

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARROWOOD INDEMNITY COMPANY,  
et al.,

*Appellants,*

v.

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, et al.,

*Appellees.*

No. 14-5260

Consolidated With Nos. 14-5243,  
14-5254, 14-5262

**PRELIMINARY STATEMENT OF ISSUES TO BE RAISED**

In accordance with this Court's October 20, 2014 Order, Appellants Arrowood Indemnity Company, Arrowood Surplus Lines Insurance Company, and Financial Structures Limited respectfully submit this Preliminary Statement of Issues to be Raised.

Appellants seek review of the Memorandum Opinion and Order Granting Defendants' Motions to Dismiss and Denying Plaintiffs' Cross-Motion for Summary Judgment entered on September 30, 2014 by the United States District Court for the District of Columbia (Lamberth, J.), in which the district court concluded that the execution of the "Net-Worth Sweep" by the Department of the Treasury, Federal National Mortgage Association ("Fannie Mae") through the Federal Housing Finance Agency ("FHFA"), and Federal Home Loan Mortgage

Corporation (“Freddie Mac”) through FHFA, which transferred all of the profits of Fannie Mae and Freddie Mac to Treasury in perpetuity, was shielded from judicial review by the jurisdictional provision of the Housing and Economic Recovery Act of 2008 (“HERA”), 12 U.S.C. § 4617(f). Appellants also seek review of the Order Denying Motion for Supplementation of the Administrative Record, Limited Discovery, Suspension of Briefing on the Defendants’ Dispositive Motions, and a Status Conference entered on September 30, 2014.

The issues to be raised on appeal are:

1. Whether the district court erred in holding that 12 U.S.C. § 4617(f) bars all of Appellants’ claims under the Administrative Procedure Act, including the claims that Treasury and FHFA exceeded their statutory authority and acted arbitrarily and capriciously.
2. Whether Treasury and FHFA violated the Administrative Procedure Act by entering into the Net-Worth Sweep, because the decision to enter the Net-Worth Sweep was, among other things, in excess of statutory authority and arbitrary and capricious.
3. Whether the district court erred in holding that Appellants’ claims for breach of contract and breach of the implied covenant of good faith and fair dealing were not ripe for judicial review and did not state a claim upon which relief can be granted.

4. Whether Fannie Mae, Freddie Mac, and their Conservator FHFA breached the written terms of the Certificates of Designation for preferred stock and breached the implied covenant of good faith and fair dealing.

5. Whether the district court erred in denying the motions to supplement the administrative record.

November 19, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of November, 2014, I electronically filed the foregoing Preliminary Statement of Issues to be Raised with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Service was accomplished on the following counsel by the CM/ECF system:

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