NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-5063, -5064, -5089

FRANK P. SLATTERY, JR., (on behalf of himself and on behalf of all other similarly situated shareholders of Meritor Savings Bank),

Plaintiff-Cross Appellant,

and

STEVEN ROTH, and INTERSTATE PROPERTIES,

Plaintiffs-Cross Appellants,

v.

UNITED STATES,

Defendant-Appellant.

Appeal from the United States Court of Federal Claims in Case No. 93-CV-280, Senior Judge Loren A. Smith.

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.

PER CURIAM.

O R D E R

Defendant-Appellant United States filed a combined petition for panel rehearing and rehearing en banc. The panel requested a response from Plaintiffs-Cross Appellants, Frank P. Slattery, Jr., Steven Roth and Interstate Properties. Responses were filed.

The petition was considered by the panel that heard the appeal, and thereafter by the court en banc. The court has decided that the appeal warrants en banc

consideration.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The petition for panel rehearing is denied.

(2) The petition for rehearing en banc is granted.

(3) The court's September 29, 2009 opinion is vacated, and the appeal is reinstated.

(4) The parties are requested to file new briefs addressing only the following issues:

(a) Is the Federal Deposit Insurance Corporation a non-appropriated fund instrumentality, and if so, what is the effect on the jurisdiction of the Court of Federal Claims over this suit against the United States?

(b) What is the appropriate standard for determining whether an entity is a non-appropriated fund instrumentality?

(5) This appeal will be heard en banc on the basis of the originally filed briefs, additional briefing ordered herein, and oral argument. An original and thirty copies of all originally-filed briefs shall be filed within forty-two (42) days from the date of filing of this order. An original and thirty copies of new en banc briefs shall be filed, and two copies of each en banc brief shall be served on opposing counsel. The Defendant-Appellant shall file its new en banc brief within forty-two (42) days from the date of filing of this order. The response briefs of the Plaintiffs-Cross Appellants are due

within twenty-eight (28) days from the date of service of the Defendant-Appellant's brief. The Defendant-Appellant's reply brief, if any, is due within fourteen (14) days from the date of service of the response. Briefs shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

(6) Briefs of amici curiae will be entertained, and any such amicus briefs may be filed without leave of court but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29.

(7) Oral argument will be held at a time and date to be scheduled later.

FOR THE COURT

March 19, 2010
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Thomas M. Buchanan
Bradley Paul Smith
Jeanne E. Davidson
Dorothy Ashley Doherty