IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

OWL CREEK ASIA I, L. P., OWL CREEK ASIA II, L.P., OWL CREEK I, L.P., OWL CREEK II, L.P., OWL CREEK ASIA MASTER FUND, LTD., OWL CREE K CREDIT OPPORTUNITIES MASTER FUND, L.P., OWL CREEK OVERSEAS MASTER FUND, LTD., OWL CREEK SRI MASTER FUND, LTD., *Plaintiffs-Appellants*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-1934
MASON CAPITAL L.P., MASON CAPITAL MASTER FUND L.P., *Plaintiffs-Appellants*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-1936
AKANTHOS OPPORTUNITY FUND, L.P., *Plaintiff-Appellant*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-1938

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I, PALOMINO MASTER LTD., AZTECA PARTNERS LLC, PALOMINO FUND LTD., *Plaintiffs-Appellants*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-1954
CSS, LLC, *Plaintiff-Appellant*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-1955
JOSEPH CACCIAPALLE, *Plaintiff - Appellant* MELVIN BAREISS, on Behalf of Themselves and All Others Similarly Situated, BRYNDON FISHER, BRUCE REID, ERICK SHIPMON, AMERICAN EUROPEAN INSURANCE COMPANY, FRANCIS J. DENNIS, *Plaintiffs*, v. UNITED STATES, *Defendant-Appellee*.	No. 20-2037

PLAINTIFFS' COMBINED OPPOSITION TO
MOTION TO HOLD APPEALS IN ABEYANCE

The Plaintiffs in the above-captioned, companion appeals in this Court oppose the government's motion to stay these appeals and thereby further delay these cases, which have been pending for years (the *Cacciapalle* class action since

2013). After all this time, the cases remain at the motion-to-dismiss stage. There is no just basis for delaying them any further.

The government bases its stay motion on the Supreme Court's grant of review in *Collins* (*Mnuchin v. Collins*, No. 19-563, and *Collins v. Mnuchin*, No. 19-422). None of the Plaintiffs here is a party in *Collins*. And contrary to what the government states, ***none*** of the questions presented in *Collins* is the same as the issues presented by these appeals. In *Collins*, the plaintiffs seek only injunctive relief, either under the Administrative Procedure Act ("APA") or based on the theory that the Federal Housing Finance Agency (the "Agency") is unconstitutionally structured and therefore all its prior actions are invalid. The *Collins* plaintiffs seek no damages. By contrast, Plaintiffs in these appeals seek ***only*** damages, whether under the Takings Clause or through related illegal exaction, for breach of fiduciary duty, or under contractual theories. Contrary to the government's motion, the questions presented in *Collins* are thus quite distinct from the questions presented by these appeals. There is therefore no basis for a stay.

The government does not argue that the resolution of *Collins* might moot the issues in these appeals, nor could it. That is because it will not. If the *Collins* plaintiffs prevail, the most they can be awarded is injunctive relief, which cannot make shareholders whole from their injury. As more fully explained below,

declaring the Net Worth Sweep invalid will still at least leave Treasury with over $25 billion more than it was ever entitled to receive. The government never argues that this issue can be addressed and remedied in *Collins*, and therefore it implicitly concedes that the Plaintiffs' claims in these appeals will remain ripe even if the *Collins* plaintiffs prevail. By the same token, since the claims in *Collins* are entirely different, there is no scenario in which a government victory in *Collins* could dispose of the issues presented by these appeals.

Because resolution of the issues in *Collins* will not substantially simplify the issues in these appeals, the government has not shown, nor could it, the "rare circumstances" justifying a stay of one case for another. *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). A stay will only lead to this Court deciding the same issues a year later than it otherwise would. That would be prejudicial to the Plaintiffs. The Court should therefore deny the government's motion.

BACKGROUND

The Plaintiffs in these cases are private shareholders of Fannie Mae and Freddie Mac, and they seek damages from the government for its August 2012 decision to amend the funding agreement between the U.S. Treasury and the Agency, the federal government conservator of Fannie Mae and Freddie Mac since September 2008.

Under that August 2012 amendment, the two government agencies agreed that, instead of Treasury's receiving a dividend on its Senior Preferred Stock equal to 10% of its total investment in Fannie Mae and Freddie Mac (as was contractually agreed in September 2008), Treasury would instead receive ***100% of the net worth*** of Freddie and Fannie every quarter. Under that amendment, the "Net Worth Sweep," it is legally impossible for private shareholders in Fannie and Freddie to ever receive a dollar of dividends or distributions of any kind, no matter how many hundreds of billions (or trillions) of dollars in profits Fannie and Freddie may make.

The Net Worth Sweep thereby expropriated the legal and economic rights of the private shareholders that existed immediately prior to the amendment, and transferred those rights to the Treasury's Senior Preferred Stock, and thus to Treasury through dividends on that stock. This action was unprecedented and was a clear appropriation of private shareholders' rights to receive dividends and distributions. Since the August 2012 Net Worth Sweep was put in place, Fannie and Freddie have paid Treasury over $125 billion ***more*** in dividends than they would have paid under the original 10% dividend arrangement. If these excess dividends, when paid, had been treated as redemptions of Treasury's Senior Preferred Stock, then Treasury's Senior Preferred Stock would have been fully redeemed, with interest—and Treasury would have received an extra windfall of

over $25 billion. Those distributions would otherwise have been available to benefit private shareholders, either through distributions or through rebuilding of Fannie and Freddie's capital, which in turn would have led to future dividends to the private shareholders.

Plaintiffs thus claim, among other things, that this government action amounted to (1) a taking; (2) in the alternative, an illegal exaction; (3) a breach of fiduciary duty; and (4) a breach of an implied-in-fact contract.

In a series of orders, the Court of Federal Claims granted the government's motion to dismiss each of Plaintiffs' complaints. *See Owl Creek* Order ECF 64; *Cacciapalle* ECF 105. Initially, the Court had ruled only on the government's motion to dismiss the *Fairholme* case; it then *sua sponte* stayed its consideration of the other plaintiffs' cases. However, in response to motions of these other plaintiffs objecting to the delaying of their cases, Chief Judge Sweeney lifted her stays (over the government's objections) and, after receiving supplemental briefing, promptly ruled in the remaining cases, including the *Owl Creek* family of consolidated cases and the *Cacciapalle* class action case.[1]

[1] *Owl Creek*, *Mason*, *Appaloosa*, *Akanthos*, and *CSS*, all represented by the same counsel, filed almost identical complaints and a single, combined opposition to the government's omnibus motion to dismiss, and they were dismissed after the lower court entered substantively identical orders in their cases. This Court accordingly consolidated these five appeals. The *Owl Creek* plaintiffs and the plaintiffs in the *Cacciapalle* class action will of course cooperate and coordinate briefing in an effort to avoid duplication.

Chief Judge Sweeney's primary rulings involved questions of standing and jurisdiction. The court held that Plaintiffs, as shareholders in Fannie Mae and Freddie Mac, lacked standing to assert any direct claims because all of their claims were substantively derivative, notwithstanding the government's direct expropriation of all of the legal rights to equity distributions previously owned by such private shareholders to benefit Treasury as the sole remaining shareholder with rights to future distributions. *Owl Creek* ECF 64, at 27-29; *Cacciapalle* ECF 105, at 29-33. The court also concluded that while Plaintiffs' claims are against the United States, it lacked jurisdiction over Plaintiffs' breach of fiduciary duty claims because they sounded in tort,[2] and over the breach of implied-in-fact contract claims because Plaintiffs were not third-party beneficiaries of such a contract or were not in privity with the United States.[3] The court also held that it had no jurisdiction over the *Cacciapalle* class plaintiffs' claim that the Housing and Economic Recovery Act ("HERA") had effected an uncompensated taking of their right to bring certain causes of action, *i.e.*, derivative claims and injunctive claims ("Taking of a Cause of Action"). *Cacciapalle* ECF 105, at 24-25.

On appeal, the primary issues that Plaintiffs expect to challenge are (1) whether their takings and illegal exaction claims are in fact ***direct*** claims, such

[2] *Owl Creek* ECF 64, at 19-23; *Cacciapalle* ECF 105, at 25-28.

[3] *Owl Creek* ECF 64, at 25; *Cacciapalle* ECF 105, at 33-36.

that Plaintiffs have standing; and (2) whether there is jurisdiction over their breach of fiduciary duty, breach of contract, and Taking of a Cause of Action claims.

None of these issues is presented to the Supreme Court in the *Collins* case. The *Collins* plaintiffs filed suit in the District Court for the Southern District of Texas after most of the Plaintiffs here had filed suit in the Court of Federal Claims. The *Collins* plaintiffs sued for injunctive relief under the APA claiming that the Net Worth Sweep exceeded the statutory authority of the Agency and Treasury, and also sought injunctive relief based on the claim that the Agency is unconstitutionally structured. *Collins* Pet., 19-422, at 14. The *Collins* plaintiffs sought vacatur of the Net Worth Sweep and a declaratory judgment that the Agency is unconstitutionally structured. *Id.* The *Collins* plaintiffs do not seek damages under any of their theories, and their claims do not involve the direct/derivative or jurisdictional issues raised in Plaintiffs' appeals. Unlike the government's motion, we attach an Addendum to this brief showing the precise questions presented on which the Supreme Court has granted *certiorari* in *Collins*.

ARGUMENT

This Court should deny the government's motion. A party seeking "a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis*, 299 U.S. at 255. "Only in rare circumstances" will

litigants in one case be compelled to stand aside while another case proceeds. *Id.* In *Landis*, a stay was justified in part because a decision in a related case "in all likelihood [would] settle many [questions of fact and law] and simplify them all." *Id.* at 256; *United States v. Town of Oyster Bay*, 66 F. Supp. 3d 285, 292 (E.D.N.Y. 2014) (denying to stay case because plaintiff would have a viable claim regardless of Supreme Court's decision in similar case).

Here, a decision in *Collins* will not resolve or simplify the issues before this Court in the present appeals, and a stay would prejudice Plaintiffs. The government certainly has not made out, as it must, "a clear case of hardship or inequity" if this Court declines to delay this appeal. *Landis*, 299 U.S. at 255.

First, the primary issues in these appeals are unrelated to the issues in *Collins*. Plaintiffs' appeals address: (1) whether their claims are direct or derivative, and (2) whether the Court of Federal Claims has jurisdiction over Plaintiffs' breach of fiduciary duty and breach of contract claims. In contrast, the issues in *Collins*, as shown by the questions presented, are: (1) whether the structure of the Agency violates the separation of powers (*Collins* Pet., 19-422, at i); (2) whether, if an agency is unconstitutionally structured, courts must set aside a final agency action or may simply strike down the statutory "removal for cause" provision that made the agency unconstitutional *(id.*); (3) whether the anti-injunction provision of HERA (12 U.S.C. § 4617(f)) precludes a court from setting

aside the Net Worth Sweep (*Collins* Pet. 19-563, at I); and (4) whether the succession clause of HERA (12 U.S.C. § 4617(b)(2)(A)(i)), which generally bars shareholder derivative actions, precludes shareholders from challenging the Net Worth Sweep under the APA (*id.*).

The questions presented in *Collins* do not encompass any of the primary issues raised in Plaintiffs' appeals. Specifically, *Collins* will not resolve whether Plaintiffs' claims are direct or derivative. *Collins* will also not resolve the jurisdictional questions whether Plaintiffs' breach-of-fiduciary-duty claim is grounded in contract or statute or whether Plaintiffs are third-party beneficiaries of an implied-in-fact contract between Fannie Mae and Freddie Mac and the Agency (or whether the government assumed the shareholder contracts when it placed Fannie and Freddie into conservatorship). None of these issues is presented by the *Collins* petitions.

The government does not claim that any outcome in *Collins* would moot these cases, nor could it have done so. The government does claim that a decision in *Collins* "is almost certain to resolve one or more issues that are central" to these appeals or at least "is likely to substantially narrow the issues this Court would be required to decide." Mot. at 8. But the government fails to acknowledge that *Collins* will not implicate the primary issues in these appeals regarding whether Plaintiffs' takings and illegal exaction claims are direct or derivative and whether

the Court of Federal Claims has jurisdiction over Plaintiffs' other claims. The government suggests that *Collins* will resolve whether the Agency retains its government character when it acts as conservator, which could impact Plaintiffs' claims. Mot. at 8. But this is also not true; that issue was ***not included*** in either petition for certiorari in *Collins*. Nor does even the government's opposition to the *Collins* plaintiffs' petition for certiorari, which the government cites, squarely present this issue. In short, the government has greatly overstated any overlap between these appeals and *Collins*; those mischaracterizations speak volumes about the insufficiency of its stay motion.

Second, the relief sought in *Collins* is entirely different from the relief sought in these cases. *Collins* seeks injunctive relief only; these cases seek damages only. This is a significant difference. The injunctive claims advanced in *Collins* cannot award any money *to shareholders* like Plaintiffs to make them whole (as they seek in their direct claims), and nothing the Supreme Court is being asked to decide in *Collins* can moot Plaintiffs' damages claims. The government never argues otherwise. Even if the Supreme Court were to declare the Net Worth Sweep to be invalid because it was issued by an unconstitutionally constituted Agency, that would still leave Treasury holding over $125 billion more than it would have received under the deal prior to the Net Worth Sweep, and over $25 billion more than it should have if the excess Net Worth Sweep dividends were to

be treated as a redemption of the principal amount in Treasury's Senior Preferred Stock (such treatment would show that Treasury's Senior Preferred Stock has been fully redeemed with interest and with an extra $25 billion paid to Treasury beyond all payment of principal and interest).[4] Such a result would not moot Plaintiffs' damages claims, and the entitlement of shareholders like Plaintiffs to seek damages has not been presented and will not be addressed by the Supreme Court in *Collins*. By contrast, these appeals present only claims seeking damages, which are wholly distinct from the injunctive claims advanced in *Collins*.

Third, any impact that a decision in *Collins* may have on Plaintiffs' claims goes to the *merits* of their claims, not the threshold jurisdictional and standing issues presented by Plaintiffs' appeals. The government's motion obscures this distinction by asserting that a decision in *Collins* "is likely to substantially narrow the issues this Court would be required to decide." Motion at 8. But this again is untrue. A decision in *Collins* on whether the Agency is constitutionally structured

[4] Should there be a *remand* in *Collins*, the plaintiffs might seek relief that forces the Treasury to return, to Fannie Mae and Freddie Mac, the excess dividends it has received. But whether the *Collins* plaintiffs are entitled to such relief through their APA and unconstitutional-structure claims was not addressed by either the district court or the Fifth Circuit in *Collins*; nor is it one of the questions presented to the Supreme Court; nor has the government argued in its motion here that it intends to agree that whether Treasury can be forced to return these excess dividends is going to be presented to the Supreme Court.

could bear on the *merits* of Plaintiffs' takings and illegal exaction claims, but these appeals are not about the merits of those claims.

In fact, the government intentionally did not address the separation-of-powers issue in the court below (*see, e.g., Owl Creek* ECF 18 (stating the government does not intend to address plaintiffs' separation-of-power arguments in its motion to dismiss but reserving its right to address this issue later)), and thus the Court of Federal Claims did not address the constitutionality of the Agency's structure when it dismissed Plaintiffs' claims for lack of standing and lack of jurisdiction. Moreover, not only has the government in *Collins* declined to defend the constitutionality of the Agency's structure (*Collins* Opp. 19-422, at 13), but the Supreme Court has essentially resolved this issue in its recent decision in *Selia Law LLC v. Consumer Financial Protection Bureau,* 591 U.S.___, ___ (2020) (noting that the Agency "is essentially a companion" of the Consumer Financial Protection Bureau, whose structure of a single director removable only for inefficiency, neglect, or malfeasance violates the separation of powers). The primary question as to that petition is the remedy for the unconstitutional structure.

In any event, regardless of the Supreme Court's decision on whether the Agency is unconstitutionally structured, on the proper remedy for any such constitutional violation, and on whether the succession clause bars shareholders from asserting APA claims, this Court will still have to determine (1) whether

Plaintiffs' takings, illegal exaction, and related claims are direct claims (indeed, the Plaintiffs here have pled ***only*** direct claims), and (2) whether there is subject matter jurisdiction over Plaintiffs' breach of fiduciary duty, breach of contract, and Taking of a Cause of Action claims. If Plaintiffs prevail in having this Court reinstate their claims, their cases would then proceed to the merits and then could benefit in the ordinary course from any ruling in *Collins*.

Fourth, and relatedly, a stay will unnecessarily delay resolution of these appeals, and substantially prejudice Plaintiffs. Plaintiffs' claims have been pending for years. A stay of potentially a year or more is not justified given that the issues in *Collins* simply are not at issue here. The government is merely seeking what defendants often seek: to delay Plaintiffs' entitlement to relief. But here, there is no basis for delay. Indeed, delay now would be at odds with the efforts of Chief Judge Sweeney below, in response to Plaintiffs' requests, to push all of the Plaintiffs' cases past the motion-to-dismiss stage, with full awareness of the pending cross-petitions for certiorari in *Collins*. To now stay these cases anyway disregards her efforts.

Finally, denying a stay would not substantially prejudice the government. The jurisdictional and standing issues presented here will not be resolved by *Collins,* and thus the government cannot reasonably be prejudiced by having those issues decided by this Court in parallel with *Collins*. And any effect on the

underlying merits that the decision *Collins* could potentially have will be resolved in due course after this Court resolves the jurisdictional and standing issues.[5] There is simply no adequate reason to delay these appeals by approximately a year or more.

CONCLUSION

For the foregoing reasons, this Court should deny the government's request to unnecessarily stay these proceedings.

[5] While the court in *Collins* did grant certiorari on an issue involving HERA's succession clause, the question presented there is not whether the claims are direct or derivative, or even whether the succession clause generally bars derivative claims, but whether the plaintiffs there, as a matter of statutory standing, are within the zone of interests of 12 U.S.C. § 4617(b)(2)(A). And not one of the sixteen judges in the *en banc* Fifth Circuit decision in *Collins* agreed with the government's position that those plaintiffs are not within that zone of interests. Whatever overlap this issue in *Collins* could imaginably have on the different issue of whether HERA's succession clause bars the derivative claims raised in these appeals by the plaintiffs in *Fairholme* (but not by Plaintiffs here or in *Arrowood*, who raised only direct claims) is marginal at best, presenting no risk of substantial prejudice to the government and not otherwise justifying its requested stay.

Date: August 10, 2020

/s/ Lawrence D. Rosenberg
Lawrence D. Rosenberg

C. Kevin Marshall
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
ldrosenberg@jonesday.com
ckmarshall@jonesday.com

Attorneys for Plaintiffs-Appellants Owl Creek Asia I, L.P., Owl Creek Asia II, L.P., Owl Creek I, L.P., Owl Creek II, L.P., Owl Creek Asia Master Fund, Ltd., Owl Creek Credit Opportunities Master Fund, L.P., Owl Creek Overseas Master Fund, Ltd., Owl Creek SRI Master Fund, Ltd.; Mason Capital L.P., Mason Capital Master Fund L.P.; Akanthos Opportunity Fund, L.P.; Appaloosa Investment Limited Partnership I, Palomino Master Ltd., Azteca Partners LLC, Palomino Fund Ltd.; and CSS, LLC

Respectfully submitted,

_____
Hamish P.M. Hume

BOIES SCHILLER FLEXNER LLP
1401 New York Ave. NW
Washington, DC 20005
Tel: (202) 237-2727
Fax: (202) 237-6131
hhume@bsfllp.com

Attorneys for Plaintiffs-Appellants Jos Cacciapalle; American European Insurance Company

ADDENDUM:

Questions Presented
Collins v. Mnuchin (No. 19-422) and
Mnuchin v. Collins (19-563)

19-422 COLLINS V. MNUCHIN, SECRETARY OF TREASURY

DECISION BELOW: 938 F.3d 553

LOWER COURT CASE NUMBER: 17-20364

QUESTION PRESENTED:

In 2008, Congress created the Federal Housing Finance Agency (FHFA) - an "independent" agency with sweeping authority over the housing finance system. 12 U.S.C. § 4511(a). Unlike every other independent agency except the Consumer Financial Protection Bureau, FHFA is headed by a single Director who can only be removed for cause by the President and is exempt from the congressional appropriations process. 12 U.S.C. §§ 4512(b)(2), 4516(f)(2). The questions presented are:

1. Whether FHFA's structure violates the separation of powers; and

2. Whether the courts must set aside a final agency action that FHFA took when it was unconstitutionally structured and strike down the statutory provisions that make FHFA independent.

CONSOLIDATED WITH 19-563 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 7/9/2020

19-563 MNUCHIN V. COLLINS

DECISION BELOW: 938 F.3d 553

LOWER COURT CASE NUMBER: 17-20364

QUESTION PRESENTED:

During the national housing crisis of 2008, the Federal Housing Finance Agency (FHFA) exercised its authority under a federal statute to appoint itself as conservator of Fannie Mae and Freddie Mac. FHFA, as conservator, negotiated agreements with the Department of the Treasury under which Treasury committed to investing billions of dollars in the enterprises in return for compensation consisting, in part, of fixed dividends. In 2012, after numerous quarters in which the enterprises' dividend obligations exceeded their total earnings - forcing the enterprises to draw more money from Treasury just to pay the dividends - FHFA and Treasury negotiated the Third Amendment to their agreements. The Third Amendment replaced the fixed dividend with a variable quarterly dividend equal to the enterprises' net worth minus a specified capital reserve. The questions presented are:
1. Whether the statute's anti-injunction clause, which precludes courts from taking any action that would "restrain or affect the exercise of powers or functions of the Agency as a conservator," 12 U.S.C. 4617(f), precludes a federal court from setting aside the Third Amendment.

2. Whether the statute's succession clause - under which FHFA, as conservator, inherits the shareholders' rights to bring derivative actions on behalf of the enterprises - precludes the shareholders from challenging the Third Amendment.

CONSOLIDATED WITH 19-422 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 7/9/2020

FORM 19. Certificate of Compliance with Type-Volume Limitations **Form 19**
July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 20-1934; 20-1936; 20-1938; 20-1954; 20-1955

Short Case Caption: Owl Creek Asia I, L.P., v. U.S.

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Date: 08/10/2020

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Name: Lawrence D. Rosenberg

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 20-1934; 20-1936; 20-1938; 20-1954; 20-1955

Short Case Caption Owl Creek Asia I, L.P., v. U.S.

Filing Party/Entity Owl Creek Asia I, L.P., (see attachment A)

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 08/10/2020

Signature: /s/ Lawrence D. Rosenberg

Name: Lawrence D. Rosenberg

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☐ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☐ None/Not Applicable
Owl Creek Asia I, L.P.	None	None
Owl Creek Asia II, L.P.	None	None
Owl Creek I, L.P.	None	None
Owl Creek II, L.P.	None	None
Owl Creek Asia Master Fund, Ltd.	None	None
Owl Creek Credit Opportunities Master Fund, L.P.	None	None
Owl Creek Overseas Master Fund, Ltd.	None	None
Owl Creek SRI Master Fund, Ltd.	None	None
Mason Capital L.P.	None	None
Mason Capital Master Fund L.P.	None	None
Akanthos Opportunity Fund, L.P.	None	None
Appaloosa Investment Limited Partnership I	None	None

☑ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

Bruce Bennett Jones Day		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☐ None/Not Applicable ☐ Additional pages attached

Fairholme Funds, Inc., et al. v. United States, No. 20-1912 (Fed. Cir.)	Cacciapalle v. United States, No. 13-1446 (Fed. Cl.)	Arrowood Indem. Co. v. United States, No, 13-689 (Fed. Cl.)
Rafter v. United States, No. 14-740 (Fed. Cl.)	Fisher . United States, No. 20-138 (Fed. Cir.)	

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

ATTACHMENT A

(Filing Party/Entity Continued)

Owl Creek Asia II, L.P., Owl Creek I, L.P., Owl Creek II, L.P., Owl Creek Asia Master Fund, Ltd., Owl Creek Credit Opportunities Master Fund, L.P., Owl Creek Overseas Master Fund, Ltd., Owl Creek SRI Master Fund, Ltd.; Mason Capital L.P., Mason Capital Master Fund L.P.; Akanthos Opportunity Fund, L.P.; Appaloosa Investment Limited Partnership I, Palomino Master Ltd., Azteca Partners LLC, Palomino Fund Ltd.; and CSS, LLC

ATTACHMENT B

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2 .Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.
Palomino Fund Ltd.	None	None
Palomino Master Ltd.	None	None
Azteca Partners LLC	None	Palomino Fund Ltd., not a publicly held company, owns 100% of Palomino Master Ltd.'s stock.
CSS, LLC	None	None