

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 17-1122

Fairholme Funds, Inc.

v.

United States

DOCKETING STATEMENT

This Docketing Statement must be completed by all counsel and filed with the court within 14 days of the date of docketing. When the United States or its officer or agency is a party, this Docketing Statement must be completed by all counsel and filed with the court within 30 days of docketing. All questions must be answered or the statement will be rejected.

Name of the party you represent see attachment

Party is (select one) [ ] Appellant/Petitioner [ ] Cross-Appellant [x] Appellee/Respondent [ ] Intervenor

Tribunal appealed from and Case No. Court of Federal Claims, No. 13-465C

Date of Judgment/Order September 20, 2016 Type of Case Suit for Just Compensation under Takings Clause

Relief sought on appeal Dismissal of appeal or affirmance of trial court's ruling

Relief awarded below (if damages, specify) The Court of Federal Claims granted Plaintiffs' motion to compel the production of certain documents the United States had improperly withheld for privilege.

Briefly describe the judgment/order appealed from see attachment

Nature of judgment (select one)

- [ ] Final Judgment, 28 USC 1295 [ ] Rule 54(b) [x] Interlocutory Order (specify type) Evidentiary privilege ruling [ ] Other (explain; see Fed. Cir. R. 28(a)(5))

FORM 26. Docketing Statement

Name and docket number of any related cases pending before this court plus the name of the writing judge if an opinion was issued.  
If none, please state none.

see attachment

Brief statement of the issues to be raised on appeal

1. Whether this Court has appellate jurisdiction to review the trial court's interlocutory discovery order; and
2. Whether this Court should overturn the trial court's document-by-document privilege rulings, which applied settled legal standards to the particular facts of this case.

Have there been discussions with other parties relating to settlement of this case?  Yes  No If "yes," when were the last such discussions?

- Before the case was filed below?
- During the pendency of the case below?
- Following the judgment/order appealed from?

If "yes," were the settlement discussions mediated?  Yes  No

If they were mediated, by whom?

Do you believe that this case may be amenable to mediation?  Yes  No

Please explain why you believe the case is or is not amenable to mediation.

The expropriation of Plaintiffs' stock has generated tens of billions of dollars in revenue for the Government. Plaintiffs do not anticipate that the Government will be willing to give up this revenue unless ordered to do so by the courts.

Provide any other information relevant to the inclusion of this case in the court's mediation program.

I certify that I filed this Docketing Statement with the Clerk of the United States Court of Appeals for the Federal Circuit and served a copy on counsel of record, this

28th day of November, 2016

by: CM/ECF Electronic Filing System

(manner of service)

Charles J. Cooper

/s/ Charles J. Cooper

Name of Counsel

Signature of Counsel

Law Firm

Cooper & Kirk, PLLC

Address

1523 New Hampshire Avenue, N.W.

City, State, ZIP

Washington, D.C. 20036

Telephone Number

(202) 220-9600

FAX Number

(202) 220-9601

E-mail Address

ccooper@cooperkirk.com

Reset Fields

Attachment to Docketing Statement

**Name of the Parties you represent:**

Fairholme Funds, Inc.

The Fairholme Fund

Acadia Insurance Company

Admiral Indemnity Company

Admiral Insurance Company

Berkley Insurance Company

Berkley Regional Insurance Company

Carolina Casualty Insurance Company

Continental Western Insurance Company

Midwest Employers Casualty Insurance Company

Nautilus Insurance Company

Preferred Employers Insurance Company

**Briefly describe the judgment/order appealed from:**

The trial court reviewed 56 documents *in camera* and determined, on a document-by-document basis, that all of the documents it reviewed should have been produced to Plaintiffs. The Government had withheld these documents under the qualified deliberative process, bank examination, and presidential communications privileges. With respect to all of the documents, the trial court ruled that Plaintiffs had made a sufficient showing of need to overcome the Government's qualified privileges. The trial court also concluded that many of the documents in question were not covered by the privileges the Government asserted.

**Name and docket number of any related cases pending this court plus the name of the writing judge if an opinion was issued:**

*In re United States*, No. 17-104 (mandamus petition challenging same order as this appeal);

*Fairholme Funds v. United States*, No. 17-1015 (appeal from denial of motion to intervene);

*In re Sammons*, No. 17-102 (mandamus petition challenging denial of motion to intervene; denied by per curiam opinion issued by Prost, C.J., Moore and Chen, JJ.).