

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BERKLEY INSURANCE CO., et al., <i>Plaintiffs,</i> v. THE FEDERAL HOUSING FINANCE AGENCY, et al., <i>Defendants.</i>	Case No. 1:13-cv-1053-RCL
IN RE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS _____ This document relates to: ALL CASES	Case No. 1:13-mc-1288-RCL

**PLAINTIFFS' REPLY TO OPPOSITION TO REQUEST
FOR JUDICIAL NOTICE PURSUANT TO FED. R. EVID. 201(b)**

Defendants' opposition to Plaintiffs' request for judicial notice never accounts for the fundamental point—namely that FHFA Acting Director Edward DeMarco submitted testimony in this case that is demonstrably inaccurate. Nothing in their response purports to defend the accuracy of the statement that Plaintiffs seek to correct. Nothing in their response proposes alternative language. Nothing in their response disputes that Plaintiffs have diligently attempted to correct the testimony in a restrained way without fanfare or demonstrativeness. And nothing in their response comes to terms with the fact that they are now advocating for knowingly allowing inaccurate testimony to go to the jury when that testimony can be readily corrected.

Plaintiffs also respectfully disagree that seeking to correct demonstrably inaccurate testimony is playing “gotcha” as Defendants allege. To the contrary, that label applies only to

Defendants' statement that failing to cross-examine a witness on the witness' inaccurate testimony is a "failure of examination, *not of the witness*."

The single case Defendants cite is inapt because that case involved judicial notice of witness testimony. *See Oliverez v. Albitre*, No. 1:09-cv-00352, 2014 WL 12766514, at *1 (E.D. Cal. Mar. 26, 2014). Plaintiffs do not seek judicial notice of witness testimony. Rather Plaintiffs seek judicial notice of a fact that is indisputably true.

Finally, Defendants offer an irrelevant and misleading account of the procedural history that led to the filing of the request. Defendants limit their description of those events to the statement that Defendants "offered to discuss with Plaintiffs the introduction of objective legislative events into the record. But Plaintiffs instead proceeded to file their request for judicial notice." First, Defendants' proposal was a dodge because the issue has never been a list of "objective legislative events" more generally. Rather, it has been about addressing an inaccuracy introduced into the record by witness testimony.

Second, it is untrue that Plaintiffs proceeded with filing the request without first attempting to work the issue out with Defendants. Far from it, Plaintiffs have diligently pursued this issue from the start. Plaintiffs first contacted Defendants the day after the testimony (October 22) both to confirm their understanding that no such bill existed and to work out a mutually acceptable way to correct the record assuming Plaintiffs were correct. *See Exhibit A*. Defendants did not respond until after Plaintiffs sent a follow up email on October 25. *Id.* Defendants subsequently responded by identifying legislation that passed the Senate Banking Committee in 2014. As Plaintiffs explained in response, that assertion did not demonstrate the accuracy of the testimony. *See Exhibit B*. In a final effort to resolve the issue, Plaintiffs sent a draft of the proposed request to Defendants on October 26 and then a follow up on October 28. *See Exhibit C*. Defendants'

opposition omits parts of this correspondence. At that point, Plaintiffs had no choice but to file the response. Plaintiffs also remain open to portraying the fact or facts that are the subject of the notice as stipulated rather than subject to judicial notice if Defendants would prefer.

Finally, despite the clear suggestion otherwise in their email response to Plaintiffs' inquiry, Defendants now claim that they were not making a representation that Mr. DeMarco was referencing the 2014 bill that they discuss in their email. If so, the second sentence can be eliminated, and the attached proposed instruction therefore includes only the first sentence proposed in the request. If, however, Defendants would like to retain the second sentence but without the reference to Mr. DeMarco, it can be modified and added to the attached proposed instruction by substituting the words "Such legislation" for "The legislation referenced in Acting Director DeMarco's testimony."

Plaintiffs thus respectfully request that the first sentence in the request be judicially noticed by the Court. Alternatively, Plaintiffs request that both sentences be judicially noticed with the second sentence modified as set forth in the prior paragraph. A proposed instruction is attached as Exhibit D.

Dated: October 31, 2022

/s/ Charles J. Cooper
Charles J. Cooper (Bar No. 24870)
David H. Thompson (Bar No. 450503)
Vincent J. Colatriano (Bar No. 429562)
Peter A. Patterson (Bar No. 998668)
Brian W. Barnes (*Pro Hac Vice*)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
Tel: (202) 220-9600
Fax: (202) 220-9601
ccooper@cooperkirk.com

Counsel for Berkley Plaintiffs, et al.

Respectfully submitted,

/s/ Eric L. Zagar
Eric L. Zagar (*Pro Hac Vice*)
KESSLER TOPAZ
MELTZER & CHECK, LLP
280 King of Prussia Rd.
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
ezagar@ktmc.com

Hamish P.M. Hume (Bar No. 449914)
Samuel C. Kaplan (Bar No. 463350)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave. NW
Washington, DC 20005

Tel: (202) 237-2727
Fax: (202) 237-6131
hhume@bsfllp.com
skaplan@bsfllp.com

Michael J. Barry (*Pro Hac Vice*)
GRANT & EISENHOFER, P.A.
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
Fax: (302) 622-7100
mbarry@gelaw.com

Adam Wierzbowski (*Pro Hac Vice*)
**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**
1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 554-1400
Fax: (212) 554-1444
adam@blbglaw.com

Co-Lead Counsel for the Class

Exhibit A

From: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>
Sent: Tuesday, October 25, 2022 9:04 PM
To: Samuel Kaplan; Varma, Asim
Cc: Hamish Hume; Jones, Stanton
Subject: RE: Yesterday's DeMarco testimony

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Sam:

Thanks very much for your message, and please excuse our delay in replying to your email of Saturday.

I'm taking the liberty of copying in Stanton, who will be handling this for us. He will get back to you as promptly as possible.

Sorry again, and thanks.

Jon

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Tuesday, October 25, 2022 8:56 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>
Subject: RE: Yesterday's DeMarco testimony

External E-mail

Jonathan and Asim,

Just following up on the below. This is obviously time-sensitive in light of the impending resting of our case and charging conference.

Thank you,

Sam

From: Samuel Kaplan
Sent: Saturday, October 22, 2022 2:28 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>
Subject: Yesterday's DeMarco testimony

Jonathan and Asim,

Hope you are both having good weekends. In the afternoon session yesterday, Mr. DeMarco gave the following testimony which can be found at 1003-04 of the transcript.

Q. Right. But you've said several times in your testimony with Mr. Stern, you said that part of your thinking was informed by the fact that there were numerous bills, I think you said three bills on Congress and a proposal from the Treasury Department, all of which -- they were different, but they had one thing in common: Shrinking the GSEs; correct?

A. Yes.

Q. But it required legislation; correct? Let me rephrase that. Excuse me. You talked about three proposed bills and a Treasury proposal; correct?

A. We talked about multiple bills in Congress, and we talked about the Treasury plan, all of which talked about wind-down. It was the FHFA strategic plan that talked about gradually shrinking the footprint, and that was something that I could do without legislation.

Q. There were some things you could do without, some things you couldn't; correct?

A. Correct.

Q. Okay. At that time, summer of 2012, President Obama is in the White House; correct?

A. Yes.

Q. And the Republicans control the House; correct?

A. I believe so. Yeah, that's right.

Q. Did it strike you as a time of particularly productive bipartisan unity where they were going to get together and pass legislation together?

A. Actually, the Senate bill was a bipartisan bill that was supported by both the leader --

Q. Did it pass?

A. It did. It actually passed through the Senate Banking Committee and went to the Senate floor.

Q. Did it pass into law?

A. No, it did not.

Having previously researched the GSE legislation during this period, we are unaware of any bill that talked about winding down the GSEs passed the Senate Banking Committee, and went to the floor, much less a "bipartisan" one. If we are incorrect on this, could you please identify what bill you or Mr. DeMarco believe meets these characteristics or to what bill he was referring? If we are correct that no such bill exists, we likely will seek judicial notice and/or a curative instruction to that effect, but we are open to discussing to other ways to correct the record. Thank you. Best,

Sam

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of his electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1 08201831BSF]

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit B

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Wednesday, October 26, 2022 12:52 AM
To: Jones, Stanton; Hamish Hume
Cc: Stern, Jonathan L.; Varma, Asim
Subject: RE: Yesterday's DeMarco testimony

Stanton,

Thanks for the reply, Stanton. We respectfully disagree. The testimony addressed 2012, and the legislation you cite was not introduced until after the Net Worth Sweep. There was virtually no legislative activity on supposed wind down bills prior to the Net Worth Sweep. For example, the 2011 "bipartisan" bill you cite had five cosponsors and was referred to Committee with no hearings held. We will consider your suggestion with respect to legislative facts, but any such legislative facts would have to involve noting the fact that the legislation referred to by Acting Director DeMarco was not introduced until after the Net Worth Sweep. Best,

Sam

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, October 25, 2022 10:11 PM
To: Samuel Kaplan <skaplan@bsfllp.com>; Hamish Hume <hhume@BSFLLP.com>
Cc: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Subject: RE: Yesterday's DeMarco testimony

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Sam: Thanks for following up about this. As Mr. DeMarco noted in the testimony quoted below, there were multiple bills in Congress. The [Mortgage Finance Act of 2011 \(S. 1963\)](#) had bi-partisan sponsorship but did not make it out of the Banking Committee. This bill would have put the GSEs into irrevocable receivership. The [Housing Finance Reform and Taxpayer Protection Act of 2014 \(S. 1217\)](#) also had bipartisan support and was voted out of the Senate Banking Committee. This bill would have eliminated the GSEs.

We do not believe that there is any need to "correct the record," nor do we believe that any curative instruction is necessary or appropriate. There were multiple bipartisan Senate bills involving winddown of the GSEs, and one of them was voted out of the Senate Banking Committee. Indeed, any instruction to the jury about this issue would be unduly prejudicial to Defendants. That said, if there are specific legislative facts that you would like in the record concerning these bills, we are open to discussing it.

Regards,
Stanton

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Tuesday, October 25, 2022 9:06 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>

Cc: Hamish Hume <hhume@BSFLLP.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>

Subject: RE: Yesterday's DeMarco testimony

External E-mail

Thanks for your reply, Jonathan, and look forward to Stanton's reply. Best,

Sam

From: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>

Sent: Tuesday, October 25, 2022 9:04 PM

To: Samuel Kaplan <skaplan@bsfllp.com>; Varma, Asim <Asim.Varma@arnoldporter.com>

Cc: Hamish Hume <hhume@BSFLLP.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>

Subject: RE: Yesterday's DeMarco testimony

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Sam:

Thanks very much for your message, and please excuse our delay in replying to your email of Saturday.

I'm taking the liberty of copying in Stanton, who will be handling this for us. He will get back to you as promptly as possible.

Sorry again, and thanks.

Jon

From: Samuel Kaplan <skaplan@bsfllp.com>

Sent: Tuesday, October 25, 2022 8:56 PM

To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>

Cc: Hamish Hume <hhume@BSFLLP.com>

Subject: RE: Yesterday's DeMarco testimony

External E-mail

Jonathan and Asim,

Just following up on the below. This is obviously time-sensitive in light of the impending resting of our case and charging conference.

Thank you,

Sam

From: Samuel Kaplan

Sent: Saturday, October 22, 2022 2:28 PM

To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>

Cc: Hamish Hume <hhume@BSFLLP.com>

Subject: Yesterday's DeMarco testimony

Jonathan and Asim,

Hope you are both having good weekends. In the afternoon session yesterday, Mr. DeMarco gave the following testimony which can be found at 1003-04 of the transcript.

Q. Right. But you've said several times in your testimony with Mr. Stern, you said that part of your thinking was informed by the fact that there were numerous bills, I think you said three bills on Congress and a proposal from the Treasury Department, all of which -- they were different, but they had one thing in common: Shrinking the GSEs; correct?

A. Yes.

Q. But it required legislation; correct? Let me rephrase that. Excuse me. You talked about three proposed bills and a Treasury proposal; correct?

A. We talked about multiple bills in Congress, and we talked about the Treasury plan, all of which talked about wind-down. It was the FHFA strategic plan that talked about gradually shrinking the footprint, and that was something that I could do without legislation.

Q. There were some things you could do without, some things you couldn't; correct?

A. Correct.

Q. Okay. At that time, summer of 2012, President Obama is in the White House; correct?

A. Yes.

Q. And the Republicans control the House; correct?

A. I believe so. Yeah, that's right.

Q. Did it strike you as a time of particularly productive bipartisan unity where they were going to get together and pass legislation together?

A. Actually, the Senate bill was a bipartisan bill that was supported by both the leader --

Q. Did it pass?

A. It did. It actually passed through the Senate Banking Committee and went to the Senate floor.

Q. Did it pass into law?

A. No, it did not.

Having previously researched the GSE legislation during this period, we are unaware of any bill that talked about winding down the GSEs passed the Senate Banking Committee, and went to the floor, much less a "bipartisan" one. If we are incorrect on this, could you please identify what bill you or Mr. DeMarco believe meets these characteristics or to what bill he was referring? If we are correct that no such bill exists, we likely will seek judicial notice and/or a curative instruction to that effect, but we are open to discussing to other ways to correct the record. Thank you. Best,

Sam

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1 08201831BSF]

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other

use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1 08201831BSF]

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:

<http://www.arnoldporter.com>

Exhibit C

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Friday, October 28, 2022 12:13 AM
To: Jones, Stanton; Hamish Hume
Cc: Stern, Jonathan L.; Varma, Asim
Subject: RE: Yesterday's DeMarco testimony

Stanton, I know there is a lot going on, but as I have not heard anything back, I need to file this. Happy of course to discuss further before it is considered by the Court if you have any additional thoughts. Best,

Sam

From: Samuel Kaplan
Sent: Wednesday, October 26, 2022 9:59 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Hamish Hume <hhume@BSFLLP.com>
Cc: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Subject: RE: Yesterday's DeMarco testimony

Stanton,

Attached please find our proposal for judicial notice on the legislation issue. Best,

Sam

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, October 25, 2022 10:11 PM
To: Samuel Kaplan <skaplan@bsfllp.com>; Hamish Hume <hhume@BSFLLP.com>
Cc: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Subject: RE: Yesterday's DeMarco testimony

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Sam: Thanks for following up about this. As Mr. DeMarco noted in the testimony quoted below, there were multiple bills in Congress. The [Mortgage Finance Act of 2011 \(S. 1963\)](#) had bi-partisan sponsorship but did not make it out of the Banking Committee. This bill would have put the GSEs into irrevocable receivership. The [Housing Finance Reform and Taxpayer Protection Act of 2014 \(S. 1217\)](#) also had bipartisan support and was voted out of the Senate Banking Committee. This bill would have eliminated the GSEs.

We do not believe that there is any need to "correct the record," nor do we believe that any curative instruction is necessary or appropriate. There were multiple bipartisan Senate bills involving winddown of the GSEs, and one of them was voted out of the Senate Banking Committee. Indeed, any instruction to the jury about this issue would be unduly prejudicial to Defendants. That said, if there are specific legislative facts that you would like in the record concerning these bills, we are open to discussing it.

Regards,
Stanton

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Tuesday, October 25, 2022 9:06 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>
Subject: RE: Yesterday's DeMarco testimony

External E-mail

Thanks for your reply, Jonathan, and look forward to Stanton's reply. Best,

Sam

From: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>
Sent: Tuesday, October 25, 2022 9:04 PM
To: Samuel Kaplan <skaplan@bsfllp.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>
Subject: RE: Yesterday's DeMarco testimony

CAUTION: External email. Please do not respond to or click on links/attachments unless you recognize the sender.

Sam:

Thanks very much for your message, and please excuse our delay in replying to your email of Saturday.

I'm taking the liberty of copying in Stanton, who will be handling this for us. He will get back to you as promptly as possible.

Sorry again, and thanks.

Jon

From: Samuel Kaplan <skaplan@bsfllp.com>
Sent: Tuesday, October 25, 2022 8:56 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>
Subject: RE: Yesterday's DeMarco testimony

External E-mail

Jonathan and Asim,

Just following up on the below. This is obviously time-sensitive in light of the impending resting of our case and charging conference.

Thank you,

Sam

From: Samuel Kaplan
Sent: Saturday, October 22, 2022 2:28 PM
To: Stern, Jonathan L. <Jonathan.Stern@arnoldporter.com>; Varma, Asim <Asim.Varma@arnoldporter.com>
Cc: Hamish Hume <hhume@BSFLLP.com>
Subject: Yesterday's DeMarco testimony

Jonathan and Asim,

Hope you are both having good weekends. In the afternoon session yesterday, Mr. DeMarco gave the following testimony which can be found at 1003-04 of the transcript.

Q. Right. But you've said several times in your testimony with Mr. Stern, you said that part of your thinking was informed by the fact that there were numerous bills, I think you said three bills on Congress and a proposal from the Treasury Department, all of which -- they were different, but they had one thing in common: Shrinking the GSEs; correct?

A. Yes.

Q. But it required legislation; correct? Let me rephrase that. Excuse me. You talked about three proposed bills and a Treasury proposal; correct?

A. We talked about multiple bills in Congress, and we talked about the Treasury plan, all of which talked about wind-down. It was the FHFA strategic plan that talked about gradually shrinking the footprint, and that was something that I could do without legislation.

Q. There were some things you could do without, some things you couldn't; correct?

A. Correct.

Q. Okay. At that time, summer of 2012, President Obama is in the White House; correct?

A. Yes.

Q. And the Republicans control the House; correct?

A. I believe so. Yeah, that's right.

Q. Did it strike you as a time of particularly productive bipartisan unity where they were going to get together and pass legislation together?

A. Actually, the Senate bill was a bipartisan bill that was supported by both the leader --

Q. Did it pass?

A. It did. It actually passed through the Senate Banking Committee and went to the Senate floor.

Q. Did it pass into law?

A. No, it did not.

Having previously researched the GSE legislation during this period, we are unaware of any bill that talked about winding down the GSEs passed the Senate Banking Committee, and went to the floor, much less a "bipartisan" one. If we are incorrect on this, could you please identify what bill you or Mr. DeMarco believe meets these characteristics or to what bill he was referring? If we are correct that no such bill exists, we likely will seek judicial notice and/or a curative instruction to that effect, but we are open to discussing to other ways to correct the record. Thank you. Best,

Sam

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1 08201831BSF]

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer. [v.1 08201831BSF]

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit D

INSTRUCTION NO. _____
JUDICIAL NOTICE¹

In this case, I have taken judicial notice of the fact that there was no legislation providing for the shrinking of the GSEs that was reported by the Senate Banking Committee in 2011 or 2012, which I regard as a matter of common knowledge or that can be determined easily through undisputed sources. You should consider this fact as included in the evidence and proven.

¹ Civil Jury Instructions for DC § 2.05