

UNITED STATES COURT OF FEDERAL CLAIMS

ARROWOOD INDEMNITY COMPANY,
ARROWOOD SURPLUS LINES
INSURANCE COMPANY, and FINANCIAL
STRUCTURES LIMITED,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 1:13-cv-00698 MMS

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR UNOPPOSED MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs Arrowood Indemnity Company, Arrowood Surplus Lines Insurance Company, and Financial Structures Limited (collectively, the “Arrowood Plaintiffs”), respectfully submit this reply in further support of their unopposed motion (the “Arrowood Motion”) for leave to file a Second Amended Complaint adding a separation-of-powers theory as part of their already-pled illegal exaction claim.

On September 10, 2018, this Court entered an Order¹ granting a motion for leave to amend (the “Fairholme Motion”) in a related case, *Fairholme Funds, Inc. v. United States*, No. 1:13-cv-00465-MMS (“*Fairholme*”) which similarly added a separation-of-powers theory to support an illegal exaction claim. This Court’s Order in *Fairholme* also set a briefing schedule on the Government’s motion to dismiss, and stated that the Court “will not resolve any

¹ Order, Doc. 420 (Sept. 10, 2018), *Fairholme Funds, Inc. v. United States*, No. 1:13-cv-00465-MMS. For the convenience of the Court, a copy of the Order entered in *Fairholme* is attached as **Exhibit A** hereto.

subsequent motions by plaintiffs to amend their complaint until after the court rules on the motion to dismiss.”

The next day, September 11, 2018, the Government filed its response to the Arrowood Motion, stating that it did not oppose the Arrowood Motion, and (without making reference to the Order in *Fairholme*) requesting that the Court set the same briefing schedule in all Coordinated Cases (including this case) as had been set by this Court’s Order in *Fairholme*.

The Arrowood Plaintiffs agree, and respectfully request that the Court grant Arrowood’s unopposed motion for leave to amend, and enter an Order in this case setting the same briefing schedule that was set in *Fairholme*.

The Arrowood Plaintiffs also respectfully request that the Court clarify one issue about that briefing schedule. In its response to the Arrowood Motion, the Government stated:

we do not intend to address plaintiffs’ separation-of-powers argument in our omnibus motion to dismiss, but reserve the right to address that argument in a separate filing, if necessary, after the Court resolves the omnibus dismissal motion.

Defendant’s Response, Doc. 41, p. 2 (Sept. 11, 2018). The Government took the same position in its response to the *Fairholme* Motion.² The Arrowood Parties do not object to the Government’s proposal to defer briefing on the separation-of-powers issue, but believe that there should be a clear directive from the Court—applicable to the Government and to all plaintiffs in the Consolidated Cases that have raised the separation-of-powers issue—as to whether or not such briefing should be done now or should be deferred.

² Defendant’s Response, Doc. 419, p. 2 (Aug. 30, 2018), *Fairholme* (“the United States does not intend to address plaintiffs’ separation-of-powers argument in its omnibus motion to dismiss, but reserves its right to address that argument in a separate filing, if necessary, after the Court resolves the United States’ dismissal motion”).

Respectfully submitted,

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