SUTHERLAND

LEGAL ALERT

February 16, 2012

Parties Agree to Dismiss Fair Housing Act "Disparate Impact" Case Pending Before the Supreme Court

In November, the Supreme Court of the United States agreed to decide whether "disparate impact" claims are cognizable under the federal Fair Housing Act and, if so, how such claims should be analyzed. The case was set to be argued in the Court later this month. On February 14, the case was dismissed, apparently by agreement of the parties.

The Court had granted a petition to review the Eighth Circuit's decision reversing summary judgment in the defendants' favor in *Gallagher v. Magner*, 619 F.3d 823 (8th Cir. 2010), which involved a challenge by owners of rental properties, under various theories of liability, to the City of St. Paul's alleged "practice" of "aggressively enforcing" its Housing Code. The district court granted the defendants' motion for summary judgment but the Eighth Circuit reversed with respect to the plaintiffs' "disparate impact" claim under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(a)-(b). See Sutherland's November 10, 2011 Legal Alert.

The Supreme Court has never addressed the propriety of "disparate impact" claims under the FHA, and lower courts' recognition of such claims began before the Supreme Court's decision in *Smith v. City of Jackson, Mississippi*, 544 U.S. 228 (2005), in which the Court found disparate impact claims cognizable under § 4(a)(2) of the Age Discrimination in Employment Act because of text in that section "identical" to that of Title VII of the Civil Rights Act of 1964 – language which is absent from the FHA.

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If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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