United States District Court
District of Connecticut

FEDERAL HOUSING AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION, Plaintiff, v. ROYAL BANK OF SCOTLAND GROUP PLC; RBS HOLDINGS USA, INC.; RBS SECURITIES, INC. (f/k/a GREENWICH CAPITAL MARKETS, INC.); RBS FINANCIAL PRODUCTS, INC. (f/k/a GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.), RBS ACCEPTANCE, INC. (f/k/a GREENWICH CAPITAL ACCEPTANCE, INC.); FINANCIAL ASSET SECURITIES CORP.; JOSEPH N. WALSH III; CAROL P. MATHIS; ROBERT J. MCGINNIS; JOHN C. ANDERSON; and JAMES M. ESPOSITO. Defendants.	CASE NO. 3:11CV1383(AWT)

RULING ON MOTION TO STRIKE

FHFA brings claims under the Securities Act of 1933, including Section 12(a)(2) of the Act which creates rescissory liability for offering or selling securities by means of false or misleading statements. See 15 U.S.C. § 77l(a)(2). FHFA also brings, inter alia, claims under the Blue Sky laws of Virginia (on behalf of Freddie Mac, which is headquartered in McLean,

Virginia) and the District of Columbia (on behalf of Fannie Mae, which is headquartered in Washington, D.C.).[1] Like Section 12 of the 1933 Act, the Blue Sky laws create rescissory liability for false or misleading statements in selling securities.

The Fifteenth and Sixteenth Defenses in the defendants' Answer, Defenses, and Affirmative Defenses, which the defendants represent apply to all of the plaintiff's claims, raise the defense of loss causation. The plaintiff moves, pursuant to Fed. R. Civ. P. 12(f), to strike with prejudice the Fifteenth and Sixteenth Defenses to the extent those defenses are directed at FHFA's claims under the Blue Sky laws of Virginia and the District of Columbia, i.e., Va. Code § 13.1-522 and D.C. Code § 31-5606.05.

For the reasons set forth below, the plaintiff's motion to strike is being granted.

I. LEGAL STANDARD

Pursuant to Fed. R. Civ. P. 12(f), "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." To

[1] There are eight claims in the Amended Complaint, as follows: First Cause of Action – Violation of Section 11 of the Securities Act of 1933; Second Cause of Action – Violation of Section 12(a)(2) of the Securities Act of 1933; Third Cause of Action – Violation of Section 15 of the Securities Act of 1933; Fourth Cause of Action – Violation of Section 13.1-522(A) of the Virginia Code; Fifth Cause of Action – Violation of Section 13.1-522(C) of the Virginia Code; Sixth Cause of Action – Violation of Section 31-5606.05(a)(1)(B) of the District of Columbia Code; Seventh Cause of Action – Violation of Section 31-5606.05(c) of the District of Columbia Code; and Eighth Cause of Action – Common Law Negligent Misrepresentation.

prevail on a motion to strike an affirmative defense, the party moving to strike "must establish that: (1) there is no question of fact that might allow the defense to succeed; (2) there is no substantial question of law that might allow the defense to succeed; and (3) they would be prejudiced by the inclusion of the defense." New England Health Care Employees Welfare Fund v. iCare Mgmt., LLC, 792 F. Supp. 2d 269, 288 (D. Conn. 2011).

"A motion to strike an affirmative defense under Rule 12(f), Fed. R. Civ. P. for legal insufficiency is not favored and will not be granted unless it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense." William Z. Salcer, Panfeld, Edelman v. Envicon Equities Corp., 744 F.2d 935, 939 (2d Cir. 1984), cert. granted, judgment vacated on other grounds, 478 U.S. 1015 (1986) (internal citation and quotation marks omitted). "Moreover, even when the facts are not disputed, several courts have noted that a motion to strike for insufficiency was never intended to furnish an opportunity for the determination of disputed and substantial questions of law." Id. (internal citations and quotation marks omitted). "This is particularly so when . . . there has been no significant discovery." Id. "'[E]ven when the defense presents a purely legal question, the courts are very reluctant to determine disputed or substantial issues of law on a motion to strike;

these questions quite properly are viewed as determinable only after discovery and a hearing on the merits.'" Id. (quoting 5 C. Wright & A. Miller, Federal Practice & Procedure § 1381, at 800–01).

"Affirmative defenses will be stricken only when they are insufficient on the face of the pleadings." Electro-Methods, Inc. v. Adolf Meller Co., No. 3:06CV686(JBA), 2006 WL 2850415, at *2 (D. Conn. Oct. 3, 2006). Where an affirmative defense "is insufficient as a matter of law, the defense should be stricken to eliminate the delay and unnecessary expense of litigating it at trial." F.D.I.C. v. Collins, 920 F. Supp. 30, 33 (D. Conn. 1996).

II. DISCUSSION

A. Collateral Estoppel

The plaintiff argues that the defendants are precluded from asserting a loss causation defense to the Blue Sky claims because the defendants have already fully litigated and lost that issue on summary judgment in a related case. See Fed. Hous. Fin. Agency v. HSBC North America Holdings, 988 F. Supp. 2d 363, 367-70 (S.D.N.Y. 2013) ("HSBC"). The defendants argue, inter alia, that collateral estoppel cannot apply to any of the defendants except RBS Securities, as they were not parties to the HSBC action.

"The doctrine of collateral estoppel (or 'issue preclusion') bars relitigation of a specific legal or factual issue in a second proceeding where (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was [a] full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits." Grieve v. Tamerin, 269 F.3d 149, 153 (2d Cir. 2001) (internal citation and quotation marks omitted).

> [O]ne is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. This rule is part of our deep-rooted historic tradition that everyone should have his own day in court. As a consequence, a judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.

Richards v. Jefferson Cnty., Ala., 517 U.S. 793, 798 (1996) (internal citations and quotation marks omitted).

FHFA argues that RBS Securities "fairly represented the interests of itself and the other defendants here (its agents and affiliates) for purposes of applying collateral estoppel." (Pl.'s Mem. in Supp. of Mot. to Strike, Doc. No. 641-1, at 6.) "[A] nonparty may be bound by a judgment if she was adequately represented by a party to the earlier suit." Taylor v.

Sturgell, 553 U.S. 880, 898 (2008). The adequate representation exception applies only when

> (1) The interests of the nonparty and her representative are aligned; and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty. In addition, adequate representation sometimes requires (3) notice of the original suit to the persons alleged to have been represented.

Id. at 900 (internal citations and quotation marks omitted).

The defendants state that RBS Securities was not sued in any representative capacity, nor did it purport to act in such a capacity, in the HSBC case. They also state that the other defendants in the instant case were not served with process in HSBC, did not believe themselves to be parties to the litigation or that RBS Securities was representing their interests, and did not receive notice from the HSBC court that they could be bound by that litigation. Also, in Taylor, the Supreme Court noted that preclusion based on an agency relationship "is appropriate only if the putative agent's conduct of the suit is subject to the control of the party who is bound by the prior adjudication." 553 U.S. at 906. Moreover, as the defendants point out, collateral estoppel cannot apply to the claims under the District of Columbia Blue Sky laws because no claim under that statute was ever asserted against RBS Securities in the HSBC case.

The court agrees with the defendants that FHFA has not met its burden of establishing the elements of the adequate representation exception. In any event, FHFA's collateral estoppel arguments raise substantial and disputed issues, specifically with respect to agency and adequate representation, that cannot be resolved on a motion to strike. See Etienne v. Wal-Mart Stores, Inc., 197 F.R.D. 217, 222 (D. Conn. 2000) ("[S]everal courts have stated that a motion to strike for insufficiency was never intended to furnish an opportunity for the determination of disputed and substantial questions of law.").

B. Blue Sky Claims and Loss Causation

The court agrees with FHFA, however, that loss causation is not a defense to the Blue Sky claims under the District of Columbia statute, D.C. Code Ann. § 31-5606.05 or the Virginia statute, Va. Code Ann. § 13.1-522.

The pertinent part of the District of Columbia statute provides that:

> A person shall be civilly liable to another person who buys a security if the person . . . Offers or sells a security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which made, not misleading, the buyer does not know of the untruth or omission and the offeror or seller does not sustain the burden of proof that the offeror or seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

D.C. Code Ann. § 31-5606.05(a)(1)(B).

The pertinent part of the Virginia statute provides that:

> Any person who . . . sells a security by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him . . . .

Va. Code Ann. § 13.1-522(A).

Each statute explicitly provides for two defenses: actual knowledge by plaintiffs of the false misrepresentations or omissions, and reasonable care by defendants in due diligence. However, as discussed below, the highest court of neither jurisdiction has specifically addressed the issue raised here, i.e., whether there is a loss causation defense even though it is not explicitly provided for in the relevant statute. Thus, the court must determine whether the District of Columbia Court of Appeals and/or the Virginia Supreme Court would read a loss causation requirement into the applicable statute. See DiBella v. Hopkins, 403 F.3d 102, 111 (2d Cir. 2005).

The defendants argue that the District of Columbia Court of Appeals has suggested that loss causation is a viable defense and that the Virginia Supreme Court has recognized loss causation as a defense. (See Defs.' Mem. of L. in Opp. to Pl.'s

Mot. to Strike ("Defs.' Mem."), Doc. No. 646, at 12, 13.) The court disagrees.

First, both of these statutes are modeled on the Uniform Securities Act, which in turn was modeled on Section 12 of the Securities Act of 1933 as originally enacted. Until the 1995 amendments by the Private Securities Litigation Reform Act ("PSLRA"), Section 12 of the Securities Act of 1933 did not contain a loss causation defense. The Supreme Court in Randall v. Loftsgaarden, 478 U.S. 647 (1986), and the Second Circuit in Wilson v. Saintine Exploration and Drilling Corp., 872 F.2d 1124, 1126 (2d Cir. 1989), both recognized prior to the PSLRA that there was no loss causation defense. "Congress shifted the risk of an intervening decline in the value of the security to defendants, whether or not that decline was actually caused by the fraud." Randall, 478 U.S. at 659. "There can be little doubt that there was no causation defense in the Act before 1995," when Congress passed the PSLRA. In re Countrywide Fin. Corp. Mortgage-Backed Sec. Litig., 84 F. Supp. 3d 1036, 1042 (C.D. Cal. 2014). Since the 1995 amendments to the Securities Act of 1933, the District of Columbia and Virginia have not amended their Blue Sky laws to add a loss causation defense, despite enacting other post-1995 amendments to those laws.

This statutory history supports the conclusion that the pertinent provisions of these three laws should have been

construed similarly prior to the PSLRA and that, while none of the three provisions originally provided for a loss causation defense, Section 12 of the Securities Act of 1933 was amended to provide for such a defense, but the relevant provisions of the District of Columbia and Virginia Blue Sky laws were not.

This conclusion is consistent with the canon of statutory construction that expressio unius est exclusio alterius, i.e., the expression of one thing implies the exclusion of another. In construing statutes, both District of Columbia and Virginia courts begin with the plain and ordinary meaning of the statutory text. See Donahue v. Thomas, 618 A.2d 601, 607 (D.C. 1992) ("[C]ourts must follow the plain and ordinary meaning of the statute because that is the meaning the legislature intended."); Boynton v. Kilgore, 623 S.E.2d 922, 926 (Va. 2006) ("[C]ourts apply the plain language of a statute unless the terms are ambiguous."). The relevant provisions of both the District of Columbia and Virginia Blue Sky laws are clear and unambiguous. These Blue Sky laws both set forth the standard for liability and specify a limited number of defenses but, like Section 12 prior to the PSLRA, neither mentions loss causation.

The fact that the pertinent provisions of the District of Columbia and Virginia Blue Sky laws expressly enumerate defenses but do not include loss causation among them provides further support for the conclusion that loss causation is not available

as a defense under these statutes. See Odeniran v. Hanley Wood, LLC, 985 A.2d 421, 427 (D.C. 2009) ("[T]he canon of expressio unius est exclusio alterius . . . embodies the common-sense principle that when a legislature makes express mention of one thing, the exclusion of others is implied."); Com. ex rel. Virginia Dep't of Corr. v. Brown, 259 Va. 697, 704–05, 529 S.E.2d 96, 100 (Va. 2000) ("[W]here a statute speaks in specific terms, an implication arises that omitted terms were not intended to be included within the scope of the statute."). See also Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993) ("[T]he Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. Expressio unius est exclusio alterius."); TRW Inc. v. Andrews, 534 U.S. 19, 28 (2001) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.") (quoting Andrus v. Glover Constr. Co., 446 U.S. 608, 616-17 (1980)); United States v. Pettus, 303 F.3d 480, 485 (2d Cir. 2002) (same).

Thus, this court reaches the same conclusion reached by other courts that have considered whether loss causation is a

defense to the provisions of the District of Columbia and Virginia Blue Sky laws at issue here or the equivalent provisions of other Blue Sky laws. See HSBC, 988 F. Supp. 2d at 367-70 (holding that loss causation is not a defense under District of Columbia or Virginia Blue Sky laws); Premier Capital Mgmt., LLC v. Cohen, No. 02 C 5368, 2008 WL 4378300, at *18 (N.D. Ill. Mar. 24, 2008) (holding that "loss causation is not an affirmative defense to claims under" the Virginia Blue Sky law); Massachusetts Mut. Life Ins. Co. v. Residential Funding Co., LLC, 55 F. Supp. 3d 235, 245 (D. Mass. 2014) (loss causation defense not available under Massachusetts Blue Sky law); Nat'l Credit Union Admin. Bd. v. Morgan Stanley & Co., No. 13 CIV. 6705 DLC, 2014 WL 1673351, at *4 (S.D.N.Y. Apr. 28, 2014) (same, Texas Blue Sky law); Countrywide, 84. F. Supp. 3d at 1042-43 (same, Colorado Blue Sky law); Lucas v. Downtown Greenville Inv'rs Ltd. P'ship, 284 Ill. App. 3d 37, 52, 671 N.E.2d 389, 400 (1996) (same, Illinois Blue Sky law); Gilliland v. Hergert, No. 2:05-CV-01059, 2008 WL 2682587, at *7 (W.D. Pa. July 1, 2008) (same, Pennsylvania Blue Sky law).

With respect to the Virginia statute, the defendants assert that the Virginia Supreme Court has recognized loss causation as a defense. They state that "in Board Supervisors of Fluvanna County v. Davenport & Co., LLC, the Virginia Supreme Court held that Virginia's Blue Sky laws also require the plaintiff to

prove both reliance and loss causation. 742 S.E. 2d 59, 63 (Va. 2013)." (Defs.' Mem. at 13.) There was no such holding in Davenport. The court explained the issues and holding in Davenport as follows:

> In this appeal, we consider whether the circuit court erred when it sustained a demurrer to a complaint filed by the Board of Supervisors of Fluvanna County (the Board) against a private financial advisor on the basis that the separation of powers doctrine prevented the court from resolving the controversy because the court would have to inquire into the motives of the Board's legislative decision making. An inquiry into the relationship between the separation of powers doctrine and the motivation of legislators necessarily implicates legislative immunity. For the reasons set forth below, we hold that the Board effectively waived its common law legislative immunity from civil liability and the burden of litigation, and therefore reverse the circuit court judgment sustaining the demurrer filed by Davenport & Company LLC (Davenport).

Id. at 60.

Then, in a discussion of whether "[c]ommon law legislative immunity applies to municipal legislators when they are acting [with]in the sphere of legitimate legislative activity," id. at 63 (internal citation and quotation marks omitted), the court stated:

> In the present case, it is clear that the motivations of and discussions between Board members surrounding their vote on the stand alone bonds fall within the scope of legislative immunity. In a trial between the Board and Davenport, the fraud claims, Counts II and IV, would require proof of the element of reasonable reliance for the Board to establish the claims. The claims of breach of fiduciary duty (Count I), gross negligence (Count III), unjust enrichment (Count V), breach of contract (Count VI), and breach of the Virginia Securities Act (Count VII) would require the Board to prove that it reasonably relied upon

> Davenport and that this reasonable reliance resulted in provable damages. An evaluation of whether the Board members relied upon Davenport's allegedly misleading statements in their discussions concerning the bonds requires testimonial probing into the basis for the Board's vote on the bond issue. As a result, the circuit court correctly held that the separation of powers doctrine was implicated.

Id. (emphasis added). Thus, it is apparent from a straightforward reading of Davenport that there is no holding with respect to Virginia's Blue Sky laws, and that there is no reasonable basis for relying on dicta in which the Virginia Securities Act, together with numerous other causes of action, received passing reference for the proposition that the Virginia Supreme Court would read a loss causation requirement into the pertinent provision of the Virginia Blue Sky laws.

The court in HSBC similarly rejected such reliance on Davenport. The defendants contend here that the reasoning in HSBC was flawed because the court distinguished Davenport on the basis that Davenport involved a claim under Section 13.1-522(B), and at issue in HSBC was a claim under Section 13.1-522(A). The defendants assert that "[t]here is nothing in the Davenport complaint suggesting that the claim asserted was under subsection 522(B) rather than subsection 522(A)." (Defs.' Mem. at 18.) That is not correct. The complaint in Davenport alleges that "[f]or more than fifteen years, Davenport has acted as the Board's financial advisor, for which it was duly

compensated." (Ex. J., Doc. No. 646-11, at ¶ 6.) Count VII merely refers to "The Act, Virginia Code Ann. section 13.1-500, et seq.," and does not reference a specific section of the Act. (Id. at ¶ 53.) However, Section 13.1-522(B) covers, among others, any person who "engages in the business of advising others, for compensation . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." Thus, it is apparent that at issue in Davenport was Section 13.1-522(B).

The defendants also argue that in Price v. Griffin, 359 A.2d 582, 588 (D.C. 1976), the District of Columbia Court of Appeals suggested that loss causation is a viable defense under the pertinent provision of the District of Columbia Blue Sky laws. However in Price, the analysis relied on precedent interpreting Rule 10(b)(5), based on an understanding that the claim at issue there was –- unlike FHFA's claims here –- a fraud-based claim. See id. at 585 n.2 ("D.C. Code 1973, s 2-2401 et seq. The sections relating to securities fraud provide as follows: s 2-2402. Fraud. . . . s 2-2413. Civil liabilities.") Moreover, the defendants rely on portions of the following passage from Price:

> [A]s a general proposition, recovery should not be allowed on a mere showing that a representation made by a seller of securities was inaccurate if the sale was made under circumstances showing that such misrepresentation was not one which caused the investor to enter into the

> transaction. Accordingly, we have concluded that in an action under the local Blue Sky Law, D.C.Code 1973, s 2-2401, where the complaint alleges certain misstatements, in contradistinction to a failure to disclose a material fact, some element of reliance must be shown to demonstrate that such statements caused the injury complained of.

Id. at 588. The "general proposition" quoted in part by the defendants is in direct conflict with the Supreme Court's explanation in Randall of what Congress sought to accomplish when it originally enacted Section 12 of the Securities Act of 1933, which is unsurprising because the statement was made in the context of a fraud-based claim. The pertinent provision of the District of Columbia law was modeled (indirectly) on Section 12 as originally enacted, and there is no indication that the District of Columbia Court of Appeals ever considered the issue of whether there was a loss causation defense to a claim under the predecessor to § 31.5606.05(a)(1)(B).

The defendants also argue that FHFA is incorrect in arguing that as originally enacted, Section 12 did not include a loss causation defense. For support, the defendants point to the Senate Report accompanying the 1995 amendments, which stated that that amendment's purpose was to "clarify" that the defense existed under the statute. But as FHFA correctly notes, "[p]ost-enactment legislative history . . . is not a legitimate tool of statutory interpretation." Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011).

Finally, the defendants argue that FHFA has put loss causation at issue because its complaint alleges that the misrepresentations at issue "directly caused Fannie Mae and Freddie Mac to suffer billions of dollars in damages" and were "the proximate cause" of Fannie Mae's and Freddie Mac's losses. (Am. Compl., Doc. No. 40, at ¶¶ 164, 165.) However, as the plaintiff points out, the allegations in a complaint do not change the legal requirements for proving or defending against its claims, and loss causation is not an element of or defense to claims under either District of Columbia or Virginia Blue Sky laws.

C. The Plaintiff Has Satisfied the Requirements Under Rule 12(f)

Based on the foregoing discussion, the court has concluded that it appears to a certainty that the plaintiff would succeed despite any state of the facts which could be proved in support of a loss causation defense with respect to its Blue Sky claims. Also, while the defendants contest the plaintiff's position, the court has concluded that the instant motion does not present any substantial issue of law. Thus, the court concludes that the plaintiff has satisfied the first and second requirements with respect to striking an affirmative defense. See New England Health Care Employees Welfare Fund v. iCare Mgmt., LLC, 792 F. Supp. 2d 269, 288 (D. Conn. 2011). With respect to the third

requirement that must be satisfied before a party can prevail on a motion to strike an affirmative defense, i.e., that the party would be prejudiced by inclusion of the affirmative defense, the plaintiff contends that this issue of a loss causation defense is a complex one and it will be prejudiced if the issue is not resolved now because its presence in the case will confuse the claims at issue, cause the plaintiff to incur significant additional time to oppose the loss causation elements under the Blue Sky laws, and force it to incur additional expenses during discovery and at the summary judgment stage and at trial.

The defendants argue that FHFA will not be prejudiced, even if the loss causation defenses to claims under the Blue Sky laws are subsequently determined to be insufficient as a matter of law, because loss causation is an element of the plaintiff's negligent misrepresentation claims and a defense to its Section 11 and Section 12 claims. See 15 U.S.C. §§ 77k(e), 77l(b). The defendants argue that "for 20 of the 68 securitizations at issue, FHFA's sole claims are premised on these non-Blue Sky legal theories" and also that "[t]he Causation Defenses under the Blue Sky laws are substantively identical to the loss causation defenses under federal law, and the facts that would support the defenses under the Blue Sky laws and under federal law (and to defeat FHFA's negligent misrepresentation claims) are identical." (Defs.' Mem. at 8-9.)

While the court agrees with the defendants that the issue of loss causation will be in the case because of other claims and/or defenses, it finds the defendants' arguments unpersuasive. It is undisputed that this is a large and complex litigation. The plaintiff notes that the defendants are seeking to pursue a loss causation defense on $11.75 billion of Blue Sky claims and that whether such a defense is available could have a significant impact on litigation strategy by each side. As the plaintiff points out with respect to a "loss causation reduction" with respect to the damages calculation for each of FHFA's claims, including the Blue Sky claims, there will be calculations made by the defendants and necessarily a calculation in response by the plaintiff. Given the amount at issue with respect to the Blue Sky claims, as long as this issue is in the case, it will be vigorously contested, at significant expense, by the parties in connection with expert discovery, at the summary judgment stage and at trial. Also, the defendants assert that "at trial the fact-finder will hear the same evidence and argument on loss causation, and if necessary the Court can provide a limiting instruction." (Defs.' Mem. at 9.) However, the presence of the issue of loss causation with respect to the Blue Sky claims would not only inevitably make an already lengthy trial longer, but would also have the effect of forcing the jury to follow and apply limiting instructions with

respect to a defense the court has already determined is insufficient as a matter of law. This would needlessly complicate the jury's task.

Finally, this is not a situation where there has been no significant discovery –- quite the contrary –- and no discovery that would be helpful in resolving the central issue presented by the instant motion has been identified. Thus, this is a case where the only consequence of striking these defenses to claims under the Blue Sky laws now will be to eliminate delay and the expense of preparing for trial on the issue and the expense and confusion of litigating it at trial.

III. CONCLUSION

For the reasons set forth above, the plaintiff's Motion to Strike (Doc. No. 641) is hereby GRANTED. The Fifteenth and Sixteenth Defenses in the defendants' Answer, Defenses, and Affirmative Defenses are stricken to the extent these defenses are directed at claims under the Blue Sky laws of Virginia and the District of Columbia, i.e., Va. Code § 13.1-522 and D.C. Code § 31-5606.05.

It is so ordered.

Signed this 31st day of August, 2016 at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge