

Summary of Statements of Issues on Appeal
Presented to the
United States Court of Appeals for the District of Columbia
Concerning Judge Lamberth's Sept. 30, 2014, Opinion and Orders

Prepared Dec. 18, 2014

Ref.	<i>Perry Capital v. Lew</i> , No. 14-5243	<i>Fairholme Funds v. FHFA</i> , No. 14-5254	<i>Arrowood Indemnity v. FHFA</i> , No. 14-5260	<i>In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations</i> , No. 14-5262
I	Whether the district court erred in holding that 12 U.S.C. § 4617(f) bars all of Perry Capital LLC's claims under the Administrative Procedure Act, including the claims that Treasury and FHFA exceeded their statutory authority and acted arbitrarily and capriciously.	Whether the Housing and Economic Recovery Act's prohibition on judicial relief that would "restrain or affect" FHFA's exercise of its powers and functions "as conservator" precludes any of the relief Plaintiffs have requested in this action. <i>See</i> 12 U.S.C. § 4617(f).	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.	Whether the Housing and Economic Recovery Act's prohibition on judicial relief that would "restrain or affect" the Federal Housing Finance Agency's ("FHFA") exercise of its powers and functions "as conservator" precludes any of the relief Appellants have requested in this action. <i>See</i> 12 U.S.C. § 4617(f).

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II		Whether the Housing and Economic Recovery Act’s provision that FHFA as conservator succeeds to “all rights, titles, powers, and privileges” of shareholders with respect to the Companies and their assets bars any of Plaintiffs’ claims in this action. <i>See</i> 12 U.S.C. § 4617(b)(2)(A)(i).		Whether the Housing and Economic Recovery Act’s provision that FHFA as conservator succeeds to “all rights, titles, powers, and privileges” of shareholders with respect to Fannie Mae, Freddie Mac, and their assets bars any of Appellants’ claims in this action. <i>See</i> 12 U.S.C. § 4617(b)(2) (A)(i).
III				Whether the District Court erred in holding that 12 U.S.C. § 4617(b)(2)(A)(i) bars shareholder derivative claims on behalf of an entity in conservatorship, even when the conservator would be (and was) unable or unwilling to bring those claims due to a manifest conflict of interest.

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IV				Whether the District Court erred in holding that the relationship between FHFA and the Department of the Treasury does not present a conflict of interest in which the FHFA is unable or unwilling to bring claims against the Department of the Treasury.
V	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.	Whether Treasury and FHFA violated federal law because their decision to enter into the Net Worth Sweep agreement was, among other things, in excess of statutory authority and arbitrary and capricious.	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.	

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VI		Whether Plaintiffs' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are ripe and sufficient to survive a motion to dismiss.	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.	Whether Appellants' claims for breach of contract and breach of the implied covenant of good faith and fair dealing are ripe and sufficient to survive a motion to dismiss.
VII			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.	
VIII	Whether the district court erred in denying the motions to supplement the administrative record.	Whether the district court erred in denying Plaintiffs' motion to supplement the administrative record and for limited discovery.	Whether the district court erred in denying the motions to supplement the administrative record.	

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IX				Whether the District Court erred in dismissing Appellants' claim under the Takings Clause of the Fifth Amendment to the United States Constitution.
X				Whether the District Court erred in holding that Appellants had failed to plead a cognizable property interest under the Fifth Amendment to the United States Constitution.
XI				Whether the District Court erred in holding that the diversion, in perpetuity, of all Fannie Mae and Freddie Mac net profits to the Department of the Treasury on a quarterly basis ("Net Worth Sweep") had no economic impact on Appellants' dividend and liquidation preference rights, such that the Net Worth Sweep did not constitute a taking of a property interest under the Takings Clause of the Fifth Amendment to the United States Constitution.

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XII				Whether the District Court erred in holding that Appellants' Takings claim was not ripe for judicial review.