

**BEFORE THE UNITED STATES JUDICIAL
PANEL ON MULTIDISTRICT LITIGATION**

IN RE: FEDERAL HOUSING FINANCE
AGENCY, ET AL., PREFERRED STOCK
PURCHASE AGREEMENT THIRD
AMENDMENT LITIGATION

MDL Docket No. 2713

**RESPONSE OF PLAINTIFFS CHRISTOPHER ROBERTS AND THOMAS P. FISCHER
IN OPPOSITION TO THE MOTION FOR TRANSFER OF ACTIONS
TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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Plaintiffs Christopher Roberts and Thomas P. Fischer respectfully submit this response in opposition to the Federal Housing Finance Agency's Motion for Transfer (Mar. 15, 2016).

INTRODUCTION

Like the plaintiffs in the actions the Federal Housing Finance Agency (FHFA) has designated as related ("related actions"), Plaintiffs Roberts and Fischer challenge actions by the FHFA and the Department of Treasury ("Treasury") (collectively, the "Agencies") that eliminated their rights as shareholders of the Federal National Mortgage Association ("Fannie") and the Federal Home Loan Mortgage Corporation ("Freddie") (collectively, the "Companies"). Specifically, Plaintiffs challenge the Agencies' amendment to the Companies' Preferred Stock Purchase Agreements ("PSPAs"), which allowed Treasury to take all of the Companies' quarterly profits, less a small and decreasing capital reserve. The adoption of this "Net Worth Sweep" and other actions extinguished Plaintiffs' economic interest in the Companies.

FHFA now moves to transfer several actions instituted as a result of the Net Worth Sweep to the U.S. District Court for the District of Columbia—a district in which no related action is currently pending, but one in which the court has already ruled favorably for the Agencies on a threshold legal issue. The Panel should reject this attempt to preordain the outcomes of the related actions.

ARGUMENT

For the reasons given in Plaintiff Robinson's response in opposition to FHFA's motion, which Plaintiffs Roberts and Fischer join and adopt herein, FHFA has failed to carry its burden to show that the statutory objectives set forth in 28 U.S.C. § 1407 would be furthered by consolidation. The Panel should therefore deny the motion.

Transfer of the action pending in the Northern District of Illinois is especially improper because it challenges agency actions that are not challenged in the other related actions.

Specifically, in addition to challenging the Net Worth Sweep, Plaintiffs challenge:

- FHFA’s decision to pay Treasury cash, rather than in-kind, dividends. *See* Compl. ¶¶ 11, 14, 58, 132, *Roberts v. FHFA*, No. 16-2107 (N.D. Ill. Feb. 10, 2016), Doc. 1 (“Compl.”).
- Provisions of the PSPAs granting Treasury substantial control over FHFA’s operation of the conservatorships. Compl. ¶¶ 12, 21, 63, 105, 123, 144.
- Treasury’s standby commitment to acquire new equity in the Companies despite the expiration of its authority to acquire the Companies’ stock. Compl. ¶¶ 19, 22, 52–53, 145.

Accordingly, Plaintiffs seek relief in addition to the relief sought in the related actions. Plaintiffs seek broader declaratory and injunctive relief covering “additional provisions of the PSPAs and Treasury’s securities [that] are not in accordance with and violate” the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654.¹ *See* Compl. ¶ 158(f)–(i).

The Panel has recognized that centralization is improper when challenges to agency action will be resolved on different administrative records. *See In re Nat. Gas Liquids Regulation Litig.*, 434 F. Supp. 665, 668 (J.P.M.L. 1977). Because the focus of the Illinois litigation varies from that of the other related actions, Plaintiffs Roberts and Fischer will rely on somewhat different administrative records. Moreover, Plaintiffs expect to be able to rely exclusively on their unique administrative record. Just today, Plaintiffs and the Agencies filed a Joint Status Report notifying the court that no party believes discovery is currently necessary. Plaintiffs believe the case can be resolved on a motion for summary judgment based upon the administrative record. Joint Initial Status Report at 6, *Roberts v. FHFA*, No. 16-2107 (N.D. Ill. Apr. 6, 2016), ECF No. 28. Defendants “assert that no discovery . . . is necessary or appropriate

¹ These include: “any provision for the payment of cash dividends during conservatorship; the prohibition on Fannie and Freddie paying down amounts added to Treasury’s liquidation preference based on disbursements pursuant to Treasury’s commitment; the provisions of the PSPAs ceding control over Fannie and Freddie and the conservatorships to Treasury (sections 5.1–5.6 and 5.8); and the provision for additional disbursements to Fannie and Freddie pursuant to Treasury’s funding commitment.” Compl. ¶ 158(f). Yesterday, Plaintiffs filed an amended complaint that retains these unique challenges and incorporates discovery information generated in Fairholme’s case in the Court of Federal Claims.

in this action because,” among other things, they believe “the action should be resolved on motions to dismiss.” *Id.* Accordingly, there are no efficiencies to be gained by transferring Plaintiffs’ action.

If the Panel grants the motion to transfer, Plaintiffs agree with Plaintiff Robinson that the cases should not be centralized in the U.S. District Court for the District of Columbia or the U.S. District Court for the District of Delaware. Plaintiffs further agree with Plaintiff Robinson that the Eastern District of Kentucky is a more convenient forum.

CONCLUSION

Plaintiffs Roberts and Fischer respectfully request that the Panel deny FHFA’s motion to transfer.

April 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2016, I electronically filed the foregoing RESPONSE OF PLAINTIFFS CHRISTOPHER ROBERTS AND THOMAS P. FISCHER IN OPPOSITION TO THE MOTION FOR TRANSFER OF ACTIONS TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, via the Panel's Electronic Case Filing system. Notice of this filing will be served on all parties of record by operation of the ECF System.

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