

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	No. 13-465 C
)	(Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME

Pursuant to Rules 6(b), 6.1, and 7 of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests an 87-day enlargement of time, to and including April 29, 2019, within which to file a reply in support of its omnibus motion to dismiss plaintiffs’ complaints. The current deadline for the Government’s reply is February 1, 2019. On January 25, 2019, counsel for plaintiffs, Fairholme Funds, Inc., *et al.* (Fairholme), advised counsel for the United States that Fairholme does not oppose this request for an enlargement of time.

Good cause exists to grant the requested relief. First, as the Court is aware, at the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. Although funding was restored on January 25, 2019, during the shutdown, Department of Justice attorneys were prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

Second, an extension is needed to prepare a meaningful reply to plaintiffs’ responses. Plaintiffs collectively filed eight distinct briefs totaling 225 pages (excluding tables, signatures,

certificates, etc.) in response to the Government's omnibus motion to dismiss. The requested extension is needed to review the various filings, address each argument raised, and obtain input from the relevant agencies. Although we initially obtained consent from the plaintiffs for a 56-day extension before funding to the Department expired, the proposed 87-day extension generally accounts for the recent lapse in appropriations. And absent an extension, our ability to prepare a meaningful reply would be compromised.

Third, counsel of record for the Government and another senior attorney involved in drafting our reply are preparing for a lengthy trial in *Colonial Chevrolet, Co., Inc. v. United States*, No. 10-647C (Fed. Cl.), and related cases. Trial is currently set to begin on March 4, 2019.

Fourth, one of the primary authors of our reply is required to prepare for several oral arguments and briefing deadlines that have been extended or stayed due to the lapse in appropriations, including: oral argument in a bid protest, *XOtech LLC v. United States*, No. 18-1483 (Fed. Cl.); oral argument in several cost-sharing reduction cases pending before this Court, including *Community Health Choice, Inc. v. United States*, No. 18-05 (Fed. Cl.); a supplemental brief in another cost-sharing reduction case, *Blue Cross & Blue Shield of Vermont v. United States*, No. 18-373 (Fed. Cl.); a post-trial response brief in *Alutiiq Manufacturing Contractors LLC v. United States*, No. 15-881 (Fed. Cl.), due 14 days after appropriations are restored; and a post-remand brief in *Meridian Engineering Co. v. United States*, No. 11-492 (Fed. Cl.), currently due on February 17, 2019. In addition, counsel will need to prepare for and present oral argument in *Hiller v. Dep't of Homeland Security*, No. 18-1244 (Fed. Cir.), on March 12, 2019. Consequently, given the lapse in appropriations to the Department, the volume of plaintiffs'

responses, and the press of business in other cases before this Court and the Federal Circuit, good cause exists for the requested enlargement.

For these reasons, we request that the Court grant this unopposed motion for an 87-day enlargement of time for the United States to file its reply in support of its omnibus motion to dismiss.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

s/Robert E. Kirschman, Jr.
ROBERT E. KIRSCHMAN, JR.
Director

s/Kenneth M. Dintzer
KENNETH M. DINTZER
Deputy Director
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 616-0385
Facsimile: (202) 307-0973
Email: Kenneth.Dintzer@usdoj.gov

January 29, 2019

Attorneys for Defendant