

FULL TESTIMONY
OHIO ATTORNEY GENERAL MIKE DEWINE
“An Analysis of the Post-Conservatorship Legal Expenses of
Fannie Mae and Freddie Mac”
HOUSE SUBCOMMITTEE HEARING ON
OVERSIGHT AND INVESTIGATIONS
WASHINGTON, DC
FEBRUARY 15, 2011

Good afternoon Chairman Neugebauer, Ranking Member Capuano, and Members of the Committee. Thank you for inviting me to testify before you today.

I have to be honest -- I'm not used to being on this side of the dais. I used to be the guy who got to ask all the really tough questions. Now I'm the guy who has to answer them! I guess that's some sort of Congressional payback!

In all seriousness, though, while I consider it an honor to testify before you today -- more importantly, I consider it my responsibility.

I am here today on behalf of the Lead Plaintiffs -- the Ohio Public Employees Retirement System (PERS) and the State Teachers Retirement System of Ohio (STRS), who represent over one million Ohio public employees and teachers -- and nearly 29 million other defrauded investors and pensioners throughout the 50 states in a securities fraud class action filed against Fannie Mae; its three former most senior officers, Franklin Raines, Tim Howard, and Leanne Spencer; and its auditor, KPMG.

The Defendants engaged in a massive accounting fraud against the class to the tune of nearly \$9 billion. Our case, which we originally filed over six years ago in November 2004, continues unresolved. What has happened prior to and since the federal government seized control of Fannie Mae nearly two and a half years ago is both outrageous and egregious. Simply put, Fannie Mae and its former executives, whom Fannie Mae has indemnified, have been using U.S. taxpayer dollars to pay their highly compensated cadre of lawyers to over-lawyer their indefensible actions.

The point of this hearing is not for me to retread Fannie Mae's past transgressions or the transgressions of its executives and its accounting firm -- because, bluntly, the liability is clear. Rather, I am here today because what Fannie Mae currently is doing to U.S. taxpayers is wrong.

It is unconscionable.

And, I urge the Committee and Congress to bring it to an end.

Fannie Mae and its former senior officers have done considerable wrong and caused great harm to a great many. But that's nothing new. We already know that Fannie Mae cooked its books, smoothed its earnings (overstating them by \$10.3 billion), and violated 30 generally accepted accounting principles -- nearly every major accounting rule applicable to it. Fannie Mae

admitted as much in May 2006, when it paid the Securities and Exchange Commission (SEC) a \$350 million civil money penalty and paid the Office of Federal Housing Enterprise Oversight (OFHEO) a \$50 million civil money penalty to settle the same fraud allegations as the ones in our current complaint! Not only that, Fannie Mae agreed in the SEC consent order to “not take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression the Complaint is without factual basis.”

Yet, Fannie Mae continues to deny liability, dragging out the current litigation -- billable hour by billable hour -- and bleeding Americans so far, by Fannie Mae’s own admission, of at least \$132 million for its legal fees. And, by your account, Mr. Chairman, the total cost incurred by Freddie Mac and Fannie Mae, to date, with respect to the fraud exceeds \$400 million post-conservatorship.

Candidly, I am both perplexed and frustrated at the way this lawsuit has been handled. Fannie Mae and the executives it is indemnifying are lawyering this case to death and delaying justice for those whom they defrauded in the first place over six years ago, while simultaneously, swindling every U.S. taxpayer.

We have made good faith efforts to move the case toward resolution. We just want justice. But these efforts, at every turn, have been ignored, with no meaningful conclusion in sight.

And let me just say this flat out -- I am not here today to use this hearing as a forum to reach a settlement. We are, in fact, prepared to go to trial. But the problem is that Fannie Mae, whom OFHEO (at one time headed by Edward DeMarco) described as having an “arrogant and unethical corporate culture,” is doing everything in its power to delay and stall, all while racking up astronomical legal costs and sticking America’s taxpayers with the bill.

It’s really easy to holdup the resolution of a lawsuit, when you’ve got a seemingly bottomless coffer of U.S. taxpayer dollars from which to pay your legion of lawyers to engage in wasteful delay tactics. For the public and private pensioners whom Fannie Mae and its officers defrauded, it’s as if they are up against the richest guy in the world and he just doesn’t care how much it’s going to cost to keep this thing going. If, what Supreme Court Justice David Brewer once said is true -- that “America is the paradise of lawyers” -- then counsel for Fannie Mae, Raines, Howard, and Spencer have found Shangri-La!

I would like to take a moment to share with the Committee some examples of the circus that this lawsuit has become and to provide a glimpse into the absurdity of the actions of Fannie Mae, Raines, Howard, and Spencer.

U.S. District Judge for the District of Columbia, the Honorable Richard J. Leon, is the judge in our case. He has tried diligently to keep the case moving forward. He holds regular conferences to check on the status of the litigation. We, as the Lead Plaintiffs -- representing millions of U.S. pensioners -- typically bring three attorneys to these conferences, including our local counsel. The Fannie Mae Defendants, however -- even just for short routine conferences, where nothing substantive is to be discussed -- typically bring 35 to 40 attorneys and paralegals, costing

taxpayers over \$600 per hour for some of these lawyers. Judge Leon commented on the huge expense incurred by having so many defense attorneys, saying at a June 25, 2009, hearing that "...the lawyers are doing pretty well.... I am not so sure the taxpayers are doing pretty well, but the lawyers are doing pretty well in this deal."

At the 123 fact depositions taken in the case, on average, we brought two lawyers because we were usually the party asking the questions. Fannie Mae Defendants brought 13, many of whom never asked any questions. For example, at Mr. Raines' deposition held in April 2010, it lasted 12 hours, covering two days. The Plaintiffs were the only party asking questions; yet the Fannie Mae Defendants brought 13 lawyers:

- Five for Raines;
- Three for Fannie Mae;
- Two for Howard;
- Two for Spencer; and
- One for Daniel Mudd -- a former Fannie Mae employee, who isn't even a defendant in the case.

None of these 13 lawyers asked a single question at this particular deposition -- not a single question, Mr. Chairman. They just sat there and billed the taxpayers for their hours.

We are now in the expert deposition phase of the case, and if the current practice continues, you can expect the Fannie Mae Defendants to rack up a very sizeable bill. For expert witnesses, we, who as the Lead Plaintiffs have the burden of proof, have designated eight experts. Defendant KPMG has designated five experts. Fannie Mae Defendants, however, have 25 experts, costing taxpayers an astounding \$600 to \$1500 an hour! Franklin Raines has nine experts just for himself, including four to say essentially that he fulfilled his job as CEO by properly relying on others and two to say that his \$91 million in compensation over five years was justified.

At a June 14, 2010 hearing, Judge Leon said there is absolutely no way that so many experts will testify at trial, admonishing Fannie Mae Defendants: "So you don't need to have five experts say the same damn thing. If one good one says it the right way from your perspective, that's going to be more than enough. You don't need five to say it. It is not a 'me too' operation. So bear that in mind. The costs are just staggering."

Mr. Chairman and Members of the Committee, candidly, securities cases don't normally take this long to resolve. Our case has been on-going for over six years. Typically, 98% of all securities cases reach a conclusion in far less time -- and with far less cost. Even the similar June 2003 securities fraud class action case against Freddie Mac, relating to its 2003 financial restatement, was resolved in a little under three years.

The bottom line, as Judge Leon put it, is this: "...the more this litigation is protracted and prolonged, the greater the risk that when it is all said and done, the pensioners and the shareholders will not have as much or will have markedly less and the taxpayers will be out millions and millions and tens and tens of millions of dollars for legal fees that can't be recouped in effect because they are gone...."

While the two Ohio pension funds are the Lead Plaintiffs, the class they represent in the case includes investors from all 50 states, including at least 67 entities from your home state of Texas, Mr. Chairman -- ranging from the Priest Retirement and Disability Fund, Teachers Retirement System of Texas, Police Officers Pension System of the City of Houston, and the Texas State Association of Firefighters. And, Congressman Capuano, the class includes at least 12 entities from your home state of Massachusetts, including the Massachusetts State Teachers Fund.

There's no question. Fannie Mae and its former executives harmed American pensioners and public service workers, including teachers, police officers, and firefighters. And, Fannie Mae and its former executives harmed nearly every major corporation in America, such as General Electric, IBM, Coca Cola, and General Motors, as their pension funds had also invested in the Enterprise.

Judge Leon described this case best when he said, "This is a case of monumental proportions. Indeed, it's a case unique in the annals of American industry and business at the highest levels. It has been regarded and referred to as the largest accounting fraud case in the history of the United States."

Members of the Committee, this is bigger than Enron. It is bigger than Worldcom. It has turned into a feeding frenzy on the part of Fannie Mae and its former officers. The evidence of liability is overwhelming, and it is time to rein them in.

Realistically, there are ways for Fannie Mae and its former officers to put up a defense without being so wasteful. I fully understand an argument can be made that Fannie Mae has to defend itself and its former senior officers, but the amount they are spending -- at the expense of U.S. taxpayers -- is, in a word, ridiculous. And, you would think -- a former CEO, who made over \$91 million -- might be able to afford his own lawyer.

I thank the Chairman, Ranking Member, and Committee Members for shedding light on the flagrant activities that are taking place. I am, of course, not here to tell you how to proceed and how to conduct your oversight investigation. However, I believe that as you ask more questions and dive more deeply into the facts, you will uncover even more of the Fannie Mae Defendants' needless and wasteful spending of our tax dollars.

When I took the oath of office last month to become Ohio's 50th Attorney General, I swore that I would seek truth, that I would seek justice, and that I would do all I can in my power to protect Ohio families.

And that is precisely why I am here today.

Ohioans have been wronged. Americans are being wronged. And now it is time for someone to stand up and just say stop!

Thank you.