

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PERRY CAPITAL LLC, et al.,

Plaintiffs-Appellants,

v.

STEVEN T. MNUCHIN, et al.,

Defendants-Appellees.

Nos. 14-5243 (L), 14-5254 (con.),
14-5260 (con.), 14-5262 (con.)

**CLASS PLAINTIFFS' MOTION FOR LEAVE TO FILE A REPLY TO
FHFA'S RESPONSE TO THEIR PETITION FOR PANEL REHEARING**

Pursuant to Fed. R. App. P. 27, Class Plaintiffs respectfully request leave to file a seven-page reply to FHFA's response to their petition for panel rehearing. FHFA's response advanced, for the first time, the novel theory that the sale of a corporation's stock on the secondary market effects a novation that alters the corporation's underlying contractual obligations. Class Plaintiffs' proposed reply identifies some of the most significant flaws of FHFA's novel theory.

Neither the Federal Rules of Appellate Procedure nor this Court's rules expressly permit or prohibit a reply to a response to a petition for panel rehearing. It is clear, however, that this Court may authorize a reply in support of a petition for rehearing, *see* Fed. R. App. P. 2; Circuit R. 2, and it has authorized such filings in the past, *see, e.g., In re Core Communications, Inc.*, 2006 WL 3069547, at *1 (D.C. Cir. 2006). Given the new arguments advanced for the first time in FHFA's

response, Class Plaintiffs respectfully submit that their proposed reply will assist the Court in its resolution of the rehearing petition.

FHFA, Fannie Mae, and Freddie Mac do not consent to this motion and may submit an opposition. On July 6, 2017, counsel for Class Plaintiffs asked counsel for the U.S. Department of the Treasury if the Treasury would consent to this motion, but did not receive an answer before this filing.

Class Plaintiffs' proposed reply will be filed concurrently with this motion.

Dated: July 6, 2017

Respectfully submitted,

/s/ Hamish P.M. Hume

Hamish P.M. Hume

BOIES SCHILLER FLEXNER LLP

1401 New York Ave., NW

Washington, DC 20005

Tel: (202) 237-2727

Fax: (202) 237-6131

*Interim Co-Lead Class Counsel for
Appellants American European Insurance
Company, Joseph Cacciapalle, John Cane,
Francis J. Dennis, Marneu Holdings, Co.,
Michelle M. Miller, United Equities
Commodities, Co., 111 John Realty Corp.,
Barry P. Borodkin and Mary Meiya Liao*

**BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP**

Blair A. Nicholas
David R. Kaplan
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
davidk@blbglaw.com
blairn@blbglaw.com

GRANT & EISENHOFER P.A.

Michael J. Barry
Viola Vetter
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100
gjarvis@gelaw.com
mbarry@gelaw.com

**KESSLER TOPAZ MELTZER &
CHECK, LLP**

Eric L. Zagar
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

*Interim Co-Lead Class Counsel for
Appellants American European Insurance
Company, Joseph Cacciapalle, John Cane,
Francis J. Dennis, Marneu Holdings, Co.,
Michelle M. Miller, United Equities
Commodities, Co., 111 John Realty Corp.,
Barry P. Borodkin and Mary Meiya Liao*

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Cir. R. 27(a)(1), that on July 6, 2017, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

DATED: July 6, 2017

/s/ Hamish P.M. Hume
Hamish P.M. Hume