

RECORD NO. 17-3794

In The
**United States Court Of Appeals
For The Third Circuit**

DAVID JACOBS; GARY HINDES,

Appellants,

v.

**FEDERAL HOUSING FINANCE AGENCY, IN ITS CAPACITY AS
CONSERVATOR OF THE FEDERAL NATIONAL MORTGAGE
ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE
CORPORATION; UNITED STATES DEPARTMENT OF THE
TREASURY; FEDERAL NATIONAL MORTGAGE ASSOCIATION;
FEDERAL HOME LOAN MORTGAGE CORPORATION,**

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE, CASE NO.: 1-15-CV-00708
GREGORY M. SLEET, U.S. DISTRICT JUDGE

**STATEMENT BY APPELLANTS
REQUESTING ORAL ARGUMENT**

Pursuant to Fed. R. App. P. 34(a) and Third Circuit L.A.R. 34.1, Appellants David Jacobs and Gary Hines (“Plaintiffs-Appellants”) hereby respectfully request that oral argument be granted to aid the Court in deciding this appeal from the District Court’s judgment dismissing Plaintiffs-Appellants’ Amended Complaint for

failure to state a claim and denial of Plaintiffs-Appellants' motion for judicial notice for the following reasons:

1. This case about Delaware and Virginia corporate law is a class action brought by Plaintiffs-Appellants on behalf of themselves and several classes of holders of preferred and common stock issued by either the Federal National Mortgage Association ("Fannie") or the Federal Home Loan Mortgage Corporation ("Freddie," and, together with Fannie, the "Companies"), seeking damages and equitable relief, as well as rescission and restitution, and a derivative action brought by Plaintiff-Appellant Jacobs on behalf of the Companies, seeking damages and equitable relief, as well as rescission and restitution, in each case in connection with the Third Amendments to the Amended and Restated Senior Preferred Stock Purchase Agreements, dated August 17, 2012, between Defendant-Appellee United States Department of the Treasury ("Treasury") and Defendant-Appellee Federal Housing Finance Agency ("FHFA"), in its capacity as conservator of the Companies. These amendments, known as the "Net Worth Sweep," granted Treasury an unlimited, cumulative cash dividend equal to the entire net worth of each Company, minus a small capital reserve, each quarter for all time, effectively stealing all the Companies' value previously held by their private investors. Plaintiffs-Appellants claim that the Net Worth Sweep is in violation of 8 *Del. C.* § 151(c) and Va. Code § 13.1-638, sections of Delaware's

and Virginia's corporations law which Fannie and Freddie, respectively, elected in their bylaws to apply to them for purposes of their corporate governance.

Plaintiffs-Appellants' claims and the merits of this appeal are more fully explained in the briefs.

2. The District Court dismissed Plaintiffs-Appellants' claims holding that Plaintiffs-Appellants' claims were barred by 12 U.S.C. § 4617(f), the so-called "anti-injunction" clause of the Housing and Economic Recovery Act of 2008 ("HERA"). Defendants-Appellees presented additional bases that they believe warrant affirming the District Court's judgment in their appeal briefs.

3. Accordingly, this appeal concerns complex issues of both federal and state law, and the rights of numerous stockholders who invested in the Companies balanced against two government agencies working in concert to transfer the entire value of the Companies to the government.

4. In view of the complex issues presented in this appeal, Plaintiffs-Appellants accordingly submit that oral argument will help "to clarify ... important legal, factual, [and] procedural point[s]." *See* 3d Cir. I.O.P. § 2.4.2(c) (2017).

5. Plaintiffs-Appellants respectfully request that the Court allot 20 minutes of argument time per side.

Respectfully submitted,

Dated: May 3, 2018

/s/ Myron T. Steele

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CERTIFICATE OF SERVICE

I hereby certify pursuant to F.R.A.P 25(d) and Third Circuit L.A.R. 113.4 that, on May 3, 2018, the foregoing *Statement by Appellants Requesting Oral Argument* was electronically filed with the Clerk of Court through the CM/ECF system to be served electronically by the Notice of Docket Activity on counsel of record for all parties, each of whom is a registered Filing User.

Dated: May 3, 2018

By: /s/ Myron T. Steele

Myron T. Steele