Housing and Economic Recovery Act's provision that FHFA as conservator succeeds to "all rights, titles, powers, and privileges" of shareholders with respect to Fannie Mae, Freddie Mac, and their assets bars any of Appellants' claims in this action. *See* 12 U.S.C. § 4617(b)(2)(A)(i);
7. Whether the District Court erred in holding that 12 U.S.C. § 4617(b)(2)(A)(i) bars shareholder derivative claims on behalf of an entity in conservatorship, even when the conservator would be (and was) unable or unwilling to bring those claims due to a manifest conflict of interest;
8. Whether the District Court erred in holding that the relationship between FHFA and the Department of the Treasury does not present a conflict of interest in which the FHFA is unable or unwilling to bring claims against the Department of the Treasury; and
9. Whether Appellants' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are ripe and sufficient to survive a motion to dismiss.

Dated: November 20, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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