

OF INTEREST

Owners of Stock in Fannie Mae and Freddie Mac Begin Suing Government in U.S. Court of Federal Claims

July 12, 2013

AUTHORS

[Richard D. Bernstein](#) | [Matthew W. Edwards](#)

Two lawsuits recently were filed by holders of preferred stock in the Federal National Mortgage Association (“Fannie Mae” or “Fannie”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac” or “Freddie”) against the federal government in the U.S. Court of Federal Claims in Washington, D.C.¹ Both lawsuits are brought under the Takings Clause of the Fifth Amendment to the United States Constitution.

The lawsuits arise from the federal government’s reaction to the mortgage-related financial crisis in 2008. At that time, the federal government, acting through the Federal Housing Finance Administration (the “FHFA”), placed Fannie and Freddie into conservatorship. In connection with the conservatorships, the government caused Fannie and Freddie to enter preferred stock purchase agreements, under which the government purchased preferred stock that ranked senior to all other preferred stock and that entitled the government to receive generous annual dividends. But once Fannie and Freddie began reporting increased profits in 2011 and 2012, the government unilaterally changed the terms of its

¹ *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl. July 9, 2013); *Cacciapelle v. United States*, No. 13-466C, Fed. Cl. (Fed. Cl. July 10, 2013).

Owners of Stock in Fannie Mae and Freddie Mac Begin Suing Government in U.S. Court of Federal Claims

Continued

agreements such that, beginning January 1, 2013, Fannie and Freddie would have to pay the government even higher dividends equal to Fannie's and Freddie's entire net worth. This leaves Fannie and Freddie no money to redeem the government's senior preferred stock or to pay the holders of junior preferred stock, whether by dividend, redemption, or liquidation. Thus, certain plaintiff holders of certain of the 33 series of junior preferred stock, including investment funds and insurance companies, allege that the government took their valuable contractual and property rights, causing substantial losses.

Other owners of Fannie or Freddie stock may wish to pursue their own actions, join the current actions, or monitor them. Experience teaches that related lawsuits arising from government financial crises can produce very different results for seemingly similar plaintiffs. For example, Willkie Farr & Gallagher partner Rich Bernstein won a \$381 million judgment for Glendale Federal Bank in litigation before the U.S. Court of Federal Claims arising from the savings and loan crisis. The Federal Circuit Court of Appeals affirmed that award. Of the more than 100 related cases arising from the savings and loan crisis, no other plaintiff ever won nearly such a large award.

If you have any questions concerning the foregoing or would like additional information, please contact Richard D. Bernstein (202-303-1108, rbernstein@willkie.com) or the Willkie Farr & Gallagher attorney with whom you regularly work. Mr. Bernstein has extensive experience litigating before the U.S. Court of Federal Claims, including currently representing General Electric Company in a \$1 billion dispute with the federal government.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Paris, London, Milan, Rome, Frankfurt and Brussels. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

July 12, 2013

Copyright © 2013 Willkie Farr & Gallagher LLP.

WILLKIE FARR & GALLAGHER_{LLP}
