Fourth Amendment of SPSPA Renders Third Amendment Anticipatory Breach of Junior Preferred Contracts Moot Except As To Passed Dividends

I. Angel v. Federal Home Loan Mortgage Corporation

A. The Complaint

I filed Angel vs. Federal Home Loan Mortgage Corporation ("Complaint") as a pro-se plaintiff ("Plaintiff") on May 21, 2018 in the Federal District Court for the District of Columbia ("Court"). The Complaint sets forth three causes of action, recited in breach of contract, and breach of fiduciary duty, against the Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal National Mortgage Association ("Fannie Mae" and together with Freddie Mac the "Companies"), and the Companies' board of director members as of August 17, 2012 (hereinafter the "Director Defendants", and collectively with the Companies the "Defendants"). By means of the Complaint I seek to recover, on account of my ownership of Fannie Mae, and Freddie Mac preferred shares ("Junior Preferred"), my pro rata share of approximately $11 billion of Junior Preferred share dividends which the Defendants skipped in declaration, and payment contractual breach from January 1, 2013 to date. The essential elements of the Complaint are a) the Companies Junior Preferred shares are securities whose payments are implicitly guaranteed by the Federal Government (the "FG Implicit Guaranty", or "Guaranty"); and b) the Fourth Amendment to the 2008 Senior Preferred Stock Purchase Agreement ("Senior

Preferred" and "SPSPA" respectively) rendered the SPSPA's third amendment anticipatory breach of Junior Preferred dividend payments moot, except as to passed dividends.

B. Prior to September 2008

Prior to the Companies' forced entry into conservatorship, in September 2008 ("conservatorship"), payment of their financial obligations was implicitly guaranteed by the FG Implicit Guaranty.

1. When employed in connection with the Companies' securities the term "Financial Obligations" was over time by common usage, and acceptance generally understood to encompass all forms and classes of the Companies' debt, and preferred shares.

2. That FG Implicit Guaranty of payment of the Companies debt, and Junior Preferred shares differed only with regard to specific contractual variations regarding interest, and dividends payments.

3. A $413 million Junior Preferred share dividend declared by the Fannie Mae board in August 2008, and set for payment at month end September 2008 (the "August 2008 Dividend") was Treasury cancelled at the September 7 Conservatorship onset (i.e., anticipatory breach); reinstated at Treasury direction four days later, and Fannie May fully paid at month end September 2008 (i.e., anticipatory breach cure). The events surrounding the August 2008 Dividend payment provide irrefutable confirmation of the FG Implicit Guaranty's reach to Junior Preferred dividend payments.

C. Conservatorship

Conservatorship was a non-event for the holders of Fannie Freddie debt, and Junior Preferred shares by reason of the FG Implicit Guaranty of payment of the Companies' Securities.

D. Defacto Nationalization 2009

The Companies were defacto nationalized in 2009 ("2009 Defacto Nationalization") attendant, inter alia, to the Federal Government's imposition over time, of nearly $60 billion of non-reimbursed costs of the HARP, and HAMP (defined below) mortgage modification programs.

1. However, the 2009 Defacto Nationalization of the Companies constituted a Fifth Amendment taking event for Fannie Mae, and Freddie Mac common share values.

2. The 2009 Defacto Nationalization of the Companies constituted a non-event for the holders of Fannie Mae and Freddie Mac debt, and Junior Preferred shares by reason of the FG Implicit Guaranty of payment of the Companies' securities.

E. Preferred Shares

1. The Companies Junior Preferred shares are contracts with fixed governance terms set forth in the share's certificates of designation ("COD"), performed in conformance with state law (Fannie Mae-Delaware, Freddie Mac–Virginia).

2. Neither HERA, nor the four times amended SPSPA altered the Junior Preferred COD economic entitlement provisions.

3. Fannie Mae, and Freddie Mac Junior and Senior Preferred COD provide for owner dividend receipt entitlement ". . . when and if declared by the board of directors".

4. The SPSPA contractual prohibition of Junior Preferred dividend payments did not change any board of director function metrics with regard to dividend declaration being a board of director function. It merely imposed a requirement, not unusual in insolvency, of Treasury written permission needing to be obtained prior to a declared dividend's payment.

F. The Third Amendment

1. The Third Amendment to the SPSPA, for Fannie Mae, and Freddie Mac's common share owners, constituted a second (i.e., after the 2009 Defacto Nationalization) per se defacto nationalization event, and uncompensated taking under the Fifth Amendment to the Constitution.

2. For the Companies' Junior Preferred share owners the Third Amendment's expropriation of the Companies net worth in perpetuity was anticipatory in contractual breach of Junior Preferred dividend entitlements. That taking was anticipatory in effect rather than absolute in effect, because as noted by the Court in Perry Capital v. Lew F. Supp 3rd 2008, D.D.C., 2014 Lamberth J. hereinafter "Perry One":

> "The question for the Court cannot be whether the Third Amendment diminishes an *opportunity* for liquidation preferences at some point in the future, but rather whether the plaintiffs have suffered an injury to their right to a liquidation preference in fact and at present."
>
> - And –
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> "But, just as there was a Third Amendment, the Court cannot definitively say there will be no Fourth or Fifth Amendment that will transform the current" opportunity to benefit from the liquidation preference in [the plaintiffs'] preferred stock." A ripeness requirement prevents the Court from deciding a case "contingent [on] future events that may not occur as anticipated, or indeed may not occur at all." Texas vs. United States, 523 U.S. at 300. Indeed, the purpose of the ripeness doctrine is to ensure the Court hears only an "actual case or controversy." Cf. Pfizer, 182 F.3d at 980. Thus, the plaintiffs' liquidation preference claims are not fit for a judicial decision until liquidation occurs."
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> [Opinion Page 24 – Emphasis Supplied]

3. However, beginning January 1, 2013 as the Defendants each quarter declared, and paid billions of dollars of Net Worth Sweep dividends to Treasury without consideration, declaration, or payment of Junior Preferred dividends, and request to Treasury for

permission to pay Junior Preferred share dividends, each such quarterly dividend pass became absolute in breach of that quarter's Junior Preferred COD dividend provisions.

G. The Fourth Amendment

The possibility of a Fourth or Fifth Amendment transforming the Third Amendment's anticipatory (i.e., not ripe) breach of Junior Preferred to dividend entitlement was foreseen by the Court in its 2014 Perry One opinion (i.e., discussed in paragraph IF2 above).

H. Perry One/Perry Two

Perry One settled the issue regarding the government's immunity from suit with regard to the FHFA Conservator's plenary operations of the Companies in Conservatorship. It left open the possibility of shareholders actions for Third Amendment breach of economic contract rights. Perry Two will soon conclude with similar Court dismissal of the Plaintiff's amended complaints as anticipatory, by reason of the Fourth Amendment cure. A dismissal for mootness in Perry Two should, in time, result in the Junior Preferred taking cases in the Court of Claims being dismissed for mootness. My reasoning, with regards to points A thru G above, is as follows:

II. The Implicit Federal Guaranty of GSE Payments

A. Perfidy

Government Perfidy and Mismanagement of the GSEs in Conservatorship ("Perfidy") was written in late 2015, and published in February 2016. Perfidy explored, and concluded that when the Companies entered conservatorship in September 2008 ("Conservatorship"), Freddie Mac, and Fannie Mae preferred shares enjoyed an implicit federal government guaranty of payment (i.e., the "FG Implicit Guaranty"), which was not materially different from the Guaranty of their debt obligations.

An April 2009 working paper entitled "The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac" authored by Federal Reserve Bank of Atlanta economist W. Scott Frame (the "Frame Paper") addresses the FG Implicit Guaranty succinctly. A brief excerpt from the Frame Paper is set forth in footnote 1 below[1].

The Frame Paper, together with a March 2012 Federal Reserve Internal Discussion Paper (Federal Reserve Paper 1045) constitute the "near entirety"[2] of Federal Government agency post Conservatorship written acknowledgement of the FG Implicit Guaranty of the Companies' securities.

B. Guaranty Affirmed

1. 2008 Conservatorship Announced

The government's decision to place Fannie Mae, and Freddie Mac into Conservatorship was announced by Secretary Paulson on September 7, 2008. Regarding the companies' $34 billion of preferred share par value Secretary Paulson, then unaware of the Guaranty's embracing

[1] Frame "The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac": "The features of Fannie Mae's and Freddie Mac's federal charters, coupled with some past government actions, [have] long served to create a perception in financial markets that the federal government '*implicitly guarantees*' the GSEs' financial obligations [emphasis supplied]."
See also Comptroller of the Currency Administrator of National Banks Interpretive Letter #931 (IL #931), dated March 15, 2002. Employing 12 U.S.C., 24(7) as its authority, IL #931:

> "Section 24 (Seventh) permits national banks to hold "mortgages, obligations, or other securities which are or even have been sold by [Freddie Mac] pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act." Section 306(g) of the Federal Home Loan Mortgage Corporation Act empowers Freddie Mac to issue "preferred stock on such terms and conditions as the Board of Directors shall prescribe." Freddie Mac preferred stock is a "security" that national banks may hold . . ."

[2] "Near entirety" because in a recent re-reading of the Court's opinion in Perry One, I discovered for the first time the following opinion language at "Section 1 Background": "the GSEs have benefitted from a public perception that the federal government had implicitly guaranteed the securities they issued; this perception allowed the GSEs to purchase more mortgages and [mortgage=backed securities], at cheaper rates, than would otherwise prevail in the private market. Treasury Mot. At 6-7." [Emphasis Supplied].

coverage of Junior Preferred share payments as well as debt security payments imprecisely stated:

> ". . . conservatorship does not eliminate the outstanding preferred stock, but does place preferred shareholders second, after the common shareholder, in absorbing losses."

Equally unaware of the FG Implicit Guaranty of the Junior Preferred payments, Federal Housing Finance Agency ("FHFA") Director James Lockhart that day imprecisely added:

> ". . . in order to conserve over $2 billion in capital every year, the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding. Subordinated debt interest and principal payments will continue to be made."

C. Prior History

In 1992 Congress established the Office of Federal Housing Enterprise Oversight ("OFHEO") to oversee and insure the capital adequacy and financial safety and soundness of the Companies.

On July 8, 2008 OFHEO Director James Lockhart stated that both Fannie and Freddie were "adequately capitalized", and on July 10 he again stated that they were "adequately capitalized holding capital well in excess of the OFHEO directed requirements which exceed the statutory minimums".

At the end of July Congress replaced the OFHEO with the FHFA to serve as the regulator of Fannie, and Freddie capital adequacy, and Mr. Lockhart was appointed as its Director.

Its capital adequacy OFHEO attested to in July 2008, the Fannie Mae Board declared $413 million dividends on Junior Preferred shares payable by month end September 2008 (i.e., once again the August 2008 Dividend). Explicitly cancelled in announcements from Secretary Paulson and Director Lockhart on September 7, 2008, the August 2008 Dividend's subsequent

resurrection, and post Conservatorship payment is described in Fannie Mae's 10k for 2008 as follows:

> "The conservator announced on September 7, 2008, that we would not pay any dividends on the common stock on or any series of outstanding preferred stock. In addition, the senior preferred stock purchase agreement prohibits us from declaring or paying any dividends on Fannie Mae equity securities (other than the senior preferred stock) without the prior written consent of Treasury. We were permitted to pay previously declared but unpaid dividends on our outstanding preferred stock for the third quarter." (Fannie Mae 10K December 31, 2008, Part II, p. 76).

On September 11, 2008, Treasury issued an announcement wherein it: (a) referenced the Junior Preferred shares FG Implicit Guaranty; and (b) retracted Director Lockhart's cancellation of the Fannie Mae August 2008 Dividend with language as follows: "*Contracts are respected in this country as a fundamental part of rule of law", and "Dividends actually declared by a GSE before the date of the senior preferred stock purchase agreement will be paid on schedule*".

Federal Reserve Paper 1045 at page 6 describes Treasury's reasoning for ordering the August 2008 Dividend's reinstatement, and post conservatorship payment as follows:

> "A last dividend payment was made at the end of the third quarter because it had been previously announced. *The Treasury believed it was legally obligated to make the payments given the prior announcement*." (emphasis supplied.)

In general Companies in bankruptcy normally are not permitted to pay dividends except from surplus, or to reduce the insolvent estate by means of a dividend distribution to shareholders absent explicit Court permission to do so[3]. The general rule persists in regard to both common and preferred share dividends, and it obtains even in the instance of preferred share dividends declared prior to, but unpaid as of, a company's entry into formal insolvency.

[3] The general rule is virtually the same for unsecured pre-petition debt payment.

The rules with regard to dividend payments by companies in conservatorship are generally in accord with those of the Bankruptcy Code.

The Treasury belief of its being ". . . legally obligated to make the payment" was clearly grounded in (a) recognition of the FG Implicit Guaranty of such payment, and (b) the need to cure the anticipatory payment cancellation breach of the Junior Preferred August 2008 Dividend which over time would result in holder demand for Junior Preferred principal payment.

As stated by Secretary Paulson that day in explicit acknowledgement of the FG Implicit Guaranty of Fannie Mae, and Freddie Mac securities payments being:

> ". . . made necessary by the ambiguities in the GSE Congressional charters, which have been perceived to indicate government support for agency debt and guaranteed MBS. Our nation has tolerated these ambiguities for too long, and as a result GSE debt and MBS are held by central banks and investors throughout the United States and around the world who believe them to be virtually risk-free. Because the U.S. Government created these ambiguities, we have a responsibility to both avert and ultimately address the systemic risk now posed by the scale and breadth of the holdings of GSE debt and MBS."

III. Preferred Dividends

A. Junior Preferred

The collective total of Fannie Mae and Freddie Mac Junior Preferred issued and outstanding as of, and from September 2008, to date is approximately $34 billion. The shares contractual dividend requirements are approximately $2 billion annually, or $500 million quarter annually, or $5.5 million daily. Junior Preferred Shares are redeemable at the Companies' discretion, and are intended to serve as perpetual non-voting capital. Each issue of Junior Preferred has a certificate of designation ("COD") setting forth the issue's terms, conditions and

dividend rates. Following January 1, 2013, the Companies have failed to pay a total of approximately $11 billion of Junior Preferred share dividends thru June 30, 2018.

Freddie Mac's bylaws designate the Virginia Stock Corporation Act (the "VSCA") as controlling for purposes of Freddie Mac's corporate governance practices and procedures to the extent not inconsistent with the Company's enabling legislation and other federal laws, rules and regulations. Fannie Mae's bylaws designate Delaware General Corporation Law (the "DGCL") as controlling for purposes of Fannie Mae's corporate governance practices and procedures to the extent not inconsistent with the Company's enabling legislation and other federal laws, rules and regulations. Regarding dividend payments there is no federal corporate law applicable to either Fannie Mae or Freddie Mac other than state law as so incorporated, and post Conservatorship the specific prohibition against such dividend payment without written Treasury approval of same set forth in the 2008 Senior Stock Purchase Agreement ("SPSPA") described below.

Regarding the declaration of Junior Preferred dividends, the individual CODs are consistently similar in their dividend language that Junior Preferred holders: ". . . will be entitled to receive, when as and if declared by the Board of Directors of Fannie Mae [Freddie Mac] or a duly authorized committee thereof, in its sole (direction out of funds legally available therefor, non-cumulative quarterly cash dividends . . ." [Emphasis Supplied].

B. Senior Preferred

The September 6, 2008 SPSPA between Treasury and the Companies provides for the Senior Preferred share owner (i.e., Treasury) to "receive, ratably, when, as and if declared each of by the [Fannie/Freddie] Board in its sole discretion . . ." cumulative cash dividends at the annual rate per share equal to the shares' then-current dividend rate (*i.e.*, ten percent).

The August 17, 2012 third amendment to the SPSPA ("Third Amendment"), redefined the "Dividend Rate" to "the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the then Applicable Capital Reserve Amount, exceeds zero." (the "Net Worth Sweep"). In other words, the Third Amendment provided for endless payment of a quarterly dividend to Treasury equal to substantially all of each Company's Net Profit for the period.

The Third Amendment expressly provided that "[f]or equal Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount." (Emphasis Supplied).

Enacted by Congress in 2008 the Housing and Economic Recovery Act of 2008 ("HERA") left in place the Companies' federal charters, the FG Implicit Guaranty of the Companies financial obligations, the Companies respective bylaws, and the basic contractual and fiduciary duties owed by the Conservator, the Companies, and the Directors with regard to inter alia, dividend declaration, and equality of treatment with other classes of preferred shares and the Senior Preferred in particular.

In Conservatorship the Companies' FHFA conservator empowered its director appointee with day to day plenary management, and performance duties obligations running back to the FHFA Conservator, HERA left in place the Companies' federal charters, and did not otherwise alter the provisions of the Companies' bylaws with regard to the economic entitlement of private share ownership. Specifically, directors remained with the power to declare dividends while having to ask Treasury to make such payments. To have provided otherwise would have

required Junior Preferred COD amendment, and any such unilateral change to the COD would have constituted a per se contractual breach in absolute violation of the Junior Preferred contracts.

Pursuant to its HERA authority, the FHFA Conservator post Conservatorship reconstituted the Freddie Mac and Fannie Mae's director boards, and then delegated day to day plenary authority in the Companies' management to the boards who in turn then owed contractual and fiduciary responsibility for their management activities solely to the FHFA Conservator, rather than to the Companies' shareholders.

That grant of plenary management authority did not otherwise alter director duties with regard to Junior Preferred share economic entitlements in areas such as dividends declaration and other monetary payments.

HERA did not provide licensee to either the FHFA Regulator, the FHFA Conservator, or the respective Company board members to abrogate shareholder economic entitlements, and state/common law fiduciary obligations, and specific COD contractual language.

The SPSPA as amended four times requires each Company to obtain Treasury permission before declaring, and paying dividends on its junior preferred shares. It does not otherwise eliminate state law governance, or amend Junior Preferred COD contractual provisions.

IV. Defacto Nationalization 2009

As candidly acknowledged in deposition testimony by Timothy Geithner, ongoing GSE public ownership after 2009, was a government fiction, and the Companies were from the Conservatorship start "effectively nationalized." With common shares then of negligible value, attendant to the SPSPA warrant grant which imposed 79.9% defacto common share ownership of

the Companies in Treasury, common public shareholders had little incentive to seek taking compensation, or otherwise challenge the Companies defacto nationalization in legal contest.

For Junior Preferred shareholders the Companies 2009 Defacto Nationalization taking was, curtesy of the shares FG Implicit Guaranty of payment, except for anticipatory dividend cancellation breach which became absolute each quarter beginning January 1, 2013 as dividends were summarily passed without declaration.

V. The Third Amendment Anticipatory Breach of Preferred Share COD

A. Third Amendment

On August 17, 2012 Treasury, and the Companies at the direction of the FHFA regulator entered into a third amendment (the "Third Amendment") to the SPSPA ensuring that Treasury would thereafter receive the entire positive net worth of each of the Companies' quarter by quarter in perpetuity (the "Net Worth Sweep").

Third Amendments pertinent language with regard to the Net Worth Sweep being as follows:

> . . . ***For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount.***
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> * * *
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> ***For each Dividend Period from January 1, 2013, through- and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end- of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the***

> ***"Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero***. In each case, "***Net Worth Amount***" ***means*** (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof)-as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities ***excluding any obligation in respect of any capital stock of -the Company, including this Certificate***), as reflected on the -balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, $3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

[Emphasis Supplied].

B. Anticipatory Breach

The Fannie Mae, and Freddie Mac Senior Preferred COD's both provided that no dividends may ever be paid on any other classes or series of stock of the Companies unless, and until full cumulative "dividends" (*i.e.,* the full Net Worth Sweep amount) are paid on the Senior Preferred stock pursuant to the Net Worth Sweep. With the entire net worth of the Companies payable in perpetuity to Treasury as the Companies' sole Senior Preferred stock owner, and the Applicable Capital Reserve Amount scheduled to reduce to $0 on December 31, 2017 there would, (as history confirmed), be no remaining assets from which dividends could ever be paid on Junior Preferred shares.

An August 17, 2012 email exchange between senior Treasury/Obama Administration official Jim Parrott and other highly placed then Treasury officials provides *prima facie* evidence of the Treasury bad faith in directing the Companies' Third Amendment's adoption as follows: "The principle of 'full income sweep of all future earnings to benefit taxpayers' should lay to rest permanently the idea that the outstanding privately held pref. will ever get turned back on". [Emphasis Supplied].

For GSEs common share owners the Net Worth Sweep constituted a second per se defacto nationalization event, and uncompensated Fifth Amendment taking.

For GSEs Junior Preferred shareowners the Net Worth Sweep while initially anticipatory in its breach of Junior Preferred contractual dividend entitlement, only over time became absolute as quarter annual dividends declaration were passed without consideration starting January 1, 2013.

While much has been written in pro, and con analysis of the Third Amendments and the scope and import of the Net Worth sweep there has been little to no commentary regarding the Amendment's establishment of a $3 billion "Applicable Capital Reserve" for each Company in order to meet the Amendment's Net Worth Amount definition which specifically excludes capital stock (i.e., Junior Preferred, Senior Preferred) when computing the Companies' artificially defined Net Worth for purposes of the Net Worth Sweep Dividend payment.

Between August 17, 2012, and September 30, 2017 the Companies were consistently profitable, and enjoyed without interruption, Third Amendment defined positive Net Worth.

Between January 1, 2013, and September 30, 2017 the year end audited certified balance sheets of both Fannie Mae and Freddie Mac have consistently reflected $34 billion of collective Junior Preferred par value (i.e., Fannie Mae $19.13 billion; Freddie Mac $14.1 billion) in

suspended placement below Treasury $189 billion of Senior Preferred, and ABOVE the then Applicable Capital Reserve Amount for purpose of Net Worth amount determination.

Other than the Senior Preferred's status as senior in priority of payment, the Fannie Mae, and Freddie Mac audited balance sheets have consistently reflected (a) the sole meaningful difference in liquidation, or other Conservatorship ending for Senior Preferred's shares other than their priority in payment over Junior Preferred and (b) Junior Preferred priority in payment over the Applicable Capital Reserve Amount balance.

VI. The Fourth Amendment – Applicable Capital Reserve Amount, Reinstated and Junior Preferred Anticipatory Breach Mooted Except As To Junior Preferred Passed Dividends

A. Fourth amendment

On December 21, 2017 the FHFA Regulator, and the Treasury anticipating a massive accounting loss, etc. agreed to reinstate the $3 Applicable Capital Reserve Amount for each of the Companies in status quo ante return to the SPSPA's Applicable Capital Reserve Amount set by the Third Amendment on July 17, 2012.

By letter agreement (the "Letter Agreement") the Companies, Treasury, and the Conservator consensually agreed to change the terms of the SPSPA, Third Amendment so as to permit to each Company to retain a $3 billion capital reserve each quarter stating:

> "As a result of these agreements each GSE will only pay a dividend to Treasury if the net worth at the end of a quarter is more than $3 billion. The terms as described, apply to any quarterly dividend paid for the fourth quarter of 2017 and each quarter thereafter."

FHFA Regulator Director Watt independently issued a statement regarding the Letter Agreement changes stating:

"While it is apparent that a draw will be necessary for each Enterprise if tax legislation results in a reduction to the corporate tax rate FHFA [Regulator] considers the $3 billion capital reserve to be adequate in the absence of exigent circumstances".

The Letter Agreement amended the SPSPA Senior Preferred CODs so that effective January 1, 2018 each SPSPA Senior Preferred COD "Applicable Capital Reserve Amount" was amended to read as follows:

> "Applicable Capital Reserve Amount" means, as of any date of determination, (A) for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; (B) for each Dividend Period occurring within each 12-month period thereafter, through and including December 31, 2017, $3,000,000,000 reduced by $600,000,000 for each such 12-month period, so that for each Dividend Period from January 1, 2017, through and including December 31, 2017, the Applicable Capital Reserve Amount shall be $600,000,000; and (C) for each Dividend Period from January 1, 2018, and thereafter, $3,000,000,000. Notwithstanding the foregoing, for each Dividend Period from January 1, 2018, and thereafter, following any Dividend Payment Date with respect to which the Board of Directors does not declare and pay a dividend or declares and pays a dividend in an amount less than the Dividend Amount, the Applicable Capital Reserve Amount shall thereafter be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.
>
> For the avoidance of doubt, following the amendment of the Certificate as provided in this Letter Agreement, Section 2 of the Certificate, as amended hereby, shall be deemed to be in form and content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012."

VII. Perry One/Perry Two

A. Perry One

The holdings of the Perry One opinion break down as follows:

1. HERA § 4617(f) precludes Third Amendment relief against the Government with regard to its direction of the Companies' affairs in Conservatorship; and

2. HERA §4617(b)(2)(A)(i) grant of (. . . "all rights, titles, powers and privileges") of shareholders to the FHFA Regulator provides an absolute bar to Junior Preferred owner challenges to the Government's plenary management of the Companies.

Left open by the Court of Appeals, and remanded to the Perry One Court for consideration in Perry Two is the issue of whether the Third Amendment Net Worth Sweep gave rise to mature actionable (i.e., by shareholders) claims for breach of contract.

B. Perry Two

In a chorus of amended complaints, the Perry One Plaintiff's beginning around March 2017 have asserted claims for Third Amendment contractual breach damages. The complaints which were responded to by Government motion to dismiss (i.e., anticipatory-not ripe), and are currently sub judice.

C. Court of Claims

Prior to February 2018 only one noteworthy Third Amendment taking case was filed in the Court of Claims. That case appears to have been pursued mainly for discovery of government documents otherwise not obtainable in the Perry One court, rather than for swift adjudication.

Following a Supreme Court refusal to grant certiorari in February 2018, a total of approximately eight additional Third Amendment taking cases have been filed by claimants professing to own more than 20% (par dollar amount) of the total outstanding $34 billion of Junior Preferred shares. All of the Third Amendment taking cases in the Court of Claims are

subject to the following agreed, and Court Ordered scheduling time table: a) Government's motion to dismiss August 1, 2018; b) Plaintiff response October 23, 2018; and c) Government Reply January 22, 2019.

D. Angel v. FHFA – Complaint

In the entire body of Third Amendment litigation seeking damages for Junior Preferred shareowners emanating from the Third Amendment, the Complaint (i.e., Angel v. Freddy Mac) is the only action seeking to recover damages from the Companies' directors. By Court Order the Director Defendants, Company Defendants, and FHFA Conservator nominal defendant (i.e., Defendants) are set to file their respective motions to dismiss by July 12, 2018, Plaintiff's Complaint response, and cross motion for summary judgment is due to be filed by September 10, 2018, and the Defendants' reply is to be filed by October 10, 2018. To my mind the Government, the Complaint Defendants, and the Complaint Plaintiffs completely agree, albeit for different reasons, that the Perry Two Actions should be summarily dismissed by reason, inter alia, of their anticipatory non ripeness, and 4th Amendment cure. To my mind the only logical dispute between the Government (Complaint non-defendant Treasury and FHFA Regulator), the Defendants and myself is whether or not the HERA § 4617(b)(2)(A)(i) grant of shareholder "rights, titles, powers and privileges" to the Conservator is so all encompassing as to include the economic entitlement of share ownership, and/or whether HERA § 4617(f) preclusion of Government actions includes Director failure to declare dividends, and/or request Treasury permission for their dividends payment to Junior Preferred shareowners.

I think not, and aside from the plain meaning of Junior Preferred COD, I posit that Court of Appeals recognition of extant ability of share owners to assert contract causes of action proves my side of the argument.

VIII. Conclusion

I did not see, or otherwise have access to the Defendants' motion to dismiss before writing and submitting my Complaint rationale thoughts to you, for public broadcast.

While away till August 10, 2018 my intent will be to study, and review the Defendant's motion to dismiss, the Government's motion to dismiss, the Court of Claims taking actions (i.e., due August 1st), and ever an optimist a Court decision in Perry Two. My present intent is to respond to the Defendant's motion to dismiss on or before September 10th. Till then my immediate thoughts regarding the motion's main thrust are; A. Statute of Limitations----I agree with the Defendant's assertion of the basic statute of limitations for contracts being Delaware 3 years, Virginia 5 years. However, we clearly disagree with regard to its measurement date. Stated simply, Defendants August 17, 2012, Plaintiff quarter annually beginning January 1, 2013. More explicitly January 1, 2013, and rolling to date, as each quarter annual Net Worth Sweep payment is made to the Senior Preferred (i.e., Treasury) holder, AND the period's Junior Preferred dividend entitlement is ignored so that the Third Amendment anticipatory breach of that quarter annual payment becomes final. At worst I view the defense to be partial rather than complete, and keep in mind that damages continue to run, with each quarters miss, at approximately $500 million per quarter after December 31, 2017; B. FG Implicit Guaranty----- Perfidy was written in early 2016 in investor rage regarding the Government policy of silence, regarding the implicit guaranty's existence, adopted after 2008. Its annexation to the Complaint is not accidental. It was deliberately annexed to buttress the Complaint's thrust as not just a dividend grab, but a test of Government integrity in what I knew would be an existence, extent, denial battle to the death. To me the battle boils down to government good versus government evil. To me the battle is to resurrect the good expressed by Secretary Paulson partially quoted

above at page 10 with regard to Government responsibility to correct ambiguities and honor contracts. I welcome the Defendants' motion to dismiss, and to those persons who cannot wait to see my reply I suggest rereading Perfidy, and footnote 2 hereof to relieve nighttime angst.

July 13, 2018