# In the United States Court of Federal Claims

Nos. 13-466C, 13-496C, 13-542C (Consolidated) (Filed: July 10, 2015)

#### **ORDER**

Defendant in the above-captioned case previously filed a motion to dismiss, and briefing is currently stayed pending the completion of jurisdictional discovery in <u>Fairholme Funds</u>, <u>Inc. v. United States</u>, 13-465C, a related case. Plaintiffs have now filed a motion requesting a partial lift of the stay and seeking limited jurisdictional discovery. Plaintiffs in related cases—<u>Washington Federal</u>, <u>Inc. v. United States</u>, 13-385C; <u>Reid v. United States</u>, 14-152C; and <u>Fisher v. United States</u> 13-608C—have partially joined in the motion. In light of the parties' representations during the July 10, 2015 status conference, and for good cause shown, the court hereby **GRANTS** the following relief regarding jurisdictional discovery:

#### Cacciapalle, 13-466C:

- As outlined in their motion, plaintiffs' counsel in <u>Cacciapalle</u> may file an application for access to the protective order entered in Fairholme for the following attorneys:
  - o Hamish Hume of Boies, Schiller & Flexner LLP
  - o Stacey Grigsby of Boies, Schiller & Flexner LLP
  - o Eric L. Zagar of Kessler Topaz Meltzer & Check, LLP
  - o Matthew A. Goldstein of Kessler Topaz Meltzer & Check, LLP
- Documents produced under jurisdictional discovery in <u>Fairholme</u> that are subject to the protective order in that case may be used in <u>Cacciapalle</u> in accordance with the restrictions of the protective order.
- Documents produced during jurisdictional discovery in <u>Fairholme</u> that plaintiffs in Cacciapalle seek shall only be provided in electronic form.
- Plaintiffs' counsel in <u>Cacciapalle</u> may participate at the depositions in <u>Fairholme</u>, limited to
  questioning government witnesses for no longer than one hour at the end of a deposition,
  unless counsel for <u>Fairholme</u> cedes additional time to them. Plaintiffs' counsel shall work
  collaboratively with counsel for <u>Fairholme</u> to ensure that each deposition does not exceed the
  seven-hour limit for each witness. Plaintiffs' counsel may not depose witnesses who have

- been previously deposed in <u>Fairholme</u>, but plaintiffs' counsel may receive electronic copies of those deposition transcripts.
- Plaintiffs' counsel may seek to depose witnesses who are not noticed by counsel for <u>Fairholme</u>, subject to the right of defendant or of the witness to object to any such deposition.
- If a dispute arises concerning the scope of the court's jurisdictional discovery order in <a href="Fairholme">Fairholme</a>, plaintiffs' counsel may participate in motions practice, including by challenging the assertion of privilege or the resistance to discovery by defendant, and/or by submitting responses to any motions filed by defendant.

## Washington Federal, 13-385C:

- Documents produced under jurisdictional discovery in <u>Fairholme</u> that are subject to the protective order in that case may be used in <u>Washington Federal</u> in accordance with the restrictions of the protective order.
- Documents produced during jurisdictional discovery in <u>Fairholme</u> that counsel for Washington Federal seek shall only be provided in electronic form.
- Plaintiffs' counsel in <u>Washington Federal</u> may attend the depositions in <u>Fairholme</u>, but may not participate. Plaintiffs' counsel may not depose witnesses who have already been deposed in <u>Fairholme</u>, but plaintiffs' counsel may receive electronic copies of those deposition transcripts.

### Reid, 14-152C, and Fisher, 13-608C:

- Documents produced under jurisdictional discovery in <u>Fairholme</u> that are subject to the protective order in that case may be used in <u>Reid</u> and <u>Fisher</u> in accordance with the restrictions of the protective order.
- Documents produced during jurisdictional discovery in <u>Fairholme</u> that counsel for <u>Reid</u> and <u>Fisher</u> seek shall only be provided in electronic form.
- Plaintiffs' counsel in <u>Reid</u> and <u>Fisher</u> may attend the depositions in <u>Fairholme</u>, but may not participate. Plaintiffs' counsel may not depose witnesses who have already been deposed in <u>Fairholme</u>, but plaintiffs' counsel may receive electronic copies of those deposition transcripts.

Finally, the counsel for the parties in <u>Fairholme</u>, <u>Cacciapalle</u>, <u>Washington Federal</u>, <u>Reid</u>, and <u>Fisher</u> shall confer to determine what changes are necessary to the current protective order. The changes to the protective order must be agreeable to all parties. Then, as soon as practicable, but **by no later than Wednesday**, **July 22**, **2015**, counsel for <u>Fairholme</u> shall file a proposed form of Amended Protective Order in its case which shall be accompanied by a copy of the original protective order that clearly indicates all changes thereto.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge