

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

In re UNITED STATES OF AMERICA,

Petitioner.

No. 2017-104

(Fed. Cl. No. 13-465C)

**OPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMIT FOR
RESPONSE TO MANDAMUS PETITION**

Respondents Fairholme Funds, Inc. et al. (“Plaintiffs”) respectfully move for leave to file a response to the United States’ mandamus petition of no more than 14,000 words, excluding those portions of Plaintiffs’ brief that do not count toward the word limit under FRAP 32(a)(7). Plaintiffs are concurrently submitting their proposed brief with this motion. Plaintiffs consulted counsel for the United States, and the United States opposes this motion and intends to file a response.

On October 27, 2016, this Court directed Plaintiffs to respond to the United States’ mandamus petition. Although FRAP 21(d) normally limits such responses to 30 pages, several reasons justify expanding that limitation in this case.

First, the Government’s mandamus petition asks this Court to overturn in its entirety an 80-page opinion in which the Court of Federal Claims concluded, following *in camera* review of 56 documents, that Plaintiffs’ need for those documents outweighed the Government’s interest in shielding them under the

qualified deliberative process, presidential communications, and bank examination privileges. To the extent the Court undertakes a reweighing of the parties' competing interests—an approach that Plaintiffs do not believe is appropriate but that the Government advocates—doing so will require a detailed understanding of the nature of Plaintiffs' claims, the Government's conduct in this and related litigation, and the materials that the Government has already produced in this case.

Second, although the Government's petition addresses only the reasoning of the trial court, Plaintiffs' response not only defends the trial court's reasoning but also offers several alternative grounds on which the petition should be denied in whole or in part. Fully responding to the arguments raised in the petition while presenting these alternative grounds for denial requires additional pages of briefing.

Third, in addition to filing a mandamus petition, the Government also appealed from the trial court's interlocutory discovery order. *See Fairholme Funds, Inc. v. United States*, No. 17-1122 (Fed. Cir.). Plaintiffs propose to address issues raised in both of these parallel proceedings in a brief of no greater length than this Court's rules allow for principal briefs in ordinary appeals.

For these reasons, Plaintiffs respectfully request that the Court authorize the filing of the brief they are submitting concurrently with this motion. To the extent that Plaintiffs' motion is granted, they will not oppose the Government filing a reply brief of not more than 7,000 words.

Date: November 3, 2016

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re United States v. _____

Case No. 17-104

CERTIFICATE OF INTEREST

Counsel for the:

(petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Fairholme Funds, Inc., et al. (see attachment)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10 % or more of stock in the party
Fairholme Funds, Inc.	None	None
The Fairholme Fund	Fairholme Funds, Inc.	None
Acadia Insurance Company	None	W.R. Berkley Corporation
Admiral Indemnity Company	None	W.R. Berkley Corporation
Admiral Insurance Company	None	W.R. Berkley Corporation
Berkley Insurance Company	None	W.R. Berkley Corporation
(see attachment for additional parties)		

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (**and who have not or will not enter an appearance in this case**) are:

Nov 3, 2016

Date

/s/ Charles J. Cooper

Signature of counsel

Please Note: All questions must be answered

Charles J. Cooper

Printed name of counsel

cc: _____

Reset Fields

Certificate of Interest – Additional Parties

Name of Parties, continued:

The Fairholme Fund, Acadia Insurance Company, Admiral Indemnity Company, Admiral Insurance Company, Berkley Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Continental Western Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, and Preferred Employers Insurance Company

1. Full Name of Party Represented by me	2. Name of Real Party in interest represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Berkley Regional Insurance Company	None	W.R. Berkley Corporation
Carolina Casualty Insurance Company	None	W.R. Berkley Corporation
Continental Western Insurance Company	None	W.R. Berkley Corporation
Midwest Employers Casualty Insurance Company	None	W.R. Berkley Corporation
Nautilus Insurance Company	None	W.R. Berkley Corporation
Preferred Employers Insurance Company	None	W.R. Berkley Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2016, I caused a copy of the foregoing Motion for Leave to Exceed Page Limit to be filed electronically via the Court's CM/ECF system. This filing was served electronically to Petitioner the United States by the Court's electronic filing system. Service was accomplished on the following by First Class U.S. Mail:

Michael Sammons
15706 Seekers St.
San Antonio, TX 78255

/s/ Charles J. Cooper
Charles J. Cooper