

October 15, 2015

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 15, 2015, I electronically filed this foregoing with the Clerk of Court using the ECF system, and to my knowledge a copy of this document will be served on the parties or attorneys of record by the ECF system.

/s/ Matt M. Dummermuth
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Attorney for Fairholme Funds, Inc.

rationales for the Net Worth Sweep are highly misleading. Those materials are described in detail in Fairholme's amicus brief.

3. Although materials disclosed through discovery in Fairholme's Court of Federal Claims case are subject to a strict protective order, *see* Order, *Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl. July 29, 2015), ECF No. 217, the court authorized Fairholme to file those materials under seal in this and other cases that concern the Net Worth Sweep, Order, *Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl. Sept. 30, 2015), ECF No. 246. As contemplated by LR 5(c), Fairholme is e-mailing the Clerk of the Court a copy of its proposed sealed amicus brief and appendix concurrently with the filing of its motion.
4. This Court has "broad inherent authority to permit or deny an appearance as amicus curiae in a given case." *Mausolf v. Babbitt*, 158 F.R.D. 143, 148 (D. Minn. 1994), *rev'd on other grounds*, 85 F.3d 1295 (8th Cir. 1996). Fairholme submits that the Court should exercise its discretion to allow it to file the proposed amicus brief and appendix. Fairholme's participation as an amicus is proper because it has expertise on the Net Worth Sweep, including access to materials that currently are not available to Plaintiffs, and because, as a shareholder in the Companies, Fairholme could be affected by the outcome of this litigation. *See Shain v. Veneman*, 278 F. Supp. 2d 1006, 1008 n.2 (S.D. Iowa 2003) (explaining that leave to participate as amici was granted "given the obvious interest" of amici in outcome of litigation); Order at 2, *Carlson v. Cady*, No. 10-587 (S.D. Iowa Jan. 4, 2011), ECF No. 34 ("After reviewing the ACLU of Iowa's motion, the Court is satisfied that the ACLU of Iowa possesses knowledge, experience and perspective on the issues raised in this case that may assist the Court in its resolution of those issues.").

5. Fairholme's motion should also be granted because consideration of the *Fairholme* discovery materials will further this Court's truth-finding function. Plaintiffs do not currently have access to the *Fairholme* discovery materials, and without those materials they were forced to draft the complaint using only information available in the public domain—information that the *Fairholme* discovery materials show to be incomplete. Accordingly, Plaintiffs may wish to amend the complaint in light of the *Fairholme* discovery materials. And regardless of how Plaintiffs decide to use these materials, many of the arguments in Defendants' motions to dismiss depend on factual premises that the *Fairholme* discovery materials demonstrate to be misleading and, in important respects, false. With these materials readily available, there is no reason for the Court to allow Defendants to litigate this case based on a misleading and incomplete description of the relevant facts.

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