## LEGAL ALERT

SUTHERLAND

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.

## . . .

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.

Thomas M. Byrne Valerie Strong Sanders Daniel H. Schlueter 404.853.8026 404.853.8168 202.383.0146 tom.byrne@sutherland.com valerie.sanders@sutherland.com dan.schlueter@sutherland.com

© 2012 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent coursel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.