



Insight

MetLife Meets FSOC in Court: The Issues

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It's been just over a year since MetLife first filed its [complaint against the Financial Stability Oversight Council](#) (FSOC) in DC District Court. Today, Judge Rosemary Collyer heard arguments from both sides and pointedly questioned the Justice Department attorney representing FSOC about the people and the process that resulted in the designation of MetLife as a systemically important financial institution (SIFI). Importantly, the legal issues in this case are questions of process; not of Congressional intent or of the [economic merits](#) of SIFI designation. Specifically, Judge Collyer must decide whether the designation process and decision by FSOC was "arbitrary and capricious." If she decides that it was, MetLife will be able to shed its SIFI designation.

Interestingly enough, the questions posed by Judge Collyer today were the same questions that were asked by the House Financial Services Committee at their "Oversight of the Financial Stability Oversight Council" hearing last December and by the Senate Banking Committee at their "Oversight of the Financial Stability Oversight Council Designation Process" last July. Three common concerns stood out.

First is the issue of whether FSOC had proper separation of powers when making its decision. Put another way, as Judge Collyer said, "Who decides what at what point? ... There's nobody neutral in this process; they're all interested." She went on to say that a "blending of functions" is common within supposedly-impartial government agencies but "not the same people."

Second is the fact that FSOC failed to take into account the existing state-based regulatory structure for insurance companies like MetLife. Judge Collyer noted that FSOC's reasons for the designation appeared inconsistent with its previous statements as to what factors it would consider during the process – including preexisting regulation.

Third, Judge Collyer expressed concerns about the way in which FSOC analyzed the action risk that would make MetLife a SIFI. She added that the analysis done by FSOC was "not a risk analysis" but that it was "assuming the worst of the worst" and that the statutory test for vulnerability to stress "isn't the analysis that was used."

Both of these concerns are not only questions that have been being raised by House and Senate Committees for several months, but they are arguments that MetLife made in its initial complaint against FSOC. It remains to be seen what Judge Collyer will decide, but momentum is building against FSOC and its SIFI designation process, and not just from the plaintiff in the case.