

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,)	
)	
Plaintiff,)	No. 20-737C
)	(Senior Judge Margaret M. Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s October 27, 2020 order, ECF No. 15; and the Court’s July 27, 2021 Order, ECF No. 26 (hereinafter collectively the “JSR Stay Orders”) the parties submit this joint status report. The October 27, 2020 order stayed this case pending the Supreme Court’s resolution of *Collins v. Yellen*, 141 S. Ct. 1761 (2020), and directed the parties to submit a joint status report within 30 days of a decision in *Collins*. On July 23, 2021, the parties in JSR filing, with combined Defendant unopposed motion to continue stay, requested that the stay be continued until the Federal Circuit’s decision in related case interlocutory appeal, *Fairholme Funds, Inc. v. United States*, Nos. 20-1912, 20-1914 (Fed. Cir.), becomes final and non-appealable (ECF No. 25). The July 27, 2021 order then stayed this case pending the Federal Circuit’s resolution of *Fairholme*, and directed the parties to “FILE a joint status report within 30 days of the decision in *Fairholme Funds, Inc.* proposing further proceedings in this case” (ECF No. 26).

Despite consultation and their best efforts, the parties have been unable to agree on the appropriate next steps in this case. Accordingly, each party separately states below its JSR position on how this case should proceed.

Plaintiff Joshua J. Angel Position:

This case, like *Collins* and *Fairholme Funds*, is a shareholder suit arising out of the operation of Fannie Mae and Freddie Mac (Enterprises) in conservatorship. Plaintiffs in *Collins* and *Fairholme Funds* challenge a 2012 amendment (Third Amendment) to the senior preferred stock purchase agreements (“SPSPA”) between Treasury and the Federal Housing Finance Agency(FHFA), acting as the Enterprises’ conservator. Specifically, the cases involve per se challenge to the legitimacy of the quarterly sweep of Fannie Mae, and Freddie Mac profits to Treasury beginning January 1, 2013 (“Net Worth Sweep”), instituted in connection with the Third Amendment to the SPSPAs that financed the Companies conservatorships, and relief prayers for hundreds of billions of dollars damages.

This case, while posing no challenge to the legitimacy of the Net Worth Sweep, nevertheless sought more than \$18 billion from the government, based on Treasury recurring direction of Fannie Mae and Freddie Mac Junior preferred share contract dividend non-declaration, each and every quarter beginning January 2013.

Specifically, the case complaint allege; (A) Treasury taking inappropriate advantage of the SPSPAs requirement that the Companies respective boards obtain Treasury’s written consent before declaring or paying junior preferred share dividends by, inter alia, instructing the respective Companies boards not to seek Treasury’s consent to Junior Preferred Share dividend declaration in dollar-for-dollar amount quarterly Treasury quarterly enlarged Net Worth Sweep payment enlargement, with each such quarterly Treasury direction being separately actionable by junior preferred shareholders.

Waiting for *Collins* and *Fairholme* decisions afforded us the opportunity to resolve our case issues by contractual breach cure, and case dismissal rather than immediate monetary payment.

The settlement is a restoration of the status quo ante for Fannie Mae and Freddie Mac junior preferred shares beginning January 1, 2013 as if the share dividends were declared, or the shares and/or the government instead of directing the Companies' boards not to declare junior preferred dividend had simply left the directors to perform preferred share declarations duties without contra direction. Of equal importance to the settlement provided to the January 14, 2021 purchase announced Treasury timeline to raise capital for the companies and establish a timeline for their emergence from conservatorship.

The case Stipulation and Settlement Agreement attached hereto is made solely between Joshua J. Angel on his own behalf, and the United States and does not require Court approval to be effective. However, because the case Stipulation and Settlement Agreement purposely confers certain substantial and valuable benefits to all present, and future holders of Fannie Mae and Freddie Mac junior preferred shares the parties decided it best to attach it as an exhibit to this joint status report rather than in a separate filing attached to a stipulation and notice of voluntary dismissal pursuant to RCFC 41(a)(1)(A)(i). In addition to voluntarily dismissing the case with prejudice, the agreement's basic terms include Treasury commitment to cause:

- (i) the GSEs' respective Board of Directors to declare (not pay) Junior Preferred Share dividends equal to the total dividends declared or declarable between January 1, 2013 and the Angel II Settlement's Effective Date (i.e., approximately \$18 billion) ("Dividend Declaration Amount");
- (ii) the GSEs make a *corrective balance sheet transfer of capital reserve amounts* (with full legal entitlements inherent therein), from the Senior Preferred Share Dividend Payable, to Junior Preferred Share Dividend Payable, and ex post facto income statement expense from reflection on the Companies' income statements, from Senior Preferred Share Dividend Expense, to Junior Preferred Dividend Expense, in amount exactly equal to the Total Dividend Declaration Amount, and thus tangential validation of Perfidy government implicit guaranty of Junior Preferred Share timely payment and rating Agencies' Government Securities Risk classification;

Defendant United States' Position:

As the parties explained in our previous joint status report, ECF No. 25, this case, like *Fairholme* and a host of other cases pending before this Court, is a shareholder suit arising out of the operation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or GSEs), in conservatorship. Plaintiffs in *Fairholme* challenge a 2012 amendment (Third Amendment) to stock purchase agreements between Treasury and the Federal Housing Finance Agency (FHFA), acting as the Enterprises' conservator, on various grounds. Mr. Angel's complaint in this case also contains allegations concerning the Third Amendment to the Treasury and FHFA agreements that are the subject of the *Fairholme* Federal Circuit appeal.

In its opinion in *Fairholme*, a unanimous Federal Circuit panel issued guidance that is highly relevant to the issues in this case and will, absent modification pursuant to any further review, bind this Court. Indeed, the Federal Circuit's decision in *Fairholme* effectively forecloses Mr. Angel's claims. We anticipate that, when and if proceedings in this case resume, we will again seek dismissal of Mr. Angel's complaint based on the Federal Circuit's decision in *Fairholme*, among other reasons, including those previously explained in our earlier motion to dismiss in this case, ECF No. 7.

In his section of this joint report, above, plaintiff Mr. Angel suggests the existence of a stipulation and settlement agreement. No such agreement is in place, nor are the parties currently exploring settlement. To be clear, the United States has not agreed to any stipulation with Mr. Angel. Moreover, the United States has not agreed to settle this case, under the terms Mr. Angel describes above or under any other terms.

Accordingly, to conserve judicial and party resources, the Court should continue to stay this case until the Federal Circuit's decision in *Fairholme* becomes final and non-appealable. Unless modified, the Federal Circuit's decision in *Fairholme* will bind the Court in this case. Even in the event of modification, any such changes will significantly impact proceedings in this case. A stay also reduces the risk that rulings by this Court may require revision in light of final resolution of the *Fairholme* appeal.

Moreover, there are 11 other cases pending in this Court, including *Fairholme* itself, that are stayed until the decision in the *Fairholme* appeal becomes final and non-appealable. *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl.); *Fisher v. United States*, No. 13-605C (Fed. Cl.) (lead case); *Shipmon v. United States*, No. 13-672C (Fed. Cl.) (consolidated under *Fisher*); *Reid v. United States*, No. 14-152C (Fed. Cl.); *Rafter v. United States*, No. 14-740C (Fed. Cl.); *638 Capital Partners, LP v. United States*, No. 18-711C (Fed. Cl.); *Patt v. United States*, No. 18-712C (Fed. Cl.); *Wazee St. Opportunities Fund IV LP v. United States*, No. 18-1124C (Fed. Cl.); *CRS Master Fund, L.P. v. United States*, No. 18-1155C (Fed. Cl.); *Perry Capital LLC v. United States*, No. 18-1226C (Fed. Cl.); *Quinn Opportunities Master LP. v. United States*, No. 18-1240C (Fed. Cl.). In addition, another similar case, *Kelly v. United States*, No. 21-1949C (Fed. Cl.), is stayed until the decision in another, companion appeal, *Washington Federal v. United States*, No. 20-2190 (Fed. Cir.), becomes final and non-appealable. *See Washington Fed. v. United States*, -- F.4th ---, 2022 WL 517755 (Fed. Cir. 2022). The United States can discern no benefit to moving forward with this case while 12 other similar cases continue to be stayed, with no filings, including status reports, due until after the decision in these appeals become final and non-appealable. Instead, it serves the interests of the parties and the Court to continue to maintain these similar cases on a similar schedule.

In the event that the Court continues the stay, the United States respectfully proposes that, within 30 days of the date the Federal Circuit's decision in *Fairholme* becomes final and non-appealable, the parties submit a joint status report proposing a schedule for further proceedings in this case.

Respectfully submitted,

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