

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

DEFENDANT’S SUPPLEMENTAL MOTION TO DISMISS

Pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests that the Court dismiss the claims of plaintiffs Fairholme Funds, Inc., the Fairholme Fund (collectively the Fairholme hedge funds), and all other plaintiffs who did not own shares in Fannie Mae or Freddie Mac (the Enterprises)¹ on August 17, 2012, the date of the alleged Fifth Amendment taking in this case. These plaintiffs lack Article III standing to maintain their takings claim because they did not own the property alleged to have been taken until many months after the alleged taking occurred.

INTRODUCTION AND BACKGROUND

In this case, Fairholme alleges that the August 17, 2012 amendment (known as the Third Amendment) to financing agreements between the Federal Housing Finance Agency (FHFA) and the Department of the Treasury (Treasury) effected a taking of Fairholme’s rights as shareholders in Fannie Mae and Freddie Mac. *See, e.g.*, Compl. ¶¶ 11, 14, 63, 72, 79, 83, 86. In its complaint, however, Fairholme omits the key fact that the Fairholme hedge funds and several other opportunistic plaintiffs were not even shareholders in the Enterprises on the date of the

¹ Fannie Mae and Freddie Mac are the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

alleged taking; rather, these plaintiffs purchased their shares in the Enterprises between May and October 2013, long after the purported taking. This undisputed fact, admitted in plaintiffs' interrogatory responses, is fatal to the ability of these plaintiffs to maintain their suit.

FHFA placed Fannie Mae and Freddie Mac into conservatorships in September 2008 and, acting as conservator, entered into agreements with Treasury to make hundreds of billions of dollars available to save the Enterprises. To maintain their solvency, the Enterprises requested and received \$187 billion in taxpayer dollars from Treasury between 2008 and 2012. *Id.* at ¶ 7. On August 17, 2012, FHFA and Treasury entered into the Third Amendment to the agreements. *Id.* at ¶ 64. The Third Amendment, among other things, modified the terms of the dividend Treasury receives on its investment in the Enterprises. *Id.*

According to the complaint, the Third Amendment's modified dividend provision "expropriated" plaintiffs' property interest in its in Fannie Mae and Freddie Mac stock. Compl. ¶ 63.² That contention is squarely at odds with the Fairholme hedge funds' and other plaintiffs' admissions, in a May 7, 2014 response to a Government interrogatory, that they purchased all of their stock in the Enterprises between May 2013 and October 2013, over eight months *after* the alleged August 17, 2012 taking. Exhibits A and B. Because these plaintiffs did not possess any shares or shareholder rights at the time of the alleged taking, they lack standing to maintain suit, and the Court should dismiss their claims as a matter of law.³

² See also Compl. ¶ 17 (August 2012 amendment "expropriate[d] the value of Fairholme's Preferred Stock"); ¶ 34 (identifying Fairholme's property as Preferred Stock issued by the Companies); ¶ 79 ("imposition of the Net Worth Sweep deprived Plaintiffs of their vested property rights by . . . expropriating . . . the entire preferred stockholders' equity in Fannie and Freddie"); ¶ 83 (the August 2012 modification "effectively confiscate[d] the Preferred Stock held by the Plaintiffs").

³ Based on plaintiffs' responses to the Government's interrogatory, this motion relates to all plaintiffs except Berkley Insurance Company.

ARGUMENT

“Standing is a threshold jurisdictional issue that implicates Article III of the Constitution.” *Hoopa Valley Tribe v. United States*, 597 F.3d 1278, 1283 (Fed. Cir. 2010); *First Annapolis Bancorp, Inc. v. United States*, 644 F.3d 1367, 1373 (Fed. Cir. 2011); *S. Cal. Fed. Sav. & Loan Ass’n v. United States*, 422 F.3d 1319, 1328 (Fed. Cir. 2005); *see also Allen v. Wright*, 468 U.S. 737, 750 (1984) (describing standing as the “most important” of Article III’s jurisdictional doctrines). “Because Article III standing implicates the court’s constitutional authority to adjudicate disputes, it can be neither waived nor assumed” *Willis v. Gov’t Accountability Office*, 448 F.3d 1341, 1343-44 (Fed. Cir. 2006) (citations omitted). A party invoking Federal jurisdiction must establish standing by showing that it has suffered a concrete and particularized “injury in fact” that is “actual or imminent, not conjectural or hypothetical,” and fairly traceable to the defendant’s challenged conduct. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

To establish standing, plaintiffs bear the burden to establish, among other things, ownership of the property at issue at the time of the alleged taking. *See Maniere v. United States*, 31 Fed. Cl. 410, 420 (1994) (“plaintiff must demonstrate ownership of the property at the time of the taking”). “It is well established that ‘only persons with a valid property interest at the time of the taking are entitled to compensation.’” *CRV Enters., Inc. v. United States*, 626 F.3d 1241, 1249 (Fed. Cir. 2010) (quoting *Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001)); *United States v. Dow*, 357 U.S. 17, 20 (1958). Conversely, “owners who acquired their property interests subsequent to the time of the taking are not entitled to compensation from the government.” *Banks v. United States*, 88 Fed. Cl. 665, 674 (2009). Indeed, this Court held in

Maniere, 31 Fed. Cl. at 420, that purchasers of stock after the date of the alleged taking lack standing to bring a takings claim. *See also Textainer Equip. Mgmt. Ltd. v. United States*, No. 08-610C, 2014 WL 1603736, *5 (Fed. Cl. Apr. 22, 2014) (“[O]ne party cannot simply step into the shoes of another when seeking just compensation for property belonging to another on the date of the taking.”).

The property at issue in this case is shares of Fannie Mae and Freddie Mac stock owned by plaintiffs, and the alleged rights plaintiffs possess as shareholders. Compl. ¶¶ 76-79. The Fairholme hedge funds and other plaintiffs allege that the Government took their shares and shareholder rights on August 17, 2012, when Treasury and FHFA entered into the Third Amendment. Compl. ¶¶ 6, 10, 17, 63, 83. These plaintiffs, however, have admitted in responses to a Government interrogatory, that they did not own any shares in the Enterprises until May 2013 – more than eight months *after* the execution of the Third Amendment. Exhibits A and B. The Fairholme hedge funds, for example, acquired all of their shares between May and October 2013. *Id.* It is undeniable that the Fairholme hedge funds and other plaintiffs possessed no shareholder rights (or any other conceivable property interest in the Enterprises) before they became shareholders. Consequently, these plaintiffs’ takings claims cannot succeed as a matter of law.

The Government could not have taken property from the hedge funds and other plaintiffs more than eight months *before* these plaintiffs purchased the property allegedly taken. Thus, these plaintiffs, like the *Maniere* plaintiffs who purchased stock after the date of the alleged taking of the stock, lack standing to sue, and the Court must dismiss their claims from this case.

CONCLUSION

For the reasons described above, we respectfully request that the Court dismiss the Fairholme hedge funds, along with all other plaintiffs who did not own stock in Fannie Mae or Freddie Mac on the date of the Third Amendment, from this case.

Respectfully submitted,

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s/ Robert E. Kirschman, Jr.
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June 8, 2015

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

**FAIRHOLME FUNDS INC. AND THE FAIRHOLME FUND’S ANSWER TO
DEFENDANT’S FIRST INTERROGATORY**

Interrogatory No. 1: Identify all shares of stock in the Enterprises owned by plaintiffs at any time. For each share identified, describe in detail the following information:

- The parties to the transaction in which the share was acquired;
- A description of the share including the type or class of share;
- The date of acquisition;
- The terms of the acquisition including the purchase price; and
- All post-acquisition transactions related to the share.

Response: Fairholme Funds, Inc. and the Fairholme Fund (“Fairholme Plaintiffs”) reassert their objections of April 21, 2014, and the response to this interrogatory is not a waiver of those objections. Except where indicated, the Fairholme Plaintiffs do not know the identities of the counter-parties to the listed transactions. Additionally, because the transactions listed below occurred electronically, the Fairholme Plaintiffs could not identify an address or location for the listed transactions. Plaintiffs have provided only the information that could be obtained through a reasonable investigation. Thus, they have not included the identity and actions of every person involved in the listed transactions.

The Fairholme Fund – Fannie Preferred

Security	Trade Date	Activity	Quantity	Price
fnmao	6/4/2013	Purchase	256,000	11.60

fnmah	5/8/2013	Purchase	300,000	4.10
fnmah	5/15/2013	Purchase	3,163,097	4.84
fnmah	6/7/2013	Purchase	95,000	4.60

fnmai	5/15/2013	Purchase	1,250,000	4.84
fnmai	6/7/2013	Purchase	70,000	4.60
fnmai	6/7/2013	Purchase	237,500	4.50

fnmfn	5/14/2013	Purchase	1,700,000	9.08
fnmfn	5/14/2013	Purchase	1,000,000	8.98
fnmfn	6/20/2013	Purchase	1,000,000	8.50
fnmfn	7/2/2013	Purchase	151,900	8.00
fnmfn	7/15/2013	Purchase	275,000	8.00
fnmfn	8/14/2013	Purchase	1,045,443	7.27

fnmaj	5/14/2013	Purchase	1,500,000	4.75
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fnmas	5/2/2013	Purchase	100,000	4.40
fnmas	5/3/2013	Purchase	350,000	4.54
fnmas	5/6/2013	Purchase	2,334,000	4.60
fnmas	5/7/2013	Purchase	1,000,000	4.60
fnmas	5/7/2013	Purchase	8,663,766	4.60
fnmas	5/8/2013	Purchase	15,075,000	4.65
fnmas	5/14/2013	Purchase	9,851,000	5.10
fnmas	5/21/2013	Purchase	1,549,000	4.92
fnmas	5/21/2013	Purchase	1,067,953	4.85
fnmas	5/22/2013	Purchase	850,000	4.86
fnmas	6/4/2013	Purchase	1,900,000	6.33
fnmas	6/25/2013	Purchase	2,000,000	4.85
fnmas	6/25/2013	Purchase	2,678,300	4.92
fnmas	8/5/2013	Purchase	1,158,500	5.15
fnmas	8/5/2013	Purchase	400,000	5.10
fnmas	8/6/2013	Purchase	1,000,000	4.97
fnmas	8/13/2013	Purchase	500,000	4.71

The Fairholme Fund – Fannie Common

Trade Date	Activity	Quantity	Price
5/8/2013	Purchase	50,000	0.89
5/9/2013	Purchase	950,000	0.93
5/10/2013	Purchase	1,542,000	0.87
5/22/2013	Purchase	2,000,000	1.77
5/23/2013	Purchase	1,500,000	2.07
5/30/2013	Purchase	1,000,000	1.63
6/5/2013	Sale	(1,500,000)	1.92
6/5/2013	Sale	(2,000,000)	1.92
6/5/2013	Sale	(512,300)	1.92
6/6/2013	Sale	(487,700)	1.86
6/6/2013	Sale	(950,000)	1.86
6/6/2013	Sale	(50,000)	1.86
6/6/2013	Sale	(1,542,000)	1.86
9/30/2013	Purchase	1,898,200	1.29
10/1/2013	Purchase	3,628,700	1.36
10/2/2013	Purchase	6,515,600	1.46
10/3/2013	Purchase	2,259,000	1.55
10/4/2013	Purchase	699,000	1.48
10/7/2013	Purchase	1,304,600	1.54
10/8/2013	Purchase	5,000,000	1.61
11/26/2013	Sale	(819,800)	2.76
3/11/2014	Sale ¹	(6,828,000)	4.03

The Fairholme Fund – Freddie Preferred

Security	Trade Date	Activity	Quantity	Price
fmccm	6/4/2013	Purchase	1,614,250	11.60

fmcci	6/4/2013	Purchase	1,308,929	11.60
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fmcccl	6/4/2013	Purchase	519,142	11.60
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fmckk	5/8/2013	Purchase	200,000	8.12
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fmcch	5/8/2013	Purchase	334,600	8.20
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fmcch	7/24/2013	Purchase	560,000	8.05
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fmckm	5/23/2013	Purchase	2,000,000	5.00
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¹ The Fairholme Fund sold 3,242,468 shares to Icahn Partners LP; 2,219,932 shares to Icahn Partners Master Fund LP; and 1,365,600 shares to High River Limited Partnership.

fmckm	5/28/2013	Purchase	2,966,575	5.85
fmckm	8/22/2013	Purchase	164,000	3.53
fmckm	9/10/2013	Purchase	620,000	4.55

fmckn	5/21/2013	Purchase	437,340	4.27
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fmcko	5/8/2013	Purchase	250,000	4.10
fmcko	8/22/2013	Purchase	200,000	3.53

fmcki	5/28/2013	Purchase	1,535,000	5.75
fmcki	5/31/2013	Purchase	335,000	5.18
fmcki	6/4/2013	Purchase	228,100	5.31
fmcki	6/7/2013	Purchase	285,000	4.50

fmckj	5/1/2013	Purchase	1,000,000	4.55
fmckj	5/6/2013	Purchase	1,500,000	4.60
fmckj	5/7/2013	Purchase	250,000	4.60
fmckj	5/8/2013	Purchase	5,000,000	4.70
fmckj	5/20/2013	Purchase	5,000,000	4.90
fmckj	5/21/2013	Purchase	5,936,000	4.96
fmckj	5/21/2013	Purchase	2,606,000	4.92
fmckj	5/21/2013	Purchase	2,702,000	4.85
fmckj	5/22/2013	Purchase	5,830,000	4.86
fmckj	6/4/2013	Purchase	1,900,000	6.33
fmckj	6/4/2013	Purchase	546,200	6.30
fmckj	8/5/2013	Purchase	453,300	5.15
fmckj	8/6/2013	Purchase	750,000	4.95
fmckj	8/13/2013	Purchase	500,000	4.71

The Fairholme Fund – Freddie Common

Trade Date	Activity	Quantity	Price
5/8/2013	Purchase	50,000	0.90
5/9/2013	Purchase	950,000	0.91
5/10/2013	Purchase	1,517,800	0.84
5/22/2013	Purchase	2,000,000	1.61
5/23/2013	Purchase	1,500,000	1.96
5/30/2013	Purchase	1,000,000	1.62
5/31/2013	Purchase	200,400	1.30
6/5/2013	Sale	(273,000)	1.80
6/6/2013	Sale	(1,227,000)	1.79
6/6/2013	Sale	(665,800)	1.79

6/7/2013	Sale	(334,200)	1.90
6/7/2013	Sale	(1,587,000)	1.90
6/10/2013	Sale	(413,000)	1.79
6/10/2013	Sale	(200,400)	1.79
6/10/2013	Sale	(950,000)	1.79
6/10/2013	Sale	(50,000)	1.79
6/10/2013	Sale	(152,800)	1.79
6/11/2013	Sale	(833,200)	1.85
6/12/2013	Sale	(531,800)	1.81
9/30/2013	Purchase	1,279,000	1.25
10/1/2013	Purchase	2,267,000	1.31
10/2/2013	Purchase	2,696,500	1.37
10/3/2013	Purchase	870,800	1.45
10/4/2013	Purchase	251,700	1.41
10/7/2013	Purchase	597,400	1.44
10/8/2013	Purchase	2,975,100	1.51
10/9/2013	Purchase	2,710,000	1.55
10/10/2013	Purchase	7,000	1.48
10/11/2013	Purchase	64,300	1.54
10/15/2013	Purchase	628,000	1.55
10/16/2013	Purchase	966,400	1.53
10/17/2013	Purchase	789,400	1.49
10/18/2013	Purchase	169,200	1.46
10/21/2013	Purchase	380,800	1.55
10/22/2013	Purchase	753,600	1.63
10/23/2013	Purchase	222,300	1.84
11/26/2013	Sale	(222,300)	2.52
11/26/2013	Sale	(180,600)	2.52
3/11/2014	Sale ²	(5,742,000)	4.04

² The Fairholme Fund sold 2,726,750 shares to Icahn Partners LP; 1,866,850 shares to Icahn Partners Master Fund LP; and 1,148,400 shares to High River Limited Partnership.

Date: May 7, 2014

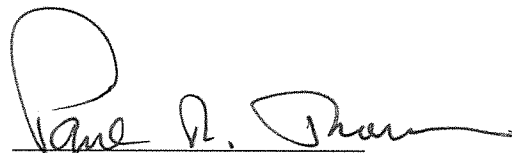
Respectfully submitted,

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VERIFICATION

I state under penalty of perjury that the information contained in the foregoing response has been collected and the response prepared with the advice and assistance of counsel, and that, subject to any inadvertent or undiscovered errors, and based on the records and information still in existence and thus far discovered, the response is true and correct to the best of my knowledge, recollections, and belief based upon the information known or made available to me.

A handwritten signature in black ink, appearing to read "Paul R. Thomson", written over a horizontal line.

Paul R. Thomson

May 6, 2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, Inc., <i>et al.</i> ,)	
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Plaintiffs,)	
)	No. 13-465C
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THE UNITED STATES,)	
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BERKLEY PLAINTIFFS’ ANSWER TO DEFENDANT’S FIRST INTERROGATORY

Interrogatory No. 1: Identify all shares of stock in the Enterprises owned by plaintiffs at any time. For each share identified, describe in detail the following information:

- The parties to the transaction in which the share was acquired;
- A description of the share including the type or class of share;
- The date of acquisition;
- The terms of the acquisition including the purchase price; and
- All post-acquisition transactions related to the share.

Response:

Berkley Insurance Co., Acadia Insurance Co., Admiral Indemnity Co., Admiral Insurance Co., Berkley Regional Insurance Co., Carolina Casualty Insurance Co., Continental Western Insurance Co., Midwest Employers Casualty Insurance Co., Nautilus Insurance Co., and Preferred Employers Insurance Co (“Berkley Plaintiffs”) reassert their objections of April 21, 2014, and the response to this interrogatory is not a waiver of those objections. Except as indicated below, the Berkley Plaintiffs purchased their shares through various brokers and do not know the identities of the counter-parties from whom they acquired their shares. Additionally, because the transactions listed below were conducted through various brokers, the Berkley

Plaintiffs could not identify an address or location for the listed transactions. The Berkley Plaintiffs have provided only the information that could be obtained through a reasonable investigation. Thus, they have not included the identity and actions of every person involved in the listed transactions.

Acadia Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
8/22/2007	Purchase	25,000.00	50.13
9/7/2007	Purchase	25,000.00	50.45
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15

Admiral Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
10/2/2006	Purchase	50,000.00	51.65
1/10/2007	Purchase	25,000.00	52.10
5/21/2007	Purchase	40,000.00	52.75
8/22/2007	Purchase	40,000.00	50.13
11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(40,000.00)	1.15
11/14/2008	Sale	(40,000.00)	1.15
12/22/2009	Purchase	225,000.00	1.20
5/31/2011	Sale	(94,500.00)	5.12
6/2/2011	Sale	(130,500.00)	5.00

Admiral Insurance Co. – Fannie Series O (fnmfn)

Trade Date	Activity	Quantity	Price
1/11/2005	Purchase	30,000.00	56.13
1/12/2005	Purchase	10,000.00	56.13
1/14/2005	Purchase	30,000.00	56.65
1/20/2005	Purchase	130,000.00	56.75
1/20/2005	Purchase	50,000.00	56.70
1/25/2005	Purchase	50,000.00	56.65
10/16/2006	Purchase	25,000.00	54.00
9/25/2007	Sale	(10,000.00)	52.65
9/25/2007	Sale	(10,000.00)	52.65
9/25/2007	Sale	(20,000.00)	52.65
9/25/2007	Sale	(30,000.00)	52.65
9/25/2007	Sale	(30,000.00)	52.65

10/3/2008	Purchase	50,000.00	3.40
12/30/2008	Purchase	20,000.00	0.80
12/22/2009	Sale	(25,000.00)	1.20
12/22/2009	Sale	(20,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(130,000.00)	1.20
5/26/2011	Sale	(50,000.00)	4.75
5/26/2011	Sale	(20,000.00)	4.75

Admiral Indemnity Co. -- Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
7/30/2007	Purchase	25,000.00	50.60
8/22/2007	Purchase	20,000.00	50.55
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(20,000.00)	1.15

Berkley Insurance Co. -- Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
7/12/2006	Purchase	100,000.00	50.00
1/10/2007	Purchase	50,000.00	52.10
7/30/2007	Purchase	100,000.00	50.60
8/1/2007	Purchase	79,500.00	50.60
9/7/2007	Purchase	25,000.00	50.30
11/14/2008	Sale	(100,000.00)	1.15
11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(100,000.00)	1.15
11/14/2008	Sale	(79,500.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15
12/22/2009	Purchase	450,000.00	1.20
6/2/2011	Sale	(119,500.00)	5.00
1/1/2013	Purchase ¹	100,000.00	1.20
1/1/2013	Purchase ²	155,000.00	1.20
1/1/2013	Purchase ³	170,000.00	1.20
7/10/2013	Sale ⁴	(1,000.00)	8.34

¹ These shares were acquired from Plaintiff Berkley Regional Insurance Co., which is owned by the W.R. Berkley Corporation.

² These shares were acquired from Plaintiff Carolina Casualty Insurance Co., which is owned by the W.R. Berkley Corporation.

³ These shares were acquired from Plaintiff Nautilus Insurance Co., which is owned by the W.R. Berkley Corporation.

⁴ These shares were sold to Plaintiff Continental Western Insurance Co., which is owned by the W.R. Berkley Corporation.

Berkley Insurance Co. – Fannie Series O (fnmfn)

Trade Date	Activity	Quantity	Price
1/11/2005	Purchase	30,000.00	56.13
1/11/2005	Purchase	50,000.00	56.13
1/14/2005	Purchase	30,000.00	56.65
1/20/2005	Purchase	50,000.00	56.70
1/20/2005	Purchase	140,000.00	56.70
1/25/2005	Purchase	50,000.00	56.65
6/28/2006	Purchase	50,000.00	54.00
10/16/2006	Purchase	50,000.00	54.00
10/28/2008	Purchase	125,000.00	2.95
11/14/2008	Purchase	600,000.00	2.15
12/22/2008	Purchase	750,000.00	0.85
12/30/2008	Purchase	40,000.00	0.80
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(140,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
5/23/2013	Sale	(1,500.00)	8.45
5/24/2013	Sale	(123,500.00)	10.20
5/24/2013	Sale	(76,500.00)	10.20
5/28/2013	Sale	(100,000.00)	11.62
6/4/2013	Sale	(100,000.00)	11.20
7/10/2013	Sale ⁵	(1,000.00)	8.48
10/22/2013	Purchase	25,000.00	10.25
10/23/2013	Purchase	13,500.00	10.65
10/24/2013	Purchase	500,000.00	11.98
11/5/2013	Purchase	1,000.00	12.92
11/7/2013	Purchase	100,000.00	14.95
1/1/2013	Purchase ⁶	1,043,000	1.54
1/1/2013	Purchase ⁷	125,538	1.85
2/21/2014	Purchase	255,000.00	18.00

⁵ These shares were sold to Plaintiff Continental Western Insurance Co.

⁶ These shares were acquired from Plaintiff Berkley Regional Insurance Co.

⁷ These shares were acquired from Plaintiff Nautilus Insurance Co.

2/21/2014	Purchase	275,000.00	18.10
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Berkley Regional Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
7/12/2006	Purchase	50,000.00	50.00
3/27/2007	Purchase	40,000.00	52.55
8/22/2007	Purchase	60,000.00	50.13
11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(40,000.00)	1.15
11/14/2008	Sale	(60,000.00)	1.15
12/22/2009	Purchase	100,000.00	1.20
1/1/2013	Sale ⁸	(100,000.00)	1.20

Berkley Regional Insurance Co. – Fannie Series O (fmmfn)

Trade Date	Activity	Quantity	Price
1/11/2005	Purchase	20,000.00	56.13
1/14/2005	Purchase	20,000.00	56.65
1/20/2005	Purchase	60,000.00	56.70
1/25/2005	Purchase	30,000.00	56.65
10/16/2006	Purchase	25,000.00	54.00
5/2/2007	Purchase	45,000.00	53.60
9/25/2007	Sale	(20,000.00)	(52.65)
9/25/2007	Sale	(20,000.00)	(52.65)
9/25/2007	Sale	(60,000.00)	(52.65)
10/2/2008	Purchase	200,000.00	3.30
11/14/2008	Purchase	600,000.00	2.15
12/4/2008	Purchase	233,000.00	1.10
12/30/2008	Purchase	10,000.00	0.80
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(25,000.00)	1.20
12/22/2009	Sale	(45,000.00)	1.20
1/1/2013	Sale ⁹	(1,043,000)	1.54

Carolina Casualty Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
10/2/2006	Purchase	50,000.00	51.65
8/22/2007	Purchase	50,000.00	50.13
9/7/2007	Purchase	50,000.00	50.45

⁸ These shares were sold to Plaintiff Berkley Insurance Co., which is owned by the W.R. Berkley Corporation.

⁹ These shares were sold to Plaintiff Berkley Insurance Co.

11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(50,000.00)	1.15
12/22/2009	Purchase	155,000.00	1.20
1/1/2013	Sale ¹⁰	(155,000.00)	1.20

Carolina Casualty Insurance Co. – Fannie Series O (fnmfn)

Trade Date	Activity	Quantity	Price
1/11/2005	Purchase	30,000.00	56.13
1/14/2005	Purchase	10,000.00	56.65
1/25/2005	Purchase	40,000.00	56.65
5/2/2007	Purchase	25,000.00	53.60
9/7/2007	Purchase	50,000.00	53.50
10/2/2008	Purchase	100,000.00	3.30
12/30/2008	Purchase	10,000.00	0.80
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(10,000.00)	1.20
12/22/2009	Sale	(40,000.00)	1.20
12/22/2009	Sale	(25,000.00)	1.20
12/22/2009	Sale	(50,000.00)	1.20
5/26/2011	Sale	(100,000.00)	4.75
5/26/2011	Sale	(10,000.00)	4.75

Continental Western Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
7/30/2007	Purchase	25,000.00	50.60
8/22/2007	Purchase	25,000.00	50.13
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15
7/10/2013	Purchase ¹¹	1,000.00	8.34

Continental Western Insurance Co. – Fannie Series O (fnmfn)

Trade Date	Activity	Quantity	Price
7/10/2013	Purchase ¹²	1,000.00	8.48

Midwest Employers Casualty Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
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¹⁰ These shares were sold to Plaintiff Berkley Insurance Co.

¹¹ These shares were acquired from Plaintiff Berkley Insurance Co.

¹² These shares were acquired from Plaintiff Berkley Insurance Co.

7/30/2007	Purchase	25,000.00	50.60
11/14/2008	Sale	(25,000.00)	1.15

Nautilus Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
7/12/2006	Purchase	50,000.00	50.00
1/10/2007	Purchase	25,000.00	52.10
7/30/2007	Purchase	25,000.00	50.60
8/22/2007	Purchase	50,000.00	50.13
11/14/2008	Sale	(50,000.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(25,000.00)	1.15
11/14/2008	Sale	(50,000.00)	1.15
12/22/2009	Purchase	170,000.00	1.20
1/1/2013	Sale ¹³	(170,000.00)	1.20

Nautilus Insurance Co. – Fannie Series O (fnmfn)

Trade Date	Activity	Quantity	Price
1/11/2005	Purchase	30,000.00	56.13
1/14/2005	Purchase	10,000.00	56.65
1/20/2005	Purchase	70,000.00	56.75
1/25/2005	Purchase	30,000.00	56.65
6/28/2006	Purchase	30,000.00	54.00
5/2/2007	Purchase	25,000.00	53.60
9/7/2007	Purchase	10,538.00	53.50
10/3/2008	Purchase	50,000.00	3.40
10/23/2008	Purchase	60,000.00	3.00
11/14/2008	Purchase	300,000.00	2.15
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(10,000.00)	1.20
12/22/2009	Sale	(70,000.00)	1.20
12/22/2009	Sale	(30,000.00)	1.20
12/22/2009	Sale	(30,000.00)	1.20
5/26/2011	Sale	(25,000.00)	4.75
5/26/2011	Sale	(10,538.00)	4.75
5/26/2011	Sale	(50,000.00)	4.75
5/26/2011	Sale	(60,000.00)	4.75
5/26/2011	Sale	(174,462.00)	4.75
1/1/2013	Sale ¹⁴	(125,538)	1.85

¹³ These shares were sold to Plaintiff Berkley Insurance Co.

¹⁴ These shares were sold to Plaintiff Berkley Insurance Co.

Preferred Employers Insurance Co. – Freddie Series S (fmccs)

Trade Date	Activity	Quantity	Price
9/7/2007	Purchase	25,000.00	50.45
11/14/2008	Sale	(25,000.00)	1.15

Date: May 7, 2014

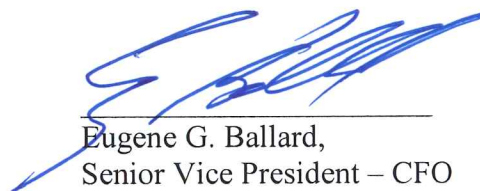
Respectfully submitted,

/s/ Charles J. Cooper
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VERIFICATION

I state under penalty of perjury that the information contained in the foregoing response has been collected and the response prepared with the advice and assistance of counsel, and that, subject to any inadvertent or undiscovered errors, and based on the records and information still in existence and thus far discovered, the response is true and correct to the best of my knowledge, recollections, and belief based upon the information known or made available to me.



Eugene G. Ballard,
Senior Vice President – CFO
W. R. Berkley Corporation
May 7, 2014