

Michael C. Dillon

Manchester, NH 03104

Congressman Dennis Kucinich  
2445 Rayburn House Office Building  
Washington, D.C. 20515

June 29, 2009

RE: Request for GAO Review of The Federal Trade Commission

Dear Congressman,

I am contacting you today as one of the more than 281,100 Federal Trade Commission-certified victims of Fairbanks Capital Corp. n/k/a Select Portfolio Servicing Inc., a victim of Mortgage Servicing Fraud in general and as a member of the National Advocacy Against Mortgage Servicing Fraud.

For the last year I have been receiving documents and information, collected by the Federal Trade Commission during the course of their investigation of Fairbanks Capital Corp., through a Freedom of Information Act request. As a result of this information, in conjunction with documents and information obtained from the *USA v. Fairbanks* and *Curry v. Fairbanks* case files at the Joe Moakley Courthouse in Boston, and independent research, I have come to the very strong opinion that the investigation into and prosecution/settlement of *USA/Curry v. Fairbanks* by the Federal Trade Commission was at best incomplete and possibly even more damaging to the very victims that it was supposed to protect and restore.

Documents filed by the Federal Trade Commission, Plaintiff's counsel, and Defendants' counsel, collectively indicate that the financial well being of Fairbanks was ultimately more important than attempting to make the 280,000 class members whole or preventing any future borrowers from becoming additional victims of Fairbanks/SPS (**Ex. A**). To wit, all counsel involved in *USA/Curry v. Fairbanks* expressed concern that any legal action beyond "voluntary" settlement would potentially force Fairbanks to seek bankruptcy protection as Fairbanks was reportedly "under-capitalized" during the time of the investigation. As a result, Fairbanks was allowed to "voluntarily" settle both the *USA v. Fairbanks* and *Curry v. Fairbanks* actions without admitting any wrongdoing for a total figure of roughly \$55 million of which roughly \$40 million was marked for "redress and reimburse".

Aside from the paltry settlement amounts that were offered to the victims, it would appear that no real oversight or regulation of Fairbanks/SPS has taken place as a result of this settlement. To date, the Federal Trade Commission has refused to

disclose the third party entity appointed to monitor the business practices of Fairbanks/SPS as ordered in *USA/Curry v. Fairbanks Modified Stipulated Final Judgment and Order (Ex. B Sec. XX Audit Requirements p24)*.

Additionally, this audit was redacted to the point of uselessness, due in part to a combination of what I believe to be a misinterpretation of the *Modified Stipulated Final Judgment and Order* and a specific request from Fairbanks' legal counsel to classify the document as "confidential" as part of attorney/client "work product". **(Ex. C)** These audit reports were ordered to be performed by a "qualified, objective, independent third-party professional", as part of the *USA/Curry v. Fairbanks* settlement order and are not being produced by Fairbanks/SPS. These audits were to be performed by the third party auditor and turned over to the Federal Trade Commission as part of the settlement agreement in an attempt to monitor Fairbanks/SPS for compliance purposes. Nowhere in the *Modified Stipulated Final Judgment and Order* was it determined that these audits would be considered "confidential" or otherwise sealed or shielded from the general docket or settlement. Apparently, the Federal Trade Commission takes requests for document confidentiality from Fairbanks' counsel more seriously than they do from the very victims they are charged with protecting **(Ex. D top of document)**

Further, by allowing Fairbanks/SPS to "voluntarily settle" *USA/Curry* in the time frame and manner in which it did, the Federal Trade Commission failed to fully prosecute all entities involved. Fairbanks/SPS' parent company, The PMI Group, was informed by the Federal Trade Commission that the Federal Trade Commission intended to name PMI in any action brought against Fairbanks/SPS.

From the **June 30, 2003 PMI 10-Q** SEC filing p. 52/53:

<http://www.sec.gov/Archives/edgar/data/935724/000119312503037895/d10q.htm>

An adverse outcome with respect to the FTC's investigation of the practices of Fairbanks could harm our financial position and results of operations.

*In October 2002, the FTC informed Fairbanks that it was the subject of an FTC investigation to determine whether Fairbanks Capital's loan servicing or other practices violate or have violated the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Section 5 of the Federal Trade Commission Act, or other laws enforced by the FTC. In the course of its continuing investigation, the FTC staff requested information from us. We have cooperated with the FTC staff in its investigation and have provided the requested information. In addition, we have had continuing discussions with the FTC in regard to its investigation and in the course of those discussions the FTC staff informed us that it intends to recommend naming us in any action the FTC might bring against Fairbanks. There can be no assurance that the outcome of these discussions will not result in us being named by the FTC in an action arising from the practices of Fairbanks. In the event that such an action is brought by the FTC against us, there can be no assurance as to the outcome of the action. In addition, the filing of an FTC action against us could lead to regulatory actions by other regulatory agencies or private litigation against us, could impact our ability to obtain regulatory approvals necessary to carry out our present*

*or future plans and operations, and could result in negative publicity that might adversely affect our business. Any action brought against us by the FTC with respect to its investigation of the practices of Fairbanks could have a material adverse effect on our consolidated financial position and results of operations.*

In fact, the Federal Trade Commission did issue a Civil Investigative Demand to The PMI Group, however, I have yet to discover any of whatever information that CID produced as part of my FOIA request. Regardless, FTC staff informed The PMI Group that they were to be named as part of *USA v. Fairbanks* yet the FTC failed to do so. Curiously, though, PMI provided a letter of credit for Fairbanks/SPS in excess of \$30 million as part of the \$55 million restitution “offered” by Fairbanks/SPS.

**PMI 10-Q filed 05/07/04 p. 15**

<http://www.sec.gov/Archives/edgar/data/935724/000119312504082197/d10q.htm>

**Guarantees to Related Party** – *In the fourth quarter of 2003, Fairbanks reached a settlement, subject to final court approval, of civil charges with the FTC and the HUD. The terms of the settlement require changes in Fairbanks’ operations and the creation of a \$40 million fund for the benefit of consumers allegedly harmed by Fairbanks. The Company has guaranteed approximately two-thirds of Fairbanks’ obligations under a \$30.7 million letter of credit, which may be drawn upon by FTC as security for a portion of the \$40 million redress fund as required by the settlement.*

By allowing every entity involved in *USA v. Fairbanks* to “voluntarily” settle this matter, especially without admitting any wrongdoing, the Federal Trade Commission sent the message to the mortgage servicing industry that no real regulatory or punitive action would be taken against a mortgage servicer but that any servicer that publicly appeared to get out of line would have to pay what amounts to a “cost of doing business” fee to the Federal Trade Commission.

Recapping for one moment, and in further evidence of the lack of concern for the victims involved, as evidenced by Exhibit B, in September of 2007 the Federal Trade Commission jointly motioned to modify the *USA v. Fairbanks* settlement in favor of Fairbanks/SPS knowing that Fairbanks had continually been in violation of the terms of the settlement AND the “best practices” agreement entered into by all parties. To further emphasize this point, the FTC went ahead and modified *USA/ Curry v. Fairbanks* despite receiving 455 pages worth of complaints against Fairbanks/SPS between June 2005 and November 2006 alone - more than a year after *USA/ Curry* had originally settled as evidenced by a FOIA request made by a Mr. Stephen Wistner, March 5, 2007. **(Ex. E)** The question of just how many complaints did the FTC receive concerning Fairbanks/SPS after the settlement of *USA/ Curry* remains to be answered. Suffice it to say that it is safe to assume that it was more than 455 pages worth.

And all of this after Federal Trade Commission employees have, at least on one occasion, ordered evidence pertinent to *USA v. Fairbanks* shredded. **(Ex. F)**

During the investigation/prosecution/settlement of *USA v. Fairbanks*, the only outside expert witnesses that were brought in for support testimony were a California CPA **(Ex. G)** and a consultant who jointly claimed that Fairbanks' was significantly under-capitalized at the time of investigation/settlement and that the settlement was "fair" given the then current financial state of Fairbanks/SPS. The consultant went on to testify that the attorney's fees requested were also justified. **(Ex. H)** Apparently, at no time during the course of *USA v. Fairbanks* were any "experts" called upon, in support of the victims' collective claims, to verify the actions of Fairbanks/SPS. For some unknown reason, the consultant that testified as to the settlement amount and legal fees associated with *USA v. Fairbanks* being appropriate apparently based her "expert opinion" on her conclusion that Fairbanks' victims were somehow akin to stockholder victims and not actual homeowners supposedly protected by the various state and federal consumer protection statutes among other state and federal laws and regulations.

Both "experts", as well as Fairbanks' Controller, Barbara K. Wing, **(Ex. I)** Plaintiffs Attorney Daniel Mulligan (at 5) **(Ex. J)** Plaintiffs Attorney Kelly Dermody (at 6) **(Ex. K)** and the Joint Declaration of Counsel Support Final Approval Class Settlement **(Ex. L)** brought into question the ability of Fairbanks to financially afford this settlement. On more than one occasion, the fact that Fairbanks had been downgraded by the credit ratings agencies as a result of *USA v. Fairbanks* being brought and Fairbanks' subsequent inability to obtain new business were cited as reasons for Fairbanks diminished income and reasons for concern that Fairbanks/SPS would file for bankruptcy.

<http://www.sec.gov/Archives/edgar/data/802106/000116231803000183/supplement.htm>

CSFB 424(b)(5) Supplemental filed 05/12/03

### ***Recent Developments Affecting Fairbanks***

*On April 29, 2003, Fitch Ratings ("Fitch") announced that it had placed Fairbanks' residential primary servicer ratings of "RPS1" for subprime, "RPS1-" for Alt-A and home equity and "RSS1" for residential special servicing on "rating watch negative" pending Fitch's determination of the impact of certain of Fairbanks' reporting and remittance practices. Fitch plans to conduct a targeted on-site review of Fairbanks' servicing facilities, which is scheduled to be completed within 30 days.*

*On April 30, 2003, Standard and Poor's Ratings Services, a division of The McGraw-Hill*

*Companies, Inc. (“S&P”) announced that it had lowered Fairbanks’ “Strong” residential servicing rankings for non-prime and special servicing to “Below Average” with a “Stable” outlook. As a result of the downgrade, Fairbanks’ status as an S&P “Select Servicer” has been withdrawn by S&P. In its report, S&P indicated that its action was based, in part, on increasing regulatory scrutiny over Fairbanks’ servicing practices, an alleged pattern of apparent Fair Debt Collection Practices Act violations, foreclosure cure rates and loan workout cure rates being outside industry tolerance levels and a lack of training and skills of the primary collections group. S&P, in announcing the downgrade of Fairbanks’ ratings, stated that Fairbanks has not adequately managed the portfolio growth associated with various acquisitions that have occurred during the past 36 months.*

*On May 5, 2003, Moody’s Investors Service, Inc. (“Moody’s”) announced that it had downgraded Fairbanks’ ratings as a primary servicer of residential subprime mortgage loans and as a special servicer from “SQ1” (“Strong”) to “SQ4” (“Below Average”). In its report, Moody’s indicated that the downgrades reflect Moody’s concerns about the on-going financial stability of Fairbanks, its ability to successfully address regulatory compliance issues without suffering erosion in loan performance and management’s ability to detect proactively and address operational and regulatory problems.*

*Fairbanks is in regular contact with Fitch, S&P and Moody’s and is actively addressing their concerns. Nevertheless, the downgrade of Fairbanks’ residential servicer rankings and ratings by S&P and Moody’s, respectively, a possible downgrade of Fairbanks’ servicer ratings by Fitch or other events may lead to Fairbanks’ inability to access liquidity advance facilities, a transfer of Fairbanks’ servicing responsibilities or increased delinquencies on the mortgage loans and delays in distributions to you, or any combination of these events.*

*An affiliate of the depositor is a lender under one or more of Fairbanks’ liquidity advance facilities.*

Had Fairbanks/SPS conducted business legally, ethically and honestly, prosecution of *USA v. Fairbanks* would not have been necessary. To cite pending legal action as the sole reason for Fairbanks’ potential financial failure is, at the very least, counter-intuitive. However, at this time, I would like to posit a different theory for Fairbanks/SPS' egregious conduct.

Affidavits and declarations were provided attesting to the fact that Fairbanks/SPS was under-capitalized and, as a result, would potentially not survive further prosecution. The Federal Trade Commission was fully aware of this testimony. It is my belief that Fairbanks/SPS was also fully aware of this fact and used the scheme of assessing fraudulent and unfounded fees as a manner in which to boost the company's capital, in effect creating a form of Ponzi scheme in the process. And if Fairbanks/SPS was aware of it's own cash flow problems, there is no reason to believe that it's parent corporations and majority and minority shareholders, The PMI Group and Financial Security Assurance respectively, could not know of the cash flow or “under-capitalization” issues as both entities had three members of their respective corporations sitting on the Fairbanks/SPS Board of Directors throughout the entire FTC investigation and right up to the sale of Fairbanks/SPS to Credit Suisse.

Regardless, history has proven that these concerns were severely unwarranted as Fairbanks/SPS was sold to Credit Suisse, <https://www.spservicing.com/about/releases/archive/2005/081505-SPSAcquisition.htm> , as in January 2005, more than six months before the sale was finalized, Fairbanks/SPS and CSFB signed a letter of intent to enter into a strategic servicing agreement thereby securing \$6 Billion in servicing rights from CSFB (**Ex. M**). Fairbanks/SPS' former owners, The PMI Group, also received streams of income from Fairbanks/SPS until the first quarter of 2008 as well.

<http://www.sec.gov/Archives/edgar/data/935724/000119312505169576/d8k.htm>  
PMI Group 8-K August 12, 2005

#### **Item 1.01. Entry Into a Material Definitive Agreement.**

*On August 12, 2005, The PMI Group, Inc. ("PMI") entered into (i) an Option Agreement (the "Option Agreement") with Credit Suisse First Boston (USA), Inc. ("CSFB"), SPS Holding Corp. ("SPS"), FSA Portfolio Management Inc. ("FSA") and Greenrange Partners LLC ("Greenrange") and (ii) a Contingent Payment Agreement (the "Contingent Payment Agreement") with CSFB, Greenrange, FSA and Select Portfolio Servicing, Inc.*

*The Option Agreement grants CSFB the option to purchase all of the outstanding capital stock of SPS from PMI, FSA and Greenrange. On August 12, 2005, CSFB exercised such option. The transaction is subject to the satisfaction of certain closing conditions, including obtaining approvals from a number of state regulators.*

*Under the terms of the transaction, PMI expects to receive an estimated cash payment of approximately \$102 million at the closing and payments from certain mortgage servicing rights. The Contingent Payment Agreement generally provides that PMI will receive additional monthly cash payments through the first quarter of 2008 from a residual interest in mortgage servicing assets that have an estimated book value at closing of approximately \$18 million. Under the terms of the Option Agreement, PMI, FSA and Greenrange will indemnify CSFB for certain liabilities relating to SPS's operations, including litigation and regulatory actions, and this indemnification obligation may potentially reduce the proceeds that PMI receives from the sale. Total expected proceeds from the sale of SPS are in excess of PMI's current carrying value and, accordingly, PMI does not expect to recognize an impairment charge as a result of the sale.*

Additionally, a PMI shareholder/Fairbanks/SPS victim personally brought his concerns directly to then PMI CEO W. Roger Houghton and PMI President and Fairbanks/SPS Board member Bradley M. Schuster during a shareholder's meeting in 2002. These same concerns were also voiced during a press conference held outside The PMI Group's Walnut Creek, CA headquarters on the same day of the shareholder meeting. Mr. Houghton was also made aware of the same concerns by the same shareholder in writing in 2002 as well. As evidenced by the inclusion of the shareholder's letter in an installment of my FOIA request to the Federal Trade Commission, the FTC was also well aware of the concerns held by the shareholder.

*USA v. Fairbanks* was officially settled in May of 2004. The sale of Fairbanks/SPS to Credit Suisse was first publicly announced January 2005 (**Ex. M**). Negotiations for the sale had to have taken place prior to January 2005. One of the questions that needs to be answered is exactly when the topic of Fairbanks/SPS' sale to CSFB first came about and when the proposal was floated between PMI and CSFB. If this plan had occurred at any time before *USA v. Fairbanks* was finalized it should have been disclosed to prosecutors so that any necessary adjustments could have been made to the settlement.

The level of egregious actions perpetrated by Fairbanks/SPS only escalated when Fairbanks apparently attempted to pay fines levied by the New Hampshire Banking Department in early 2002 with a counterfeit check (**Ex. N**). If Fairbanks/SPS is brazen enough to attempt to pay fines to government entities in such a grossly illegal manner what chance does the American homeowner/borrower/consumer stand against them?

Additionally, I bring to your attention the Stipulated Final Judgment and Order released by the Federal Trade Commission September 9<sup>th</sup>, 2008 in *Federal Trade Commission, v. EMC Mortgage Company, a Delaware corporation, and The Bear Stearns Companies LLC, a Delaware limited liability company*.

<http://www.ftc.gov/opa/2008/09/emc.shtm>

***Bear Stearns and EMC Mortgage to Pay \$28 Million to Settle FTC Charges of Unlawful Mortgage Servicing and Debt Collection Practices***

*The Bear Stearns Companies, LLC and its subsidiary, EMC Mortgage Corporation, have agreed to pay \$28 million to settle Federal Trade Commission charges that they engaged in unlawful practices in servicing consumers' home mortgage loans. The companies allegedly misrepresented the amounts borrowers owed, charged unauthorized fees, such as late fees, property inspection fees, and loan modification fees, and engaged in unlawful and abusive collection practices. Under the proposed settlement they will stop the alleged illegal practices and institute a data integrity program to ensure the accuracy and completeness of consumers' loan information.*

Similar to *USA/Curry v. Fairbanks*, EMC and Bear Stearns were allowed to "voluntarily" settle this action for a paltry \$28 million in exchange for admitting no wrongdoing. Per a telephone call I received from the Federal Trade Commission the morning of September 10, 2008, at that time the FTC had no idea how many victims *FTC v. EMC & BS* would eventually have but they expected the number to be "in the

tens of thousands”. *FTC v. EMC* alleges a greater number of violations of law than *USA v. Fairbanks*, EMC’s parent corporation, Bear Stearns, was named as a defendant whereas Fairbanks/SPS’ parent corp., The PMI Group, was not a named defendant in *USA v. Fairbanks*, yet EMC and BS were allowed to “voluntarily” settle this case for almost exactly half of the *USA/Curry* settlement and again, in exchange for admitting no wrongdoing. The fact that *FTC v. EMC* needed to be brought at all is proof that *USA v. Fairbanks* was nothing close to the deterrent to Mortgage Servicing Fraud that the Federal Trade Commission thought that it would be. At least the Federal Trade Commission brought charges after this latest investigation of EMC/BS as opposed to the 2005 investigation of EMC/BS that resulted in no apparent charges or downgrades.

[http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2006\\_Feb\\_6/ai\\_n16047699](http://findarticles.com/p/articles/mi_m0EIN/is_2006_Feb_6/ai_n16047699)

### **Fitch: Launch of FTC Investigation Does Not Warrant Rating Change For EMC**

*The FTC issued the CID pursuant to a Dec. 8, 2005 resolution of the FTC authorizing non-public investigations of various unnamed subprime lenders, loan servicers and loan brokers to determine whether there have been violations of certain consumer protections laws. The FTC investigation is in a very early stage, as EMC is still in the process of gathering the extensive documentation requested by the regulator. Fitch intends to monitor the progress of the investigation and will initiate a Rating Watch or downgrade if conditions warrant, though the agency feels that it is currently not appropriate to do so.*

Congressman, something is terribly wrong when a government entity, charged with protecting the consumers of the United States, does not carry out this task to its fullest capacity. In the end, only the consumer suffers. Fairbanks/SPS went on to be awarded \$6 billion, with a “B”, in servicing contracts from new parent corporation Credit Suisse. Fairbanks/SPS former parent, The PMI Group, went on to sell Fairbanks/SPS to Credit Suisse for \$144 million in 2005 and secured a stream of income from the sale until the first quarter of 2008. The Federal Trade Commission has denied me **(Ex O)** and others access to the vast majority of information that it has in its possession that could potentially have saved hundreds of thousands, if not millions, of borrowers from becoming additional victims of Fairbanks/SPS. And even more recently, as demonstrated with *FTC v. EMC/BS*, the Federal Trade Commission refuses to hold corporate entities properly and legally accountable for their actions when it is discovered that they are committing criminal acts against the very consumers that the Federal Trade Commission is charged with protecting.

To add additional insult to injury, the federal government somehow saw fit to award Select Portfolio Servicing, f/k/a Fairbanks Capital Corporation, \$376 million in TARP funds as of April 13, 2009 as part of the “Home Affordable Modification Program”. Evidence of this can be found on the last page of the TARP Transaction Reports which can be found at <http://www.financialstability.gov/latest/reportsanddocs.html> .This corporation should be prosecuted to the fullest extent of the law for criminal actions not rewarded with \$376 million of United States taxpayers’ money. In my own case, for example, I strongly believe that I have evidence of mail and wire fraud, there is potentially securities fraud, tax fraud and insurance fraud and I have evidence of fabricated assignments of mortgage that have been filed at my county registry of deeds in order to further the financial scheme that has been perpetrated against me. Other victims of Fairbanks/SPS have shared similar complaints as mine with me over the years.

At the very least, with the recent infusion of capital that Fairbanks/SPS has received the Federal Trade Commission should be exploring the possibility of obtaining more significant financial restitution for the 280,000 victims certified in *USA/ Curry v. Fairbanks*. Of course, that should have been done long ago, when Fairbanks/SPS obtained the \$6 Billion servicing platform from Credit Suisse as a result of Credit Suisse's acquisition of Fairbanks/SPS in 2005.As a result of this financial windfall, in conjunction with the significant financial infusions that SPS has received over the last few years, at the very least the Federal Trade Commission should very seriously explore securing additional restitution for the 281,100 victims of Fairbanks Capital as well as any new potential victims that may be identified after the 2004 settlement of *USA/ Curry v. Fairbanks*.

At roughly the same time period that I notified Fairbanks Capital Corp. that I was opting out of the *USA/ Curry v. Fairbanks* class action, their local legal counsel, Harmon Law Offices, represented to my attorney in writing that Fairbanks did, in fact, have physical custody of my original note and mortgage in their Salt Lake City, UT facility and refused to produce said documents upon request by my attorney. **(Ex. P fishing expedition)** More than four years later, I have been given significant reason to believe that Fairbanks/SPS cannot, in fact, produce my original note and mortgage thereby admitting that they have no legal standing to perform any actions with regard to my loan never mind initiate a foreclosure action as they attempted to do so in December 2003. **(Ex. Q Where’s the Note)**

I am one of the 281,100 victims of Fairbanks Capital as certified by the Federal Trade Commission for the *USA/ Curry v. Fairbanks* class action. More than four years after opting out of the class action, Fairbanks/SPS gave me significant reason to believe that they could not produce my original note and mortgage. This brings Fairbanks/SPS’ legal standing into significant question in my case. My question,

though, is a more global one. If Fairbanks/SPS cannot produce my original note and mortgage, why am I only finding this out more than four years after the settlement of USA/Curry v. Fairbanks only through my own legal efforts?

More importantly, if Fairbanks/SPS cannot produce my original note and mortgage, did the Federal Trade Commission bother to confirm whether or not then Fairbanks Capital Corp. had legal standing and/or was able to produce the original notes and mortgage associated with the other 281,099 victims? The Federal Trade Commission in general, and specifically FTC Special Counsel Allison I. Brown of the Division of Financial Practices, were specifically made aware of the applicability of Article 3 of the Uniform Commercial Code (as discussed in detail in Ex. Q) by Fairbanks/SPS' own Executive Vice President and General Counsel Gregory Harmer in a letter dated January 21, 2004 from Mr. Harmer to Attorney Brown while discussing terms of the *USA/Curry v. Fairbanks* settlement. (**Ex R**).

This is an extremely significant question as, if the Federal Trade Commission did not confirm Fairbanks' legal standing in each and every one of the 281,100 cases involved in *USA/Curry v. Fairbanks* then the Federal Trade Commission may very well be responsible for the 280,000 victims who opted in to *USA/Curry v. Fairbanks* relinquishing their legal rights against Fairbanks/SPS and all other entities released as a result of the settlement of *USA/Curry v. Fairbanks* for absolutely no justifiable legal reason. If such were the case, this would constitute grossly negligent oversight on the part of the Federal Trade Commission and an extreme travesty of justice perpetrated against the victims of not only Fairbanks Capital Corp. n/k/a Select Portfolio Servicing Inc. but potentially the 86,000 victims of *FTC. V. EMC/Bear Stearns* and any other victim of Mortgage Servicing Fraud in general as the settlement of *USA/Curry v. Fairbanks* was touted as being "industry reforming" and, had it been properly adjudicated, may very well have served as a significant deterrent against "erroneous" or potentially illegal actions of other mortgage servicers.

Had *USA/Curry v. Fairbanks* been properly adjudicated and Fairbanks/SPS been held fully accountable and prosecuted to the fullest extent of the law for its' egregious actions, there is a chance that the current economic crisis in which the United States finds itself may have been significantly lessened as the levels of greed that drove Fairbanks/SPS may have been checked in other mortgage servicers, like EMC/Bear Stearns and others, thereby potentially causing less damage to Residential Mortgage Backed Securities.

The grossly negligent failure of the Federal Trade Commission to properly prosecute Fairbanks/SPS for its large scale fraudulent actions is no more apparent than when the Supplemental Affidavit of Fairbanks' Senior Vice President and Chief Information Officer Brent Rasmussen is taken into consideration. **(Ex. S)** Mr. Rasmussen testifies at paragraph 4 that *“It is not possible, as a practical matter, to simply write-off, reverse, refund or reimburse all fees and charges that borrowers claim were “improper”, even if those claims were true, because of various limitations in how Fairbanks (and other industry participants) keeps its records.”* (emphasis added) Mr. Rasmussen goes on to further testify at paragraph 5 that *“Fairbanks uses a computerized system, known as the Mortgage Servicing Platform (“MSP”) system, in connection with its loan servicing activities. This system shows information about the loan, such as the loan balance, when borrower payments are posted to the account, and what fees and charges Fairbanks assessed to the account. However, the system does not allow Fairbanks to distinguish, for any particular borrower, many of the circumstances pertaining to the assessment of specific fees and charges.”*

This testimony, submitted under oath of a sworn affidavit, plainly states that even “if” the victims of Fairbanks/SPS had legitimate claims against the company, the issues could not have been fixed because of the manner in which Fairbanks/SPS chose to do business. Because of the choice that Fairbanks/SPS made in the manner in which it decided to conduct business, at least 281,1000 victims of the corporation were significantly damaged financially, emotionally, physically and/or psychologically. Some of these victims and their families were/are so damaged by Fairbanks/SPS that they may never recover in any aspect.

And finally, by way of a Memorandum of Interview conducted on April 8, 2003 generated by HUD-OIG, **(Ex. T)** a “cooperating witness” stated that Fairbanks *“could not accurately track the insurance that was related to a borrower's property.”* This witness also testified that Fairbanks required what amounted to “kickbacks” from Force Placed Insurance providers. Similarly, realty companies were required to compensate Fairbanks for the real estate owned (REO) business that Fairbanks provided in the amount of  $\frac{3}{4}$  of a point. This individual also stated that the *“Alltell system” that Fairbanks used would create “significant problems for the borrowers”* because of the manner in which the program functioned with regard to, among other things, the allocation of borrower's “partial payments.”

A second “cooperating witness” Memorandum of Interview generated on March 27, 2003 **(Ex. U)** corroborates the initial witness account that kickbacks were required of then Countrywide-owned Balboa Insurance. Additionally, this witness stated that corporations were created by Fairbanks to do business with Fairbanks in order to increase overall revenue for the company. One of these businesses, Residential Real Estate Review, was created to generate Broker Price Opinions for Fairbanks. This witness stated that it was known within Fairbanks that the company “up-charged”

for BPOs as a way to increase revenue because *“the borrower was a captive client and did not have a choice regarding the fee charged.”* As a result of the creation of RRReview, BPOs were not considered “arms length transactions” and he was aware of instances whereby borrowers, in fact, were charged for BPOs that were never conducted. Additionally, this witness stated that it was *“a conflict of interest for Fairbanks to determine (i.e. control) the value of a property it was foreclosing on.”* This second witness also stated that it was known that the area overseeing force placed insurance for Fairbanks *“was not well managed”* and that *“borrowers had great difficulty convincing Fairbanks that they already had coverage.”*

A third “cooperating witness” stated in an interview conducted by HUD-OIG on May 16, 2003 (**Ex. V**) that *“she had heard the Fairbanks employees had intentionally created notice of foreclosure letters and pre-dated them. Specifically, the state of Maryland required a special demand letter in case of foreclosure. When Fairbanks employees learned that (name redacted) failed to issue the letter required by Maryland, they artificially created them.”*

In addition to the aforementioned exhibits, I also have in my possession, requests of Fairbanks/SPS victims from across the country asking their respective Senators to initiate a Government Accountability Office review of the Federal Trade Commission on their behalf. To the best of my knowledge, no action has ever been taken as a result of those requests.

At this time, I would ask that a request be made of the Government Accountability Office and that a formal review be conducted of the Federal Trade Commission’s practices, the practices of HUD-OIG and the manner in which the Federal Trade Commission and HUD-OIG investigated, prosecuted and settled not only *USA v. Fairbanks* but *FTC v. EMC/BS* and any other actions brought by the Federal Trade Commission in conjunction with any mortgage lender, servicer or other entity in the mortgage industry. Someone has to protect the American consumer from corporate corruption and if the Federal Trade Commission and/or HUD-OIG are somehow incapable of doing it then the American people need to know why and a new government entity needs to be appointed to perform the task properly.

Please forward this request to the appropriate individual or group in your office and have them contact me at their earliest possible convenience. The Exhibit list and victim letters/requests to their Senators are rather voluminous and I would like to transfer the information in the most efficient manner possible so as not to waste collective time and resources.

Additionally, please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

/S/

Michael C. Dillon

Cc:

Senator Jeanne Shaheen  
Senator Judd Gregg  
Senator Charles Schumer  
Senator Patrick Leahy  
Senator Bernie Sanders  
Senator Olympia Snowe  
Senator Susan Collins  
Senator Mel Martinez  
Senator Christopher Dodd  
Senator Richard Shelby  
Senator Robert Menendez  
Senator David Vitter  
Senator Tim Johnson  
Senator Mike Crapo  
Senator Jack Reed  
Senator Jim Bunning  
Senator Sheldon Whitehouse  
Senator John McCain  
Senator Jon Kyl  
Senator John Cornyn  
Senator Kay Bailey Hutchison  
Senator Arlen Specter  
Senator Evan Bayh  
Senator Richard Burr  
Senator Kay Hagan  
Congresswoman Carol Shea-Porter  
Congressman Paul Hodes  
Congresswoman Maxine Waters  
Congresswoman Marcy Kaptur  
Congressman Michael Capuano  
Congressman Barney Frank  
Congressman Brad Miller  
Congressman Paul Kanjorski  
Congressman Dennis Moore

Congressman Melvin Watt  
Congressman Scott Garrett  
Congresswoman Shelly Moore Capito  
Congressman Ron Paul  
Congressman Alan Grayson  
Congressman Gary Ackerman  
Congressman Jeb Hensarling  
Congressman William Delahunt  
Congressman Andre Carson  
Congressman John Dingell  
Congressman Edolphus Towns  
Congressman Dennis Kucinich