

THE COVER-UP CONTINUES:

***The government secretly tries to stop
a key witness from giving testimony.***

WHAT IS THE ADMINISTRATION HIDING?

***A previous statement sworn under oath is described
as “highly misleading . . . if not outright false”.***

THE JUDGE ISN'T BUYING IT.

The Press: Asleep at the switch.

On October 2nd, in what looked at first glance to be but a routine filing in one of the court cases challenging its effective nationalization of **Fannie Mae** and **Freddie Mac**, the government filed a motion asking **Judge Margaret M. Sweeney** of the U.S. Court of Federal Claims to quash a subpoena which had been issued by plaintiffs' counsel. But the name of the person who received the subpoena – i.e., whose testimony the government was trying to prevent – was blacked out (the legal term is 'redacted'). The reasoning behind the government's request? Also blacked-out. In fact, the entire filing was redacted. Under the terms of a previously-issued 'Protective Order' imposed at the government's insistence, even the plaintiffs themselves aren't allowed to know the identity of the proposed

witness – only their lawyers (who can't disclose the name to their clients) are entitled to that information. Meanwhile, in what is arguably the most egregious example of attempted government secrecy since the Watergate scandal of the 1970s, there has been not a peep about any of this in the press.

A real head-scratcher

So who could this mystery witness be? The government has cited national security and maintaining the stability of the financial markets among other reasons for filing and redacting over 11,000 pages of documents 'under seal'. But filing under seal a motion to block someone's testimony? Who is this dangerous person?

Perhaps the finance minister of some foreign country who has been threatening to no longer buy Fannie and Freddie debt securities? Hmm. Maybe a like-minded head of some foreign central bank? Nope. It is one **Egbert Perry**, who turns out to merely be the chairman of Fannie Mae's board of directors. Mr. Perry, as it turns out, was appointed to the board just weeks after Fannie was placed into conservatorship in September of 2008; as such, plaintiffs' counsel asserts, he might have useful information regarding a) the circumstances surrounding the decision by the board to agree to being placed into conservatorship in the first place and b) the adoption of the so-called 'Third Amendment Sweep' four years later. You will recall that that's when the government changed the terms of the original 'bailout' deal and replaced the 10 percent dividend on its preferred stock with one equal to 100 percent of the GSEs' net worth in perpetuity. (See *Changing the Rules at the Finish Line* http://delawarebayllc.com/images/Fannie_Freddie_OpEd_Amended_April_30_2014.pdf.) Mr. Perry would sound like a pretty routine witness, no? Then why the government's attempt to block him from testifying and – more intriguingly – *why try to hide it?*¹

Lame excuses

After six weeks of briefing and counter-briefing (all under seal, of course), on November 17, Judge Sweeney denied the government's motion. More important, she filed her order in-the-clear; i.e., she lifted the seal. As you can see (http://www.gselinks.com/Court_Filings/Fairholme/13-465-0264.pdf) for yourself, there is nothing particularly special about any of the

government's reasons for trying to prevent Mr. Perry's deposition from taking place (or, for that matter, its attempt to conceal that it was trying to do so). And certainly there appears to be nothing that implicates national security issues. To the contrary, Judge Sweeney thoughtfully and thoroughly demolished what turns out to be nothing more than a plain-vanilla collection of lame excuses. No, the Administration seems to be fearful that if Mr. Perry is allowed to testify about what he knows, he might undercut the carefully-crafted series of shopworn lies and fabrications Treasury has thus far employed in its attempt to prevent the truth from being revealed.² Indeed, in two previous depositions, Fannie Mae's former chief financial officer, as well as a top Treasury official, appear to have flatly contradicted the previous sworn statement of a key Treasury operative which the government has been relying upon in its defense of the Third Amendment Sweep. While we can't know exactly what is in those depositions (duh, they're under seal, remember?), plaintiffs' counsel – who HAVE seen what is hidden behind the redactions – has characterized the Treasury operative's sworn statement as *"incomplete and misleading, if not outright false"*. (Perjury, anyone?)

So aside from Mr. Perry's testimony, what else is the government is trying to hide? I simply do not know. But it is helpful to remember the political climate in which the Third Amendment Sweep was adopted. In August of 2012 – four years after the financial crisis – the housing market had turned around and Fannie and Freddie were starting to show black ink again; indeed, they were on the verge of reporting truly

¹ With the exception of **Gretchen Morgenson** of the *New York Times* – which has filed a motion seeking to have the documents made public – most of the Press has been strangely silent on an issue which goes to the very core of press freedom.

² <http://www.nationalmortgagenews.com/news/voices/treasurys-claims-about-fannie-and-freddie-need-a-reality-check-1065795-1.html>

stupendous profits.³ (Treasury claims not to have known that at the time, but how could they not?) Concurrently, the Administration was facing an intense fight over increasing the debt-ceiling limit and avoiding a government shutdown. That's when they began implementing what they described at the time as "*extraordinary measures*" to husband the government's cash so as to 'extend the runway' and postpone default. While I have no proof, I believe that one of those "*extraordinary measures*" involved capturing the about-to-be-reported profits of Fannie and Freddie – and that when documents which the government has gone to such extreme pains to hide are finally made public, that will be confirmed.

ATM Machine

And what an ATM machine Fannie and Freddie have turned out to be! The Third Amendment Sweep created a massive and unprecedented financial windfall for Uncle Sam. So far, the government has collected over *\$130 billion more* than it would have received had it honored the terms of its original agreement. (And remember that the twins are now required to fork over ALL of their profits to the government – *in perpetuity*.)

And as for Congress? They know a cash cow when they see one. At this writing, the

National Association of Realtors is up in arms over a proposal to use part of Fannie and Freddie's guaranty fees to fund the infrastructure bill currently making its way through the House of Representatives. Fannie and Freddie, of course, have absolutely nothing to do with building roads and bridges and yes, it will definitely mean higher monthly mortgage payments for all new homebuyers. But hey, it's not a tax increase, right? Thanks to the fact that most House Republicans have "taken the pledge" to never, ever raise taxes, adding even a nickel to the gasoline tax (not raised BTW since 1993) is out of the question – even though prices at the pump are down by over a dollar a gallon in the past 18 months.

Yup, it's always 'follow-the-money'.

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Additional disclosure: The author is a holder of Fannie Mae and Freddie Mac securities. In addition, he is a co-plaintiff in a lawsuit pending in the U.S. District Court in Wilmington, Delaware challenging the legality of the Third Amendment Sweep.

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³ As has been previously reported, serious questions have been raised as to whether or not Fannie and Freddie ever needed a bailout in the first place. (See

<http://www.valuewalk.com/2015/06/a-forensic-look-at-the-fannie-mae-bailout/>).

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