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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
RESIDENTIAL CAPITAL, LLC, et al.,	)	Case No. 12-12020 (MG)
Debtors.	)	(Jointly Administered)

OMNIBUS MOTION *IN LIMINE* OF THE AD HOC GROUP OF JUNIOR SECURED NOTEHOLDERS TO PRECLUDE CERTAIN ASPECTS OF THE TESTIMONY OF LEWIS KRUGER AND JOHN DUBEL AND THE EXPERT TESTIMONY OF RON D'VARI AND JEFFREY LIPPS PROFFERED IN CONNECTION WITH THE FGIC SETTLEMENT MOTION

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TO THE HONORABLE MARTIN GLENN:

The Ad Hoc Group of Junior Secured Noteholders (the "Ad Hoc Group") by and through its undersigned counsel, hereby files this omnibus motion in limine (the "Motion") to preclude certain aspects of the testimony of Lewis Kruger and John Dubel and expert testimony of Ron D'Vari and Jeffrey Lipps proffered by the Debtors in connection with the Debtors' Motion Pursuant to Federal Rules of Bankruptcy Procedure 9019 for Approval of the Settlement Agreement Among the Debtors, FGIC, the FGIC Trustees and Certain Institutional Investors [Docket No. 3929] (the "FGIC Motion"). In support of its Motion, the Ad Hoc Group respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors' evidentiary record in support of the FGIC Motion suffers from many of the same deficiencies that the Committee raised with respect to the record created on the now abandoned RMBS Settlement. First, the Debtors seek to use attorney-client privilege and the Court's mediation order as both a sword—to offer evidence that the FGIC Settlement Agreement meets the Iridium factors— and as a shield—to prevent them from having to reveal in discovery the actual substance of any advice rendered or discussions had in mediation. The Court has repeatedly cautioned the Debtors that they may not do so. See, e.g., In re Residential Capital, LLC, 491 B.R. 63, 70 (Bankr. S.D.N.Y. 2013) ("The law does not permit such cherry-picking of reliance on counsel evidence."). Consistent with that prior ruling, the Court should now hold the playing field level and preclude the Debtors and FGIC from introducing certain aspects of the testimony of Lewis Kruger and John Dubel regarding advice of their counsel and their participation in the mediation process. Marked declarations reflecting the materials that the Ad Hoc Group contends should be precluded are attached hereto as Exhibits A and B.

2. Second, the Debtors' proposed direct testimony from two experts should be precluded as failing to meet the minimum requirements for admissible evidence under Federal Rules of Evidence 701 or 702. The Debtors have offered Ron D'Vari as an expert witness with respect to the lifetime expected collateral losses of certain residential mortgage-backed securities trusts (the "FGIC Insured Trusts") and the extent of past or future losses to holders of securities issued by those trusts which were not insured by FGIC. That is the very same subject matter of a detailed analysis that Mr. D'Vari apparently performed for FGIC in 2011. As set forth in Section II(A), infra, an expert can be found to lack the requisite impartiality and objectivity when he or she has previously been retained by the other side in a litigation, particularly where the expert is testifying to the same subject matter and had access to the other side's confidential materials. The task for a court in a dual representation case is to determine how the prior expert retention could potentially impact the proposed expert's present testimony, at the least by comparing the substance of the two engagements. During Mr. D'Vari's deposition, however, FGIC refused to allow Mr. D'Vari to testify at all regarding the substance of his prior FGIC representation, effectively forestalling the parties or the Court from even understanding the scope of the problem. Due to FGIC's insistence on keeping Mr. D'Vari's prior work secret, the Debtors cannot now establish that Mr. D'Vari can present an objective and independent expert opinion to the Court.

3. Similarly, the Debtors' offer Jeffrey Lipps as a legal expert on RMBS litigation to testify as to the potential costs and delays of litigating with FGIC and the FGIC Insured Trusts. That is the exact same subject area on which Mr. Lipps has previously provided legal advice to the Debtors as their retained section 327(e) counsel. The Debtors, however, have asserted privilege with respect to all of that prior legal advice, in essence, offering Mr. Lipps to testify as

a virtual witness to explain not what he actually advised the Debtors prior to the execution of the FGIC Settlement Agreement, but rather what he theoretically would have advised if he had been asked. That facile strategy, presumably employed as a potential end run around this Court's rulings on the advice of counsel defense, must fail. As set forth in Section II(B), infra, Mr. Lipps' present retention as legal counsel to the Debtors renders him incapable of providing the Court with an objective and independent expert opinion on the Settlement Agreement that meets the requirements of Federal Rules of Evidence 701 or 702. Accordingly, the Court should preclude Mr. D'Vari's and Mr. Lipps' testimony as lacking the requisite indicia of impartial and objective expert opinions.

ARGUMENT

I. The Debtors And FGIC Should Be Precluded From Offering Evidence Regarding The Basis Of Their Business Judgment And The Merits Of The Settlement Agreement

4. Since the FGIC Settlement was first announced, the Ad Hoc Group has been concerned that the Debtors' agreement to provide FGIC a $337 million allowed claim at ResCap, LLC is not an accurate reflection of any real legal risk at that estate, but rather represents the price that FGIC demanded for signing onto a plan process that would require it to release claims against Ally. Based on Mr. Kruger's vague deposition testimony on the subject, the allowance of any claim at ResCap, LLC seems aimed, at least in part, to provide FGIC with a targeted allocation of the Ally Contribution that the Debtors have now sought to justify with post hoc expert reports. If that is not what actually happened, the Debtors should have just said so. In discovery, however, the Debtors refused to provide any evidence to address the Ad Hoc Group's concerns. Instead, they shielded from discovery virtually all evidence of the process and

reasoning by which they actually agreed to enter into the Settlement Agreement and the risks that they actually were trying to mitigate when they came to their business judgment decision.

5. As set forth in the Ad Hoc Group's Supplemental Objection, the Debtors did not produce a single substantive email, letter, presentation, spreadsheet, term sheet, or draft agreement relating to the Settlement Agreement. (See Suppl. Obj. ¶ 10.) While Mr. Kruger acknowledges that he "regularly met with the Board of Directors of ResCap to update them about this process, the mediation [and] kept the Board generally informed about these matters" (see Direct Testimony of Lewis Kruger at ¶ 15), the Debtors have not produced any documents bearing on the evaluation, negotiation, and approval of the Settlement Agreement, or any materials presented to the Board concerning the Settlement Agreement. (Suppl. Obj. ¶¶ 10, 34.) Based on the Debtors' privilege logs (attached hereto as Exhibit C), which appear to imply that extensive legal advice was rendered, as well as the absence of any unprivileged documents, it appears that Mr. Kruger relied heavily on written privileged analyses in deciding to settle.

6. In addition to withholding all written communications concerning the mediation and Settlement Agreement, Mr. Kruger's counsel prohibited inquiry into the substance of these communications during Mr. Kruger's deposition. At that deposition, counsel repeatedly instructed Mr. Kruger not to answer questions about certain aspects of his declaration on the

grounds of attorney client privilege and mediation privilege.[1] Mr. Kruger was instructed not to answer questions concerning an array of subjects that bear directly on his conclusions (expressed in his declaration and Direct Testimony) concerning the reasonableness of the FGIC Settlement and the process through which it was negotiated and approved, including the arm's length nature of the negotiations and the merits of the FGIC Settlement Agreement. (See, e.g., Kruger Dep. Tr. at 191:11-192:4 ("Q. The arm's length negotiations, and just so I'm clear. It's the debtor's position that the mediation confidentiality order in place prohibits the disclosure of any substance between FGIC or its counsel, on the one side, and the debtors and their counsel, on the other side, with respect to the FGIC claims? Mr. Kerr: . . . the communications, the substance, the back and forth, is subject to the confidentiality order entered by Judge Glenn, relied upon by Judge Peck and all the parties. And so, in terms of the substance of the communications back and forth, that's confidential.").) Indeed, Mr. Kruger ultimately testified that he could not disclose anything that he relied upon in making his determination to enter into the FGIC Settlement Agreement. (See id. at 127:11-20 ("Q. Okay. So what of the things you relied upon in making your determination with respect to the advisability of entering into the FGIC Settlement Agreement do you feel can be appropriately disclosed without waiving an attorney-client privilege or waiving a mediation privilege? . . . A. I don't think there's anything.").)

[1] See, e.g., Kruger Dep. Tr. at 45:2-10 ("Mr. Eggerman: I'm going to interpose an objection, in my view the dynamics that occurred during the mediation were probably within the ambit of the court's order. And a lot of the questions that are being asked seems to be designed to elicit the dynamics which, to me, are not far off from the substance of the mediation."); Id. at 167:14-25 ("Q. What was the reason you didn't just agree to fix the liability at 337 under all circumstances? Mr. Kerr: Objection. Again . . . I don't want you to disclose anything that was discussed in the mediation, you can answer that question without disclosing what was discussed in mediation. A. It was part of the mediation in the global settlement agreement. It's hard for me to separate out."); Id. at 169:7-13 (". . . Q. And it's 596, whether or not the plan is confirmed; right? Mr. Kerr: Objection. . . . A. I don't think I can answer that outside the context of the mediation."); Id. at 207:12-18 ("Q. Is it your understanding that the FGIC computation was insisted upon as part of that global settlement? Mr. Kerr Objection. On that, I will direct – I think that's covered by the confidential mediation order, and I'll direct the witness not to answer that.").

7. Similarly, FGIC produced its CEO, John Dubel, for a deposition on July 10, 2013. Mr. Dubel's testimony was also restricted by his counsel's instruction not to answer questions about the substance of the mediation or the FGIC Settlement on the grounds of attorney client communication and mediation privilege. (See, e.g., Dubel Dep. Tr. at 138:14-21 ("Mr. Slack: Let me -- let me object to only -- only to the extent that whatever analysis he's thinking about was done in furtherance of either the -- the settlement or -- or the plan, then I would instruct you not to answer on the basis of work – work product privilege and attorney- client and the mediation privilege.").) As a result, Mr. Dubel's deposition testimony lacked disclosure of any of the substantive back and forth between the parties on the allowance of claims against GMACM, RFC or ResCap LLC.

8. This Court has made clear that, in the context of a proposed settlement under Bankruptcy Rule 9019, a movant's failure to disclose advice or communication on the ground that such advice or communication is privileged will preclude that party from later presenting such privileged or confidential information to support its positions. See In re Residential Capital, LLC, 491 B.R. at 70 ("The law does not permit such cherry-picking of reliance on counsel evidence. The consequence of failing to make full disclosure of the advice that was given is that the Debtors are now precluded from offering any advice provided to the Debtors' officers and directors that was considered in connection with the decision to enter into the RMBS Trust Settlement."); see also E.G.L Gem Lab Ltd. v. Gem Quality Inst., Inc., 90 F. Supp. 2d 277, 296 n.133 (S.D.N.Y. 2000), aff'd, 4 F. App'x 91 (2d. Cir. 2001) (where a party "blocked his adversary from conducting discovery on [his communications with counsel], he will not now be heard to advance reliance on counsel."); Arista Records LLC v. Lime Group LLC, Civ. A. No. 06-5936, (KMW), 2011 WL 1642434 at *2 (S.D.N.Y. April 20, 2011) (precluding defendants

from offering evidence or argument at trial regarding their purported belief in the lawfulness of their conduct where defendants had blocked inquiry on the basis of privilege).

9. FGIC itself recognized the need for such relief when it joined in the Committee's motion to preclude evidence of the Debtors' reliance on counsel during the RMBS trial, all on identical grounds to the present dispute. (See Joinder of Financial Guaranty Insurance Company in Support of the Motion of the Official Committee of Unsecured Creditors to Preclude the Debtors from Offering Any Evidence of Their Reliance on Counsel for Advice Concerning the Evaluation, Negotiation or Approval of the RMBS Settlement [Docket No. 2932].) Moreover, FGIC and the Debtors could have disclosed their own mediation confidences without violating the Mediation Order, by making an application to the Court, but they chose not to do so. (See July 25, 2013, H'rg Tr. at 35:17-36:8 ("The Court concludes that by permitting disclosure of the one-page commutation break-out, FGIC has not provided a subject matter waiver of any applicable privilege including mediation privilege. This is not a situation where FGIC is seeking to use an assertion of privilege as a sword and a shield.").)

10. Here, when tested through discovery, many of Mr. Kruger's summary conclusions expressed in his Declaration proved to be supported only by the advice of counsel and the mediation privilege—none of which was disclosed during discovery. As set forth in Exhibit A, the highlighted portions of Mr. Kruger's Direct Testimony should therefore be precluded.[2] Mr. Dubel provided very limited testimony with respect to the FGIC Settlement Agreement and no testimony with respect to settlement of FGIC Claims and the allowed claims against RFC,

[2] The Ad Hoc Group presumes that the Direct Testimony of Lewis Kruger filed in support of the FGIC Motion on July 31, 2013 supersedes the previously filed Declaration of Lewis Kruger, attached to the FGIC Motion as Exhibit 3. To the extent that the Debtors intend to offer the prior declaration into evidence, the Ad Hoc Group respectfully requests that the same testimony from that declaration be stricken as well.

GMACM or ResCap, LLC. Mr. Dubel's testimony was restricted by his counsel's instruction not to answer questions on the grounds of attorney client and mediation privilege. As set forth in Exhibit B, the highlighted portions of Mr. Dubel's Witness Statement should therefore be precluded.

11. Indeed, the Debtors offered no evidence in discovery to support the conclusion that the Settlement Agreement is a fair resolution of a complex legal issue, without which the FGIC Motion cannot be approved. As the Committee, joined by FGIC, argued, the Debtors' "deliberate tactical decision to subject the [RMBS] Settlement to Court scrutiny without evidence of such [legal] advice . . . had both procedural and legal consequences that cannot be undone." (Committee Motion to Preclude the Debtors from Offering Any Evidence of their Reliance on Counsel for Advice Concerning the Evaluation, Negotiation or Approval of the RMBS Settlement [Docket No. 2906] ¶ 19; FGIC Joinder to Committee Motion to Preclude [Docket No. 2932].)

II. The Debtors Should Be Precluded From Offering Mr. D'Vari's And Mr. Lipps' Conflicted Expert Testimony In Support Of The Settlement Agreement

12. As an initial matter, the expert testimony of Mr. D'Vari and Mr. Lipps are irrelevant post-hoc justifications of the Settlement Agreement, as to which the Court should provide no weight under Federal Rules of Evidence 402. That is an objection that can be addressed at trial. This Motion addresses threshold admissibility of Mr. D'Vari's and Mr. Lipps' testimony under either Federal Rules of Evidence 701 or 702. Despite the availability of numerous potential experts on the subject of RMBS claims litigation who could have advised the Debtors prior to settling, the Debtors chose to retain Mr. D'Vari and Mr. Lipps— each of whom has prior conflicting roles in these Cases—after settling and then sought to preclude any inquiry

into the extent of these experts' conflicts during discovery. That was a fatal decision in light of the law on the admissibility of expert opinions.

13. It is widely recognized that "[t]he single most important obligation of an expert witness is to approach every question with independence and objectivity." Steven Lubet & Elizabeth I. Boals, *Expert Testimony: A Guide for Expert Witnesses and the Lawyers Who Examine Them* 163 (2d ed. 2009). Courts in this Circuit note that, when necessary "to protect the integrity of the legal process," they must exercise their inherent power to disqualify expert witnesses. See, e.g., Grioli v. Delta Int'l Machinery Corp., 395 F. Supp. 2d 11, 13 (E.D.N.Y. 2005) (citing Koch Ref. Co. v. Jennifer L. Boudreax MV, 85 F.3d 1178, 1181 (5th Cir. 1996)). No "bright line rules" restrict the court's discretion in this analysis and courts may consider an expert's potential conflict as a matter of evidentiary weight rather than admissibility. Id.; see also Tagatz v. Marquette Univ., 861 F.2d 1040, 1042 (7th Cir. 1988) (Posner, J.) (permitting plaintiff to provide expert testimony, as the "trier of fact should be able to discount for so obvious a conflict of interest."). Such a determination, however, necessarily follows after the court is appraised of the nature of the expert's potential conflict. For example, Courts consistently disqualify expert witnesses who: (1) previously enjoyed access to a party's confidential information; and (2) subsequently enter the service of an adverse party in a manner implicating "the potential breach of such confidences, even without any predicate showing of actual breach." Michelson v. Merrill Lynch Pierce Fenner & Smith, Inc., Civ. A. No. 83-8898, 1989 WL 31514, at *4 (S.D.N.Y. Mar. 28, 1989) (quoting Marvin Lumber & Cedar Co. v. Norton Co., 113 F.R.D. 588, 591 (D. Minn. 1986)) (internal quotation marks and punctuation omitted).

14. In Lippe v. Bairnco Corp., 288 B.R. 678 (S.D.N.Y. 2003), the court excluded the expert testimony of a law professor who sought to provide an opinion as to the business purpose of the transaction challenged in that case. The court observed that the professor had been engaged as counsel by plaintiffs and their attorneys of record, and in that role had "helped plaintiffs 'explore and develop legal theories,' 'identify the legal issues and the facts – the kinds of facts that would be necessary to support various claims,' 'formulat[e] and develop [] issues and theories in the case,' and 'evaluat[e] the defense that would be put up in this case[.]'" Id. at 683-84. In language equally applicable to Mr. D'Vari and Mr. Lipps, Judge Chin held that this dual role made proper expert testimony impossible: "because of [the expert's] advocacy on behalf of plaintiffs as counsel and legal advisor, I do not believe that he can now testify with the detachment and independence that one would expect from an expert witness offering views as a professional." Id. at 688. The same rule applies here.

A. Mr. D'Vari Was Retained By FGIC With Respect To The Same Trusts To Which He Seeks To Give Expert Testimony While Refusing To Testify Regarding The Substance Of His Prior Representation

15. On June 11, 2013, the Debtors filed their Application for an Order Under Bankruptcy Code Sections 327(a) and 328(a) Authorizing the Employment and Retention of NewOak Capital Advisors as Consultant Nunc Pro Tunc to May 24, 2013 (the "NewOak Retention Motion") [Docket No. 3953]. In support of the NewOak Retention Motion, and as required by Federal Rule of Bankruptcy Procedure 2014, the Debtors attached and referred to a Declaration by NewOak's Chief Executive Officer, Ron D'Vari, in which Mr. D'Vari admitted that NewOak "has in the past and may currently represent certain of the Interested Parties in other matters. However, each of the matters was or is wholly unrelated to the Debtors and these Chapter 11 cases and, accordingly, none of the said representations is adverse to the interests of

the Debtors or their estates." (See NewOak Retention Mot. ¶ 28.) On this basis, the Debtors asserted that NewOak qualified as a "disinterested person" within the meaning of 11 U.S.C. §§ 101(14) and 1107(b).

16. At Mr. D'Vari's deposition, however, he testified that he and NewOak had provided services to FGIC related to the very same FGIC Insured Trusts that the Settlement Agreement purports to resolve. (D'Vari Dep. Tr. at 70:14-71-19.) In fact, Mr. D'Vari personally provided expert services and advice to FGIC between 2010 and 2011 with respect to all of the 47 FGIC Insured Trusts that are the subject of the Settlement Agreement. (Id.) FGIC precluded him from testifying about that representation. (Id. at 27:6-28:12; 37:20-42:7; 133:6-22).)

17. It is undisputed that Mr. D'Vari had access to sensitive, confidential FGIC information in his work regarding the FGIC Insured Trusts in 2010-2011. Indeed, FGIC's counsel instructed Mr. D'Vari not to answer any substantive questions regarding Mr. D'Vari's prior advice, solely on the basis of confidentiality, despite repeated requests that he testify on an attorneys' eyes only basis. (Id. at 33:20-35-6.) The parties and the Court, then, are left to speculate as to exactly what Mr. D'Vari told FGIC in 2011 and how he could have possibly rendered an impartial and objective opinion for the Debtors.[3]

18. Simply, how could Mr. D'Vari provide a fresh opinion to the Debtors without implicating his prior duties to FGIC to retain its confidences and defend the soundness of his prior advice? Mr. D'Vari cannot "possibly create separate spaces within his memory" to guard against inappropriate disclosure or use of information he obtained in his work for FGIC. See

[3] Because there has been no disclosure, the Court cannot grant any weight to Mr. D'Vari's testimony and thus should preclude it outright at this time.

Michelson, 1989 WL 31514, at *4; see also Lippe v. Bairnco Corp., 288 B.R. at 688 ("because of his advocacy on behalf of the plaintiffs as counsel and legal advisor, I do not believe that he can now testify with the detachment and independence that one would expect from an expert witness offering views as a professional."); Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc., Civ. A. No. 95-8833, 2000 WL 42202, at *5 (S.D.N.Y. Jan. 19, 2000) (disqualifying doctor who had learned confidential information belonging to defendant from serving as expert against defendant in subsequent litigation). To safeguard the integrity of the litigation process, the Court cannot simply take FGIC's word that Mr. D'Vari's prior advice does not conflict with testimony here and should preclude his testimony.

B. Mr. Lipps Was Counsel To The Debtors On The Very Issues To Which He Seeks To Give Expert Testimony

19. Mr. Lipps was first retained by RFC in the 1990s and was retained to represent the Debtors regarding pending MBIA litigation in 2010 (See Lipps Dep. Tr. at 10:8-11:6; 22:22-24:25.). On July 25, 2012, the Court entered an order under section 327(e) authorizing the employment and retention of Carpenter Lipps & Leland LLP as Special Litigation Counsel to the Debtors, Nunc Prop Tunc to May 14, 2012 [Docket No. 907]. In addition to serving as the Debtors' defense counsel in RMBS litigation for the past three years, Mr. Lipps was deeply involved in the prosecution of the RMBS Settlement Motion, including drafting briefs for the Debtors. (See id. at 8:2-8.) With respect to the FGIC Settlement Agreement, Mr. Lipps was asked "to provide [his] opinions with respect to the uncertainty and/or risk associated with

prosecuting or defending the various claims that were being asserted initially by FGIC and the litigation that [he] was involved in representing the various Debtors on[.]"[4] (Id. at 17:3-12.)

20. Mr. Lipps' role as the Debtors' counsel of record precludes him from meeting the obligation of all experts to "approach every question with independence and objectivity." Steven Lubet & Elizabeth I. Boals, *Expert Testimony: A Guide for Expert Witnesses and the Lawyers Who Examine Them* 163 (2d ed. 2009). Mr. Lipps cannot give impartial expert testimony on issues central to the Settlement Agreement, knowing that his candid testimony on these issues could damage his client's cause and could, in fact, conflict with his prior advice. Not only would this dual role pose a sharp conflict of interest for Mr. Lipps – potentially forcing him to choose between his duties as a lawyer to represent his client zealously and his duties to the Court to serve as an independent and objective expert—it would also create a glaring appearance of impropriety. The Committee raised this very issue in their Motion In Limine to Preclude the Expert Testimony of Jeffrey A. Lipps in Connection with the Debtors' Motion for Approval of the RMBS Trust Settlement Agreements (the "Committee Motion In Limine"), which motion was still sub judice when the settlement motion was overtaken by the Global Settlement. (See Committee Motion In Limine [Docket No. 3612] at 2 ("Mr. Lipps' proposed expert testimony is highly problematic . . . Mr. Lipps' ability to testify with the detachment and independence required of an expert is severely compromised by his simultaneous role as the Debtors' counsel in this very matter.") Notably, FGIC joined in the Committee's Motion In Limine and separately

[4] To the extent that the Debtors are offering Mr. Lipps to express a legal opinion, such testimony is inadmissible, as both the Committee and FGIC have previously noted. (See, e.g., FGIC Supplemental Objection at 2-3.)

objected to Lipps' testimony.[5] (See Joinder of Financial Guaranty Insurance Company in Support of Motions in Limine of the Official Committee of Unsecured Creditors [Docket No. 3618], and Financial Guaranty Insurance Company's Response to Debtors' Daubert Motion to Exclude the Testimony of FGIC's Expert Clifford Rossi and Supplemental Objection to the Testimony of Jeffrey Lipps [Docket No. 3724].) Despite this quite legitimate challenge interposed by the Committee and FGIC, the Debtors chose once again to retain Mr. Lipps as an expert with respect to FGIC and then to offer his testimony to the Court. The Court need not and should not admit that testimony into the record and should instead grant the Motion.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Ad Hoc Group respectfully requests that the Court enter an Order (i) precluding Mr. Kruger and Mr. Dubel from offering certain testimony at the hearing of the FGIC Settlement Motion, (ii) precluding Mr. D'Vari and Mr. Lipps from offering any expert testimony at the hearing of the FGIC Settlement Motion, and (iii) granting such other and further relief as the Court deems just and proper.

[5] Noting, among other things, that, "[t]he methodology employed by Mr. Lipps violates the reliability standards [for experts] . . . because, although he opines on the reasonableness of the [] settlement amount, his methods do not include any analysis of the quantitative components of the settlement." (FGIC Supplemental Objection to Testimony of Jeffrey Lipps [Docket No. 3724] at 4.)

Dated: August 7, 2013
New York, New York

Respectfully submitted,

By: */s/ J. Christopher Shore*
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Exhibit A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

DIRECT TESTIMONY OF LEWIS KRUGER

I, Lewis Kruger, under penalty of perjury, testify as follows:

SUMMARY OF TESTIMONY

1. The FGIC Settlement Agreement, dated May 23, 2013 (the "**Settlement Agreement**"), among (i) the Debtors, (ii) Financial Guaranty Insurance Company ("**FGIC**"), (iii) The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Law Debenture Trust Company of New York, U.S. Bank National Association and Wells Fargo Bank, N.A (collectively, the "**FGIC Trustees**") and (iv) the Institutional Investors (as defined in the Settlement Agreement) is a critically important settlement within this Chapter 11 proceeding.[1]

2. In my role as Chief Restructuring Officer for the Debtors, I evaluated the Settlement Agreement's terms and conditions and the releases provided therein and concluded that the Settlement Agreement constitutes a fair, equitable and reasonable compromise in connection with the claims that have been asserted by FGIC and by the FGIC Trustees in their respective proofs of claims filed in this case.

3. Based on my review of the various issues presented by the underlying claims and the positions taken by various parties in this case and the risks associated with litigating those claims, I believe that the Settlement Agreement benefits the Debtors and their creditors by compromising, resolving and eliminating substantial claims that have been asserted by FGIC and the FGIC Trustees against the Debtors' estates.

4. In addition, the Settlement Agreement is a part of a broader global settlement agreement (as reflected in the Court-approved Plan Support Agreement), which was agreed to by the Debtors and a large number of its creditors and stakeholders and which, if ultimately approved, will generate a significant and substantial benefit to all of the Debtors, the Debtors'

[1] Exhibit 1 is the Settlement Agreement.

estates and to their creditors. As an important part of that global settlement plan, the Settlement Agreement eliminates the enormous costs and complexities associated with potential future litigation of claims surrounding the FGIC Insured Trusts, enables the Debtors and their estates to receive a substantial financial contribution from Ally Financial, Inc. ("**AFI**"), and moves the Debtors closer to accomplishing a successful plan of reorganization. Absent the Settlement Agreement and the overall global settlement, the Debtors' estates would be diminished significantly and there is very little likelihood that the creditors would see a distribution, if any, for years to come.

5. Finally, the parties negotiated and agreed to the Settlement Agreement as part of the mediation overseen by Judge Peck. The parties to those negotiations, which lasted several months, had highly divergent interests. This is evident by the contentious disputes and issues that were being litigated in the RMBS Trust Settlement 9019 Motion, and which were ultimately resolved as part of and as a result of this overall process. The Debtors and the parties to the Settlement Agreement, as well as the other parties who were negotiating and ultimately agreed to the global settlement agreement reflected in the PSA, were represented by competent and experienced counsel and advisors. I personally met numerous times with parties and their counsel during the spring to work on resolving all of these issues. In making my business judgment that it was in the Debtors' best interests to enter into the Settlement Agreement, I was able to draw on that firsthand experience, my work with Debtors' counsel and financial advisors, my interaction with the Unsecured Creditors Committee and their counsel and advisors, and my lengthy experience as a bankruptcy and restructuring lawyer. From my perspective, I believe that discussions and negotiations over the issues that ultimately lead to the Settlement were conducted professionally and were done at arm's-length.

EXPERIENCE AND ROLE

6. Prior to my engagement as Chief Restructuring Officer ("**CRO**") for the Debtors, I was a partner and Co-Chair of the Financial Restructuring Group at Stroock & Stroock & Lavan LLP, a law firm that has extensive experience in all aspects of restructuring and insolvency matters. I have over fifty years of restructuring experience and have played a role in many significant reorganization proceedings in the United States, representing debtors, official and ad hoc creditors' committees, financial institutions and acquirers of assets.

7. On February 11, 2013, I was appointed by the Debtors to serve as their CRO. A copy of my February 11, 2013 engagement letter, as amended (the "**Engagement Letter**"), is Exhibit 30. The Engagement Letter was sent to me by Tammy Hamzehpour, the then General Counsel for Residential Capital, LLC ("**ResCap**"), and I reviewed and signed the Engagement Letter to confirm my acceptance and agreement to its terms. My appointment as CRO for the Debtors and the terms of my Engagement Letter were approved by the Court on March 5, 2013 (the "Retention Order"). [Docket No. 3013]. A copy of the Retention Order is Exhibit 31.

8. My Engagement Letter sets out my responsibilities and authority to act on behalf of the Debtors. Under the Scope of Services, the Engagement Letter provides that "Mr. Kruger shall serve as the Chief Restructuring Officer (the "CRO") of the Debtors [and] shall report directly to the Board Directors of Residential Capital, LLC (the "Board")". Exh. 30 at 7. It further provides that:

> [T]he CRO shall be vested with the Debtors' powers to oversee, manage, and direct the acts, conduct, assets, liabilities and financial conditions of the Debtors, the operation of the Debtors' business [in] any matters relevant to the case, including without limitation, the authority to:
>
> i. direct Debtors' respective management teams and professionals in connection with the Debtors' efforts to negotiate and settle the Claims against the Debtors, and

propose a schedule and process for the litigation of disputed claims, including, but not limited to, those held by the monolines, junior secured bonds, the RMBS Trustees, and securities claimants;

ii. direct the Debtors' executive management teams and professionals in developing and implementing an efficient liquidation of the Debtors' assets and of estate causes of action;

iii. direct the litigation strategy of the Debtors including the investigation, prosecution, settlement and compromise of claims filed against the Debtors and of estate causes of action;

iv. direct the Debtors' executive management team and professionals in formulating a chapter 11 plan;

v. communicate and negotiate with the Debtors' creditors and key stakeholders, including the official committee of unsecured creditors (the "Creditors Committee"), and assist such parties in working towards a consensual chapter 11 plan;

vi. make decisions on behalf of each Debtor with respect to chapter 11 plan negotiations and formulation, in such a manner as is consistent with the business judgment rule, the provision of applicable law, taking into account the respective fiduciary duties of the CRO to each Debtor's respective estate;

vii. cooperate with the Creditors' Committee in negotiations with Ally Financial Inc. ("AFI") to attempt to pursue a global settlement of the Debtors' claims against AFI that is acceptable to all major stakeholders;

viii. represent the Debtors' interests through counsel before this Court; . . .

Id. My Engagement Letter also makes clear that "[e]ach of the Debtors acknowledges and agrees that the Services being provided hereunder are being provided on behalf of them, and the Company, on behalf of each Debtor, hereby waives any and all conflicts of interest that may arise on account of the Services being provided on behalf of any other entity." *Id.* at 4.

MY INITIAL WORK AS CRO

9. Immediately after being retained as CRO, I worked closely with the Debtors' employees, the Debtors' counsel and the Debtors' financial advisors to learn about the Debtors, their businesses and their current condition. I also spent substantial time familiarizing myself with the prior proceedings in the chapter 11 cases and became directly involved in the ongoing mediation process that was being overseen by Judge Peck. I also began meeting with the various affiliates (such as AFI) and creditors of the Debtors so that I could better understand the nature of their claims and the Debtors' defenses and responses to those claims. I also read materials and attended presentations about the Debtors' historical business, the nature of the Debtors' relationships to its affiliates, the RMBS Trusts and Trustees, the monoline insurers, such as FGIC and MBIA Insurance Corporation ("**MBIA**") that insured certain securities in certain of the Trusts, and various other creditors for the Debtors.

10. I was also actively involved in developing and evaluating strategy in the chapter 11 cases and worked with Debtors' counsel and the Debtors' financial advisors on contested matters before the Court. For example, in connection with the *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of RMBS Trust Settlement Agreements* [Docket No. 320], I reviewed pleadings filed by the various parties regarding the claims being asserted by the Trustees of the RMBS Trusts against the Debtors. I read and reviewed the Declaration of Jeffrey A. Lipps, sworn to May 25, 2012 [Docket No. 320-9], the Supplemental Declaration of Jeffrey A. Lipps, dated September 28, 2012 [Docket No. 1887-4] and the Reply Declaration of Jeffrey A. Lipps, sworn to January 15, 2013 [Docket No. 2805], which provided a detailed overview of the types of claims that had been or could be asserted by the Trustees against the Debtors and described the complexities presented by the various litigations addressing those issues.

11. Based on those efforts, my years of experience and my role as CRO for the Debtors, I have become generally familiar with the parties' respective positions regarding the priority and nature of the various claims asserted against the Debtors in these chapter 11 cases (including the claims asserted by FGIC, the other monoline insurers and the FGIC Trustees).

12. Because the monoline insurers represent one of the largest creditor groups in the Debtors' bankruptcy cases, resolution of the monoline claims has been a critical factor in formulation of a chapter 11 plan and a central focus of my work as CRO. In connection with working to formulate a chapter 11 plan, I participated in analyzing the validity, priority and amount of any claims asserted by the monoline insurers, including FGIC, as well as the implications of the Bankruptcy Code on the treatment of monoline insurers' claims. I have also been involved in the process of (i) preparing objections to the claims filed by certain monoline insurers and (ii) planning for anticipated litigation regarding the monolines' claims, including considering various defenses to those claims such as subordination.

13. I have also read and reviewed proofs of claims submitted by FGIC in this chapter 11 cases. Copies of those proofs of claim are identified as Exhibits 2, 3 and 4. I have also read and reviewed proofs of claims submitted by Law Debenture Trust Company of New York and Wells Fargo Bank, N.A., the proofs of claims submitted by U.S. Bank, N.A. and the proof of claim submitted by Bank of New York Mellon Trust Co., N.A.[2] Each of these entities acted as the Trustees for the "wrapped" portions of the FGIC Insured Trusts. Copies of those proofs of claim are identified as Exhibits 5, 6, and 7, respectively. As I described previously, I was aware

[2] Law Debenture Trust Company of New York and Wells Fargo Bank, N.A. as Separate Trustee and Trustee and U.S. Bank N.A. each filed a single proof of claim against fifty-one (51) Debtor entities. Bank of New York Mellon Trust Co., N.A. filed two separate proofs of claims against nine (9) of the Debtors. *See* Claim Nos. 6758-6767 and 6772-6779 filed by Bank of New York Mellon Trust Co., N.A or Bank of New York Mellon; Claim Nos. 6604-6654 filed by Law Debenture Trust Company of New York and Wells Fargo Bank, N.A. as Separate Trustee and Trustee, respectively, against fifty-one debtor entities; and Claim Nos. 6655-6705 filed by U.S. Bank N.A, against fifty-one debtor entities.

of the types of claims being asserted by the Trustees, based on my involvement in the RMBS Trust Settlement 9019 Motion. To further familiarize myself with the types of claims at issue with respect to the FGIC Insured Trusts specifically, I also read one of the pre-petition complaints filed by FGIC against the Debtors.

MY WORK ON THE GLOBAL SETTLEMENT AGREEMENT

14. A key part of my role as the Debtors' CRO was to communicate and negotiate with the Debtors' creditors and key stakeholders with the goal of working towards a consensual chapter 11 plan. *See* Exh. 30 at 7. To do this, I worked hard to understand the claims and interests of all of those parties and to identify the risks faced by the Debtors in this case and to consider the potential compromises that could be achieved among the various and competing constituencies. My responsibility in this area dovetailed well with the ongoing mediation effort being directed by Judge Peck. That process allowed the various parties, which had very competing and contrary interests, to meet in a confidential forum and to articulate and present their respective positions and interests. I attended and took an active role in those sessions. I was also able to meet separately with my counsel, my financial advisors and with individual parties, such as the Unsecured Creditors Committee and their counsel and advisors, and the monoline insurers and their counsel, to receive presentations about their respective positions and to help me understand the issues at stake. As I have noted previously, most, if not all, of those parties are extremely sophisticated and were represented by experienced counsel and financial advisors who could advocate on their behalf.

15. As required by my Engagement Letter, throughout the Spring of 2013, I regularly met with the Board of Directors of ResCap to update them about this process, the mediation before Judge Peck and the positions taken by the various parties in the chapter 11 cases. In those meetings, I was able to answer the Board's questions and outline our efforts to reach a

consensual global settlement with as large of group of creditors as possible. Although I had the authority under my Engagement Letter to negotiate, approve and execute the FGIC Settlement Agreement on behalf of the Debtors, I kept the Board generally informed about these matters. For example, in advance of a Board meeting scheduled for May 23, 2013, a copy of a near final version of the FGIC Settlement Agreement was sent to the Board.[3]

THE FGIC CLAIMS

16. As part of the Debtors' mortgage servicing and origination business, Debtors GMAC Mortgage, LLC ("**GMACM**") and Residential Funding Company, LLC ("**RFC**") acted in a variety of roles in connection with transactions involving the securitization of residential mortgages through securitization trusts (the "**RMBS Transactions**"). In conjunction with their various roles in the RMBS Transactions, certain of the Debtors were parties to applicable Pooling and Servicing Agreements, Assignment and Assumption Agreements, Indentures, Mortgage Loan Purchase Agreements and/or other agreements governing the creation and operation of the FGIC Insured Trusts (as defined below) (the "**Governing Agreements**").

17. FGIC, a monoline financial guaranty insurance company, issued irrevocable insurance policies (the "**Policies**") for certain Securities (as defined in the Settlement Agreement) issued in connection with certain of the securitization trusts (the "**FGIC Insured Trusts**") associated with the RMBS Transactions. There are a total of forty-seven FGIC Insured Trusts.[4] By issuing the Policies, FGIC guaranteed the payment of principal and interest due on the

[3] Exhibit 32 is a true and accurate copy of an email sent by Jennifer Shank, who is on ResCap's Legal Staff, to members of the Board in anticipation of the May 23, 2013 Board meeting. I was a copy recipient of this email, and I recall receiving it on May 23, 2013. It was a regular part of ResCap's business to prepare and send emails such as this to members of the Board in connection with upcoming Board meetings. As indicated under the subject line in Exhibit 32 and in the text of the cover email, attached to that email was a copy of the then draft FGIC Settlement Agreement. Because the draft FGIC Settlement Agreement was not yet in final form, when this email was produced that attachment was withheld pursuant to the terms of the Order Appointing Mediator, dated December 26, 2012.

[4] *See* Exh. 1 Exh. B; Affirmation of Gary T. Holtzer, dated May 29, 2013, ¶ 4 (the "Holtzer Aff."), which is Exhibit 33 and which is also attached as Exhibit 10 to the FGIC Settlement Agreement 9019 Motion [Docket No. 3929-10].

insured Securities. Additionally, FGIC entered into an Insurance and Indemnity Agreement with one or more of the Debtors in connection with each of the FGIC Insured Trusts (the "**Insurance Agreements**"). Pursuant to the Insurance Agreements, the Debtor parties agreed, among other things, to reimburse FGIC for certain payments FGIC made under the Policies that resulted from the applicable Debtor's failure to repurchase or substitute mortgage loans that breached one or more representations or warranties contained in the applicable Governing Agreements.

18. Prior to the date on which the Debtors filed their petitions in these chapter 11 cases (the "**Petition Date**"), FGIC had filed a total of twelve civil suits asserting a variety of claims against ResCap, GMACM, and RFC in connection with twenty of the FGIC Insured Trusts. The actions are currently pending in the United States District Court for the Southern District of New York, and each action has been automatically stayed as against the Debtors. As of the Petition Date, the Debtors had not yet filed responsive pleadings or commenced discovery in any of the FGIC actions.

19. FGIC filed three proofs of claim numbered 4868, 4870 and 4871 against Debtors RFC, ResCap and GMACM, respectively (collectively, the "**FGIC Claims**"), asserting general unsecured claims against each such Debtor. *See* Exhs. 2, 3 and 4. The FGIC Claims, are all substantially similar in form and nature and allege that: (i) RFC and GMACM breached various representations, warranties and/or covenants in the Governing Agreements or the offering documents, (ii) FGIC was fraudulently induced to issue the Policies in connection with most of these FGIC Insured Trusts, and (iii) ResCap is liable for the alleged breaches and fraud of GMACM and RFC under alter ego liability theory. They also each assert that "because GMACM and RFC were acting at the direction of ResCap, ResCap may be jointly and severally liable to FGIC for the harms FGIC has suffered from the fraudulent inducement committed by

GMACM and RFC." *See, e.g.*, Exh. 2 at 13 ¶ 32. FGIC also asserts claims related to the Debtors' allegedly deficient servicing of the mortgage loans in the FGIC Insured Trusts and based on the Debtors' alleged failure to provide FGIC access to certain information in accordance with the Governing Agreements. FGIC further seeks indemnification for "any and all claims, losses, liabilities, demands, damages, costs, or expenses of any nature arising out of or relating to the breach" of the Governing Agreements. *Id*. at 14.

20. In total, the FGIC Claims assert claims of "not less than $1.85 Billion" against each of RFC, ResCap and GMACM. *See, e.g*., Exh. 2 at 15. It is my understanding that the aggregate amount of each of the FGIC Claims was determined by FGIC by calculating the total expected lifetime claims against FGIC under the Policies and adding estimated interest and costs that FGIC has incurred or expects to incur in connection with pursuing the claims. I further understand that the total expected claims included historical claims received plus the present value of the difference of (i) the projected expected future claims less (ii) expected future premiums. *See, e.g., id.* at 14-15.

21. In addition, it is my understanding that as of November 2009, and pursuant to an order issued by the Superintendent of Financial Services of New York under Section 1310 of the New York Insurance Law, dated November 24, 2009, FGIC ceased making payments on all claims, including claims made by the FGIC Trustees under the Policies. As of that date, FGIC represents that it had paid approximately $343.3 million in claims to the insureds under the Policies for which it had not been reimbursed. As of March 31, 2013, FGIC represents that it had received approximately $789 million in claims under the Policies that it had not yet paid. *See* Exh. 1 at 1. Absent the settlement, discharge and release of FGIC's obligations under the

Policies, I understand that FGIC estimates that the present value of losses projected to arise under the Policies in the future exceed $400 million. See Exh. 33, Holtzer Aff. ¶ 5.

THE RMBS TRUSTS' CLAIMS IN CONNECTION WITH THE FGIC TRANSACTIONS

22. In addition to and separate from the claims asserted by FGIC in this chapter 11 case, each of the FGIC Trustees have asserted claims and have filed proofs of claim with respect to the forty-seven FGIC Insured Trusts (the "**FGIC Trustees' Claims**"). Copies of those FGIC Trustees' Claims are Exhibits 5, 6 and 7. In their proofs of claim, the FGIC Trustees assert servicing claims, representation and warranty claims, indemnification claims, fraud and negligent misrepresentation claims, alter ego and veil piercing claims, setoff and recoupment rights, among others, with respect to the forty-seven FGIC Insured Trusts. *See, e.g.,* Exh. 5 at 14 ¶¶ 32-33. While the proofs of claim do not indicate an aggregate amount of damages being sought, with respect to just the representation and warranty claims, each of the FGIC Trustees assert a "Buyback Claim for an amount not less than its allocable portion of the Allowed Repurchase Claim of $8.7 billion", which was at issue in the RMBS Trust Settlement 9019 Motion. *Id*. at 15 ¶ 36. Moreover, the FGIC Trustees have maintained throughout the case that, in the absence of the proposed RMBS Trust Settlement, their asserted claims against each of multiple Debtors in connection with the FGIC Insured Trusts could be equal to the aggregate estimated lifetime reductions in the value of the collateral pools underlying those trusts.

23. Based on my involvement in the RMBS Trust Settlement dispute, I was aware that FGIC Insured Trusts represented roughly ten percent of the 392 trusts in the RMBS Trust Settlement at issue in the *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of RMBS Trust Settlement Agreements* [Docket No. 320]. I also understood that those 392 trusts had by April of 2013 suffered "over $30 billion in collateral losses" and "depending on what

assumptions are used, they [would] lose another $13.5 billion to $19.8 billion in coming years." *Debtors' Reply Brief re Iridium Factors in Support of Motion for Approval of RMBS Settlement Agreements* [Docket No. 2803]. Thus, for those 392 trusts, total aggregate losses would "range (depending on the witness's assumptions and methods) from $43.5 billion to $49.8 billion." (*Id.*) With this in mind, I understood that the total potential lifetime losses of collateral for the FGIC Insured Trusts could likely be $3 to $4 billion dollars. Thus, I understood that, if the parties were not able to reach an agreement to resolve the claims involving the FGIC Insured Trusts, the FGIC Trustees' claims against the Debtors would be substantial and likely in the billions of dollars, something that I considered and took into account when evaluating the FGIC Settlement Agreement.

24. In support of this Motion, the Debtors retained a financial expert, Dr. Ron D'Vari, to provide an estimate of the total potential lifetime losses of collateral for the entire forty-seven FGIC Insured Trusts. Based on the positions taken by the FGIC Trustees, this figure would arguably represent the maximum amount that the Trustees could attempt to seek from the Debtors resulting from collateral losses. Dr. D'Vari determined from publicly-available data that the FGIC Trustees have already incurred several billion dollars of collateral losses with respect the FGIC Insured Trusts and estimated that the total potential lifetime loss of collateral for the FGIC Insured Trusts could total approximately $5.41 billion, the vast majority of which would be released by the Settlement Agreement. While I did not have and, therefore, did not consider Dr. D'Vari's calculations and estimates at the time I made the decision to enter into the FGIC Settlement, his analysis and opinions are consistent with what I knew based on my involvement in the RMBS Trust Settlement dispute. I also believe that Dr. D'Vari's conclusions confirm and

reinforce the view that, under the Settlement Agreement, the Debtors are receiving releases from the FGIC Trustees of substantial claims.

THE FGIC SETTLEMENT

25. In early April 2013, and in connection with the mediation process overseen by Judge Peck, I became aware of a prospective settlement between FGIC and the FGIC Trustees. While I had been aware of discussions regarding the possible settlement of the FGIC Claims earlier in March, this was the first time that I saw a written document with respect to that potential, prospective settlement. As reflected in the PSA, the Term Sheet and the Supplemental Term Sheet and as part of the global settlement plan, the Settling Parties ultimately agreed in May 2013 to a proposed settlement of the monoline claims generally that will be part of the global settlement plan and ultimate plan confirmation process. This global settlement plan contemplates and includes a resolution of any claims involving the FGIC Insured Trusts.

26. In early April 2013, I learned that, because of the schedule of the ongoing FGIC Rehabilitation Proceeding in New York State Court, the FGIC settlement portion of the global settlement plan would have to be incorporated into a separate settlement agreement and separately presented to the Bankruptcy Court for approval in advance of the plan confirmation process. Thus, concurrently with the negotiations leading up to the completion of the Supplemental Term Sheet during the period between May 13 and May 23, 2013, the Settlement Parties negotiated the terms of a separate settlement agreement involving the FGIC Insured Trusts that was acceptable to all of the Settlement Parties and supported by most of the Debtors' claimant constituencies, including each of the parties to the PSA. That separate agreement is the Settlement Agreement at issue in this Motion. (*See* Exh. 1.) While the signature pages for the Settlement Agreement are dated May 23, I recall that minor changes to the language of the Settlement Agreement continued to be made through and including May 29, 2013.

27. As discussed in more detail below, the Settlement Agreement consists of three principal parts: (i) allowance of the FGIC Claims against certain of the Debtors' estates in the minimum aggregate amount of $596.5 million (the "**Minimum Allowed Claim Amount**"), subject to FGIC's reservation of its rights to assert certain additional claims and the allowance of FGIC's claims in a larger amount in the event that the PSA is terminated or the plan contemplated thereunder is not approved; (ii) the settlement, discharge and release of FGIC's obligations under the Policies in exchange for a bulk, cash payment of $253.3 million from FGIC to the FGIC Trustees; and (iii) the release against the Debtors' estates of the remainder of the FGIC Claims and the vast majority of the FGIC Trustees' Claims.

28. I understand that the Settlement Parties calculated this base $596.5 million allowed claim by taking the sum of $343.2 million, the amount of claims FGIC has already paid under the Policies but that remains unreimbursed by the Debtors (*see* Exh. 1 at 1), and $253.3 million, the amount of the Settlement Payment provided for under the Settlement Agreement (*id.* at 6).

29. The Settlement Agreement also includes a definition of its "Effective Date", which is the first Business Day on which all of the conditions in Section 6.01 have been satisfied or waived. Those conditions are that the New York State Rehabilitation Court has entered an order approving the Settlement Agreement and that order has become a final order and that the Bankruptcy Court has entered an order approving the Settlement Agreement and that order has become a final order. (*See* Exh. 1 at 12-13.) The Effective Date of the Settlement Agreement is not conditioned on the completion of the plan confirmation process or on the global settlement plan contemplated in the PSA being approved or becoming effective.

The FGIC Allowed Claims

30. The first key component of the Settlement Agreement is the allowance of the FGIC Claims in an amount that is significantly less than the total asserted amount of the FGIC Claims filed in the chapter 11 cases. Ultimately, the amount of the FGIC Allowed Claims will depend on whether or not the plan contemplated in the PSA is or is not ultimately approved as part of a plan confirmation process and becomes effective.

31. The Settlement Agreement provides that, as of the Effective Date, the FGIC Claims shall be deemed allowed as general unsecured claims against each of ResCap, GMACM and RFC in the aggregate amount of $596.5 million, which I will refer to as the "Minimum Allowed Claim Amount". This Minimum Allowed Claim Amount will be allocated among ResCap, GMACM and RFC pro rata based on which of the Debtors would be obligated to reimburse FGIC for such payments under the Governing Agreement. The Minimum Claim Amount essentially becomes a floor for the amount of the claims that FGIC can assert against the Debtors if the Settlement Agreement is approved and is substantially less than the $1.85 billion in claims that FGIC has asserted against each of ResCap, GMACM and RFC under its proofs of claim.

32. The Settlement Agreement further provides that, if the PSA is terminated or the plan contemplated under the PSA does not "go effective", then in addition to the single allowed claim of $596.5 million, FGIC reserves the right to assert general unsecured claims against each of ResCap, GMACM and RFC "with all claims by FGIC (including any FGIC Allowed Claims or otherwise) against each such entity capped in each case at the amount of" $596.5 million. Under this scenario, the Minimum Allowed Claim Amount will be treated *pari passu* with other unsecured claims allowed against ResCap, GMACM and RFC. Nothing in the Settlement Agreement, however, prevents the Debtors from objecting to or otherwise seeking subordination

of any unsecured claims asserted by FGIC in excess of the Minimum Allowed Claim Amount. Thus, the terms of the Settlement Agreement essentially sets a ceiling with respect to the claims that FGIC can ever assert against the Debtors if the Settlement Agreement is approved. Again, even this amount is substantially less the $1.85 billion in claims that FGIC has asserted against each of ResCap, GMACM and RFC under its proofs of claim.[5]

The Settlement, Discharge and Release of FGIC's Obligations Under the Policies

33. The second element of the Settlement Agreement is a settlement, discharge and release of FGIC's obligations under the Policies. In this regard, FGIC will obtain releases of its obligations under the Policies, in exchange for a bulk, cash payment from FGIC to the FGIC Trustees in an amount of up to $253.3 million (the "**Settlement Payment**"). Upon the effective date of the Settlement Agreement, this settlement, discharge and release will prevent any further claims against FGIC under the Policies, ending any further accrual of claims FGIC alleges it holds against the Debtors.

Release of Claims Against the Debtors

34. I believe that a substantial benefit to the Debtors and the Debtors estates are the releases that they are receiving under the Settlement Agreement. These releases become effective and binding as of the Effective Date of the Settlement Agreement. Subject to the terms and conditions of the Settlement Agreement, FGIC has agreed to a reduction of its total, asserted claims in the aggregate amount of $5.55 billion (proofs of claim totaling $1.85 billion against

[5] Section 3.01(B) of the Settlement Agreement states that, if the Court approves the Plan Support Agreement and the chapter 11 plan contemplated thereby becomes effective, the amount of the FGIC Allowed Claims will be specified and will be the aggregate and allocated amounts set forth in the Supplemental Term Sheet, as such amounts may be adjusted, amended or revised by agreement of the parties to such agreement. Because the effectiveness of the Settlement Agreement is not dependent upon approval of the chapter 11 plan contemplated in the PSA, whether or not these numbers will be allowed and/or whether they are appropriate, is a plan confirmation issue only and is not required to be resolved to approve the Settlement Agreement.

each of ResCap, GMACM and RFC) to a specified range as described in Section 3.01 of the Settlement Agreement and to release any and all other claims against the Debtors and their estates under the Governing Agreements and the Policies. (Exh. 1 §§ 2.01(a)(i), (ii), (iii) & 2.01(b).) Additionally, the FGIC Insured Trustees agree to release all of their "origination-based" claims the FGIC Trustees have asserted in connection with the FGIC Insured Trusts, less the amount of any claims under the Governing Agreements for any past or future losses to holders of Securities not insured by the Policies. (Exh. 1 §§ 2.01(a)(iv) & 2.01(b).) Using the amounts sought by FGIC as against each Debtor in its proofs of claims and the lifetime estimated loss of collateral for the FGIC Insured Trusts calculated by Dr. D'Vari, this means that each of the Debtors will obtain a release of claims asserted by FGIC and the FGIC Trustees, in varying amounts of up to approximately $6.85 billion against any one Debtor, less the maximum claim FGIC is permitted to assert against that Debtor under Section 3.01 of the Settlement Agreement.

ENTRY INTO THE FGIC SETTLEMENT AGREEMENT

35. Pursuant to the authority given to me by the Board as approved by the Court in the Retention Order, I was responsible for negotiating with the Debtors' creditors and key stakeholders as part of working toward a consensual chapter 11 plan and to make decisions on behalf of the Debtors, and pursuant to and consistent with my business judgment, to negotiate and settle claims against the Debtors when appropriate. I took that responsibility seriously and actively engaged with my counsel and financial advisors and with the representatives, counsel and advisors of the Debtors' creditors and key stakeholders for months to work toward a global settlement plan. I am proud of the work we did, and I believe that the result of those efforts, which includes negotiating and entering into the Settlement Agreement, represents a unique accomplishment.

36. Consistent with my authority as CRO, I reviewed, approved and executed the PSA and I reviewed, approved and executed the Settlement Agreement involving the FGIC Insured Trusts. While the Settlement Agreement was provided to the Board in advance of the May 23, 2013 Board meeting (Exh. 32), ultimately it was my responsibility as CRO to decide whether the Settlement Agreement was reasonable, fair and equitable and in the best interests of the Debtors and their estates. After careful consideration, I concluded that the Settlement Agreement more than met that test. My conclusion is based on my careful review of the financial and other terms of the Settlement Agreement, the proofs of claims submitted by FGIC, my understanding of the claims asserted by FGIC and the FGIC Trustees, my assessment of the strengths and weaknesses of those claims and any defenses to those claims, the risk and costs of having to litigate those claims and the consequences of not settling. My views were also informed by discussions with my counsel and financial advisors and with the other parties and constituencies involved in the effort to reach a global settlement. While the Settlement Agreement is being presented for purposes of this Motion as a stand-alone agreement, it is part and parcel of the overall effort to reach a global settlement plan. Although I consulted with counsel and the Debtors' advisors, and participated in the long mediation process, I relied on and exercised my own independent business judgment in ultimately determining that entry into the Settlement Agreement was appropriate and in the best interests of the Debtors and their creditors.

37. With respect to the benefits resulting to the Debtors and the Debtors' estates by entering into the Settlement Agreement, I believe we were successful in substantially reducing and limiting the amount and scope of claims faced by the Debtors. Even though the Debtors believe they have substantial factual and legal defenses to the claims asserted by FGIC and the FGIC Trustees, I recognized and evaluated the risk that those claims, which totaled billions of

dollars in the aggregate, would present if successfully litigated to conclusion as part of a contested plan. FGIC itself has asserted claims of $1.85 billion against each of ResCap, GMACM and RFC. While the FGIC Trustees never placed a monetary value on their claims in their proof of claims, they have consistently asserted that they could seek recovery for any and all loss of collateral value under the Trusts. Based on my review of materials in the RMBS Trust Settlement 9019 Motion, I understood that those losses could be between $3 to $4 billion. As separately confirmed by Dr. D'Vari, those potential lifetime losses of collateral could total up to approximately $5.41 billion, the vast majority of which would be released by the Settlement Agreement. I considered the potential risk that these claims might be successfully pursued against each of the Debtors when evaluating whether the agreed upon allowed claims in the Settlement Agreement were fair and reasonable and were in the best interests of the Debtors and their estates.

38. In addition, under the terms of the Settlement Agreement, FGIC will be completely releasing all of its claims against the Debtors and the FGIC Trustees will be releasing all of their origination based claims against the Debtors. By obtaining these releases, the Debtors would resolve a substantial number of difficult and complex claims and avoid the risk, costs and time of litigating those claims to conclusion in this Court. As described by Mr. Lipps, the types of claims that have been asserted by FGIC and the FGIC Trustees are complex and multi-faceted and present no easy pathway to resolution. Consistent with my authority and direction from the Board, I believe that resolving these difficult and complex issues as part of an overall consensual plan is in the best interests of the Debtors, the Debtors estates and the Debtors' creditors.

39. In addition, I believe that the other, remaining terms of the Settlement Agreement —such as the provisions to obtain Court approval, the conditions precedent to the Effective Date

of the Agreement and the termination provisions under the Settlement Agreement—are reasonable, fair and equitable, and protect the interests of the Debtors and their estates.

40. Finally, as I noted previously, I am aware that the Settlement Agreement is part of an overall global settlement plan that, if ultimately approved as part of the plan confirmation process, will generate significant benefits to all of the Debtors' estates and to their creditors. In facilitating and supporting that global settlement plan, the Settlement Agreement allows the parties to eliminate enormous potential costs associated with future litigation involving the overall estates, enables the parties to receive a substantial $2.1 billion contribution from AFI, and moves the Debtors one step closer to accomplishing a successful chapter 11 plan. Further, absent the Settlement Agreement and the overall global settlement, there is very little likelihood that any of the creditors (including the FGIC Insured Trusts and the investors in those Trusts) would see a distribution for years to come, and the estates would be diminished significantly. This alternative of endless litigation among the creditors and Debtors, and no resulting contribution from AFI in the Debtors' estates, is, in my judgment, a much worse alterative for all participants in this process.

41. I am also aware that, in the proposed order submitted to the Court in connection with this Motion seeking approval of the Settlement Agreement, the Court has been asked to make certain findings not only with respect to the Debtors, the Debtors' estates and the Debtors' creditors, but also with respect to the Trustees and the investors in the FGIC Insured Trusts. While I cannot speak on behalf of the FGIC Trustees and/or the investors in the FGIC Insured Trusts, I am able to give my views, based on my perspective, of how this Settlement Agreement impacts those entities. First, as I describe above, I believe that the Settlement Agreement is in the best interests of the Debtors and their creditors and substantially increases the potential

recovery by those creditors. While those enhanced recoveries will flow to the FGIC Insured Trusts, under the operative Governing Agreements and/or under the terms of the global settlement plan (which incorporates and reflects the benefits of and recoveries under the Settlement Agreement), those enhanced recoveries will ultimately flow to the benefit of the investors in those FGIC Insured Trusts. I also note that, one of the signatory groups to the Settlement Agreement is the "Institutional Investors", which is defined in the Settlement Agreement to be "the authorized investment managers and certificateholders, bondholder and noteholders in tranches of Securities insured by FGIC identified in the attached signature page." These groups of investors in the FGIC Insured Trusts, which were represented by Kathy Patrick at Gibbs & Bruns LLP, Talcott Franklin of Talcott Franklin P.C., and Ropes & Gray are themselves signatories and supporters of the Settlement Agreement, demonstrating that, in their judgment, the Settlement Agreement is in the best interests of the Investors in the FGIC Insured Trusts.

42. Similarly, based on my dealings with counsel for the FGIC Trustees, I believe that the FGIC Trustees acted professionally and in good faith. The three FGIC Trustees—Bank of New York, Wells Fargo and U.S. Bank—are some of the largest and most sophisticated financial institutions in the country. They were all represented by sophisticated counsel and engaged with and were assisted by extremely competent and professional financial advisors.

43. Additional benefits, and aspects, of the Settlement Agreement that informed my belief that it was fair and reasonable, are discussed below.

THE IRIDIUM FACTORS

The Balance Between the Litigation's Possibility of Success and the Settlement Agreement's Future Benefits

44. As described in more detail by Mr. Lipps, I understand there is significant uncertainty regarding the outcome of any litigation addressing the validity, priority and amount of the FGIC Claims and the FGIC Trustees' Claims through the claims resolution process. In part due to this uncertainty, I, along with the Debtors, believe that the Settlement Agreement provides substantial benefits to the Debtors, the Debtors' estates and their creditors.

45. After reviewing the FGIC Claims, the claims submitted by FGIC pre-petition, some of the filings in the RMBS Trust Settlement 9019, the Governing Agreements for the FGIC Insured Trusts, and past adverse rulings for the monoline insurers, the Debtors believe that they have strong defenses to those claims. If forced to litigate, the Debtors would mount a vigorous defense. Nonetheless, I understand that the issues that would be involved in litigating the FGIC Claims and/or the FGIC Trustees' Claims are likely to be fact-intensive in nature and the legal issues involved are relatively novel. I am also aware of various settlement trends in monoline cases. Accordingly, I, along with the Debtors, understand that litigation involving these types of monoline claims would involve substantial litigation risk. In fact, I understand that the results of litigation among other RMBS sponsors and monoline insurers and/or securitization trustees have resulted in some unfavorable outcomes for RMBS sponsors. As a result, the Debtors and I believe that they would face substantial litigation uncertainty and risk in connection with litigating these issues.

46. On the other hand, I, along with the Debtors believe that the Settlement Agreement provides substantial benefits to their estates and their creditors. In particular, the Settlement Agreement provides benefits in the form of (i) a substantial reduction of claims

asserted against each of the Debtors' estates as described above, (ii) increased certainty regarding the validity, priority and amount of the FGIC Claims and the FGIC Trustees' Claims and (iii) substantial cost savings when compared with the likely costs of professional fees and experts that would be needed if litigation over the FGIC Claims and the FGIC Trustees' Claims proceeded. I believe that the alternative of not entering into the Settlement Agreement and, possibly not obtaining the advantages of the global settlement plan, is not in the best interests of the Debtors, the Debtors' estates and/or the Debtors' creditors.

The Likelihood of Complex and Protracted Litigation

47. The ongoing disputes in recent years among mortgage originators on the one hand, and monoline insurers and securitization trustees on the other, are well publicized. A number of the lawsuits and other proceedings involving RMBS breach of representation and warranty and fraudulent inducement allegations against mortgage originators have been ongoing for years, in many cases without resolution. Indeed, based on my review of information from the RMBS Trust Settlement 9019 and as described in more detail in Mr. Lipps' testimony, I understand that, as of the Petition Date, the Debtors were involved in litigation with MBIA that had been pending since late 2008 and that had the prospect of continuing on for years if it had not been stayed.

48. The Debtors' litigation with FGIC, on the other hand, commenced shortly before the Petition Date. As of the Petition Date, the Debtors had not yet filed responsive pleadings and discovery had not yet commenced. Similarly, I am not aware of any lawsuits commenced by the FGIC Trustees as of the Petition Date in connection with the breach of representation and warranty claims related to the FGIC Insured Trusts. As a result, absent a settlement, the Debtors are almost certain to become embroiled in additional, complex litigation with FGIC and the FGIC Trustees over the validity, amount and possible subordination of their asserted claims.

49. Given the highly fact intensive nature of RMBS litigation, the litigation is also almost certain to be complex and protracted. As described further in the Mr. Lipps' Declaration and in his direct testimony, the Debtors have experienced such litigation first-hand with MBIA, which spanned three and a half years leading up to the Petition Date. The discovery necessary to resolve the FGIC Claims and the FGIC Trustees' Claims—along with the various pleadings and hearings necessary for the Court to decide the allowed amount of the FGIC Claims and the FGIC Trustees' Claims being released—would be massive, as each of the forty-seven FGIC Insured Trusts have different Governing Agreements and factual underpinnings, especially with respect to the fraud claims.

50. In sum, litigation regarding the validity, amount and priority of the FGIC Claims, as well as the FGIC Trustees Claims' being released, would almost certainly be exceedingly complex and could drag on for years, much like other lawsuits of a similar nature that are currently pending in other state and federal courts. Finally, as with any other complex litigation that extends for years, the expenses associated with any litigation of the FGIC Claims and the FGIC Trustees Claims' being released would almost certainly be high, inconvenient and, given the asserted size of those claims, could result in a delay of distributions to other creditors even in the event of a confirmed chapter 11 plan.

The Paramount Interests of Creditors

51. In my role at CRO for the Debtors, I take seriously my role to try to reach a fair and equitable resolution of claims brought against the Debtor and, if possible, to enter into a consensual chapter 11 plan that has the support of Debtors' creditors. I believe that entering into the Settlement Agreement is consistent with those goals. As described above, the Settlement Agreement resolves substantial claims against the Debtors' estates—in varying amounts of up to $6.85 billion against each Debtor, less the maximum claim FGIC is permitted to assert against

that Debtor under the terms of the Settlement Agreement. Obtaining the releases in the Settlement Agreement insures that the Debtors will not have to litigate and face the risk of being responsible for the full amount of claims originally asserted by FGIC and the FGIC Trustees.

52. As a result, relatively few claims against the Debtors will remain in connection with the FGIC Insured Trusts, limited to an amount between (i) the Minimum Allowed Claim Amount and the claims that FGIC is allowed to assert in the event that plan contemplated under the PSA does not become effective, (ii) certain servicing claims held by the FGIC Trustees, and (iii) claims attributable to losses by holders of Securities not insured by the Policies. The FGIC Trustees will receive $253.3 million in cash compensation ***from FGIC*** and will be relieved of the responsibility of having to continue to pay premiums on the Policies. I, along with the Debtors, believe that the Settlement Agreement represents a compromise that is in the paramount interests of creditors.

53. Moreover, as described above, the Settlement Agreement is part of the global settlement plan that, if ultimately approved, will bring substantial, additional benefits to the Debtors' creditors. While the approval of that global settlement plan is not before the Court on this Motion and will have to wait for the plan confirmation process, entry into and approval of the Settlement Agreement is a necessary and required step.

Support of Other Parties-in-Interest for the Settlement Agreement

54. The Settlement Agreement has support from entities that hold or represent the holders of the overwhelming majority of claims asserted in the Debtors' chapter 11 cases. Each of the Debtors' claimant constituencies that have signed on to the PSA also support the Settlement Agreement, including:

(a) the Creditors' Committee;

(b) AFI, on behalf of itself and its direct and indirect non-debtor subsidiaries;

(c) Allstate Insurance Company and its subsidiaries and affiliates;

(d) American International Group, as investment advisor for certain affiliated entities that have filed proofs of claim in the Debtors' chapter 11 cases;

(e) the Kessler Class Claimants (as defined in the Plan Support Agreement);

(f) Massachusetts Mutual Life Insurance Company and its subsidiaries and affiliates;

(g) MBIA and its subsidiaries and affiliates;

(h) Prudential Insurance Company of America and its subsidiaries and affiliates;

(i) certain funds and accounts managed by Paulson & Co. Inc., holders of Senior Unsecured Notes issued by ResCap;

(j) the RMBS Trusts (as defined in the Plan Support Agreement);

(k) certain holders of the Senior Unsecured Notes issued by ResCap;

(l) the Steering Committee Consenting Claimants (as defined in the Plan Support Agreement);

(m) the Talcott Franklin Consenting Claimants (as defined in the Plan Support Agreement); and

(n) Wilmington Trust, National Association, not individually, but solely in its capacity as Indenture Trustee for the Senior Unsecured Notes issued by ResCap.

Nature and Breadth of Releases To Be Obtained by Officers and Directors

55. The releases of the Debtors' officers and directors in the Settlement Agreement are reasonable and, based on my understanding, consistent with releases in settlement agreements approved in other cases in this district, providing only for voluntary releases by the non-debtor Settlement Parties.

Competency and Experience of Counsel

56. All of the Settlement Parties were represented by competent and experienced counsel throughout the negotiation of the FGIC Settlement Agreement. I personally have over fifty years of experience as a practicing attorney in restructuring matters. The Debtors were

represented by competent and experienced counsel. Based on my involvement and interactions, I believe that the Superintendent of Financial Services of New York, as Rehabilitator of FGIC; the Bank of New York Mellon; the Bank of New York Mellon Trust Company, N.A.; Law Debenture Trust Company of New York; U.S. Bank National Association; Wells Fargo Bank, N.A.; the Steering Committee Consenting Claimants and the Talcott Franklin Consenting Claimants were all represented by competent and experienced counsel.

Arm's-Length Negotiations

57. From my perspective, I believe that the Settlement Agreement and the compromises reflected in that agreement are the result of arm's-length negotiations. As I described previously, this Settlement Agreement arose out of the broader discussions in the mediation being directed by Judge Peck, which was a very vigorous, robust process that went on for months. A substantial number of different parties engaged in that process, many of which had very divergent and different interests and agendas. That process allowed the various parties to meet in a confidential forum and, under Judge Peck's guidance, to present their respective positions and interests. Most, if not all, of those parties are extremely sophisticated and were represented by experienced counsel and financial advisors who could and did advocate on their behalf.

58. The Settlement Agreement itself was executed by the Debtors, FGIC, the FGIC Trustees and the Institutional Investors. Based on the claims asserted by these parties in these chapter 11 cases and the positions they have taken in the various matters before the Court, it is evident that their interests were divergent. Moreover, as the Court is aware from overseeing the pretrial proceedings in the RMBS Trust Settlement 9019 Motion, these groups were not hesitant to advocate for their positions and were willing to aggressively pursue their own agendas. As I also describe above, the time period over which the prospective settlement involving the various

claims surrounding the FGIC Insured Trusts is from at least early April to the end of May, if not longer.

59. Accordingly, I, along with the Debtors, believe that the Settlement Agreement was the result of arm's-length bargaining.

CONCLUSION

60. Based on all of the factors described above, I believe that Settlement Agreement is reasonable, fair and equitable and in the best interests of the Debtors, the Debtors' estates and the Debtors' creditors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed the 31st day of July, 2013, at New York, New York.

/s/ Lewis Kruger
Lewis Kruger

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered

WITNESS STATEMENT OF JOHN S. DUBEL

I, JOHN S. DUBEL, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am Chief Executive Officer of Financial Guaranty Insurance Company ("FGIC"). I provide these services through my company, Dubel & Associates ("DA"). DA commenced its engagement with FGIC on January 2, 2008. I have over thirty years of experience restructuring companies. Prior to joining FGIC, I was a Managing Director of Gradient Partners, L.P., a single strategy distressed hedge fund, from 2006 through 2007. From 2002 to 2006, I was a Principal and Managing Director with AlixPartners, LLC, a firm specializing in turnaround and crisis management. While at AlixPartners, I served as Chief Executive Officer of Cable & Wireless America, President and Chief Operating Officer at RCN Corporation, Chief Restructuring Officer of Anchor Glass Container Corporation and Acterna Corporation, and CFO at WorldCom, Inc. I received a Bachelor in Business Administration degree from the College of William and Mary.

2. I respectfully submit this witness statement, in lieu of direct testimony, on behalf of FGIC and in support of the *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the Settlement Agreement among the Debtors, FGIC, the FGIC Trustees and Certain*

Institutional Investors (Docket No. 3929). I will make myself available for cross-examination and further testimony at the hearing on the Debtors' motion.

3. FGIC was appointed to the Official Committee of Unsecured Creditors (the "OCC") in the ResCap chapter 11 cases by the United States Trustee, and I represented FGIC on the OCC. I was the principal negotiator for FGIC with respect to the global mediation in the Residential Capital ("ResCap" and together with its subsidiaries, the "Debtors") bankruptcy case. The ResCap bankruptcy case is very large in size, and the estimated claims of administrative, secured and unsecured creditors is almost $18 billion. *See* Disclosure Statement for the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, *et al.* and the Official Committee of Unsecured Creditors (July 4, 2013) (Docket No. 4157) ("Debtors' Disclosure Statement") (excerpt attached hereto as Exhibit A), Ex. 6 (ResCap Recovery Analysis).

The Mediation Process

4. The mediation was conducted pursuant to an order of the Bankruptcy Court beginning in December 2012. I was personally involved in all mediation sessions and negotiations on behalf of FGIC. I personally participated in the negotiation of the Plan Support Agreement,[1] signed on or about May 13, 2013, and the related term sheets and agreements negotiated and signed then and on May 23, 2013, as part of the overall global bankruptcy plan settlement. An integral part of the global bankruptcy plan negotiations, and a condition precedent to the ResCap bankruptcy plan proceeding to confirmation by the Bankruptcy Court, was negotiation and development of the settlement agreement (the "FGIC Settlement Agreement"), signed on May 23, 2013, among FGIC, the Debtors, the Trustees (defined below), the Steering Committee Group (defined below), and the Talcott Franklin Group (defined below).

[1] When I use terms not otherwise defined herein, I intend those terms to have the same meanings as in *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the Settlement Agreement among the Debtors, FGIC, the FGIC Trustees and Certain Institutional Investors* (Docket No. 3929).

Even though the signature pages of the FGIC Settlement Agreement are dated May 23, 2013, minor changes to the language of the agreement were made through May 29, 2013.

5. The First Amended Plan of Rehabilitation for FGIC, dated June 4, 2013 (the "Plan"), is not in effect yet. The authority to settle policy claims is currently and expressly permitted by the FGIC Order of Rehabilitation, entered more than a year ago, which grants the Rehabilitator broad powers throughout the duration of the rehabilitation proceeding, including the power to operate and conduct FGIC's business. If the Plan were in effect, however, the terms of the Plan allow FGIC to enter into settlements of potential claims. In particular, section 4.8 of the Plan provides that FGIC may resolve claims "without further Court approval" through negotiation, settlement, or "any similar transaction that results in the extinguishment or reduction of FGIC's liability, in respect of [] all or part of any Policy . . . .". Section 4.8 (even if applicable here, which it is not) does not require FGIC to obtain the consent of investors holding securities of policyholders whose policies are being settled.

6. The Steering Committee Group and the Talcott Franklin Group were the only two groups of holders of RMBS securities that both regularly participated in the ResCap chapter 11 cases, and signed confidentiality agreements in order to participate fully in the mediation process, restricting their ability to trade in ResCap securities during the negotiation period. They actively participated in the mediation and in negotiation of the FGIC Settlement Agreement, along with the Trustees.

7. The Steering Committee Group[2] includes 18 sophisticated banks and financial institutions, such as Goldman Sachs, ING, BlackRock, Teachers Insurance and Annuity

[2] The investors in the "Steering Committee Group" consist of AEGON USA Investment Management, LLC, Angelo Gordon, Bayerische Landesbank, BlackRock Financial Management Inc., Cascade Investment, LLC, Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management, L.P., ING Investment Management Co. LLC, ING Investment Management LLC, Kore Advisors, L.P., Pacific Investment Management Company LLC, Maiden Lane LLC and Maiden Lane III LLC (by the Federal Reserve Bank of New York as managing member), Metropolitan Life Insurance Company, Neuberger Berman Europe Limited, SNB StabFund, The TCW Group, Inc.,

Association, TCW, Metropolitan Life, PIMCO, and Western Asset Management. They hold approximately $12.1 billion in current amount, and $29.8 billion in original face amount, of RMBS securities issued by various ResCap related trusts. Attached hereto as Exhibit B is the latest Bankruptcy Rule 2019 filing (Docket No. 1741), indicating the holdings of the Steering Committee Group. The Talcott Franklin Group[3] is a similar group of 57 banks, financial institutions and funds, which includes objectors CQS ABS Master Fund Limited and CQS ABS Alpha Master Fund Limited and holds $17 billion in original face amount, of RMBS securities issued by various ResCap related trusts. *Debtors' Second Supplemental Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Trust Settlement Agreements* at 30 (Docket No. 1887).

8. At the commencement of the ResCap bankruptcy, the Steering Committee Group, the Talcott Franklin Group, and the Junior Secured Noteholders had negotiated and signed a pre-bankruptcy agreement with the Debtors and the Debtors' parent company, Ally Financial Inc.

(continued...)

Teachers Insurance and Annuity Association of America, Thrivent Financial for Lutherans, Western Asset Management Company, and certain of their affiliates, either in their own capacities or as advisors or investment managers. *Debtors' Second Supplemental Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Trust Settlement Agreements* at 4 n.8 (Docket No. 1887).

[3] The investors in the "Talcott Franklin Group" consist of: Anchor Bank, fsb, Bankwest, Inc., Blue Heron Funding V, Caterpillar Life Insurance Company, Caterpillar Insurance Co. Ltd., Caterpillar Product Services Corporation, Cedar Hill Mortgage Opportunity Master Fund, L.P., Citizens Bank & Trust Co., Commerce Bancshares, Inc., Commonwealth Advisors, Inc., CQS ABS Master Fund Limited, CQS Select ABS Master Fund Limited, CQS ABS Alpha Master Fund Limited, Citizens Bank and Trust Company, DNB National Bank, Doubleline Capital LP, Ellington Management Group, LLC., Everest Reinsurance (Bermuda) Ltd., Everest International Re, Ltd., Farallon Capital Management, L.L.C., Farmers and Merchants Trust Company of Chambersburg, First National Bank and Trust Company of Rochelle, First National Banking Company, First National Bank of Wynne, First Farmers State Bank, First Bank, Gemstone CDO I, Gemstone CDO II, Gemstone CDO V, Gemstone CDO VII, HBK Master Fund L.P., Heartland Bank, Kerndt Brothers Savings Bank, Kleros Preferred Funding V plc, Knights of Columbus, LL Funds LLC, Lea County State Bank, Manichaean Capital, LLC, Mutual Savings Association FSA, Northwestern Bank N.A., Pinnacle Bank of South Carolina, Peoples Independent Bank, Perkins State Bank, Phoenix Light SF Limited, Radian Asset Assurance Inc., Randolph Bank and Trust, Rocky Mountain Bank & Trust, Royal Park Investments SA/NV, SBLI USA Mutual Life Insurance Company, Silver Elms CDO II Limited, Silver Elms CDO plc, South Carolina Medical Malpractice Liability JUA, Summit Credit Union, Thomaston Savings Bank, Union Investment Luxembourg S.A., United Educators Insurance - Reciprocal Risk Retention Group, Wells River Savings Bank, Vertical Capital, LLC, and certain of their affiliates, either in their own capacities or as advisors or investment managers. *Debtors' Second Supplemental Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Trust Settlement Agreements* at 4 n.8 (Docket No. 1887).

("AFI"), whereby AFI would contribute $750 million to the Debtors in exchange for general releases of all claims, including third party claims, and certain claims held by the Trustees against the Debtors would be compromised for $8.7 billion. That proposed pre-bankruptcy settlement agreement was opposed by many other parties in the bankruptcy case, including FGIC and the OCC, resulting in substantial litigation and uncertainty. Among the major issues in controversy were (1) the scope and size of the AFI contribution, (2) whether $750 million sufficed to settle and resolve all of the estate and third party claims against AFI, (3) the size and priority of claims asserted with respect to the RMBS trusts, (4) the validity, priority and interrelationship of those claims with respect to claims asserted by the monoline insurers, (5) the amount, priority or possible subordination of security law claims asserted against the Debtors in class actions and other lawsuits, and (6) the claims of various government entities and borrower class actions asserted against the Debtors.

9. To move the bankruptcy case forward, and forestall potentially years of burdensome and extremely expensive litigation between and among the Debtors, their parent AFI, and all of the competing creditors and creditor groups, the Bankruptcy Court, by order entered on December 26, 2012, appointed the Honorable James M. Peck, a sitting bankruptcy judge with significant experience in complex, multi-party cases (such as the Lehman bankruptcy case) to act as global plan mediator. *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the Settlement Agreement among the Debtors, FGIC, the FGIC Trustees and Certain Institutional Investors*, ¶¶ 34-44 (Docket No. 3929). As part of the Bankruptcy Court's order, the Bankruptcy Court placed strict confidentiality protections in place, which preclude me from describing the substance of any of the negotiations, or the various proposals or counter-proposals. Attached as Exhibit C is a copy of the Mediation Order (Docket No. 2519), which

provides that all documents or discussions made or provided in connection with the mediation by parties participating in the mediation must be kept confidential. The Mediation Order states:

> [N]o person or party participating in the mediation . . . shall in any way *disclose to any non-party* or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, mediation statement, other *document or information*, correspondence, resolution, offer or counteroffer that may be made or provided in connection with the mediation, unless otherwise available and not subject to a separate confidentiality agreement that would prevent its disclosure *or as authorized by this Court.*

¶ 4 (emphasis added).

10. Without revealing the substance of the negotiations, however, I can describe in general terms the process of the mediation, the participants, and the good faith, arm's-length nature of the negotiations. The mediation in this case was the most complex and lengthy such process with which I have ever been personally involved, in any capacity. Judge Peck began by holding individual meetings with each of the main participants, and the process was very time intensive for all parties, particularly for Judge Peck. His initial meeting with FGIC and our counsel lasted approximately five hours. There were regular meetings among and between various parties including FGIC, to discuss the relevant issues, and Judge Peck regularly met with and communicated with the Debtors, the OCC, and other individual creditors and groups.

11. In addition to the above parties, the Trustees of the various ResCap related trusts that issued RMBS securities also actively participated in the mediation. The Trustees include The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A, Law Debenture Trust Company of New York, U.S. Bank National Association, and Wells Fargo Bank, N.A., who are the Trustees of the trusts that issued RMBS insured by FGIC (the "FGIC Insured Trusts"). Attorneys from law firms such as Dechert, Seward & Kissel, and Alston & Bird represented the Trustees during the mediations. The Trustees also received advice from

Duff & Phelps, a financial advisory firm serving as the Trustees' expert. Various other significant creditor groups, such as the Steering Committee Group and the Talcott Franklin Group, participated both in discussions and meetings with the Trustees and others.

12. The ResCap bankruptcy involves numerous parties and claims, and there are many complex interdebtor and intercreditor issues that would affect plan distributions. Accordingly, the mediation was necessary to address these complex issues. Specifically, the mediation process was designed by the Debtors and approved by the Court to encompass two major areas, (i) the claims asserted by the Debtors' estates and the third party claims held by individual creditors against AFI, as well as (ii) how the value of any recovery on those claims and the other assets of the Debtors' estates would be allocated among the many competing creditor groups. *See* Debtors' Disclosure Statement at 72. As reflected in the Debtors' Disclosure Statement, some 6,850 proofs of claim were filed, totaling $99.7 billion, although the Debtors estimate that they will end up with approximately $13.4 billion in allowed unsecured claims. *See id.*, Ex. 4 at 1.

13. The ultimate success of the global mediation was far from a certainty. In fact, on February 21, 2013, a group of Junior Secured Noteholders, who claim to have secured claims of approximately $2 billion, and who were participating in the global plan mediation, objected to the Debtors' motion to extend their exclusive time period to file a bankruptcy plan (where the Debtors in part relied upon the mediation process as cause for the extension) stating:

> For the past two months, the Ad Hoc Group has patiently participated in a plan mediation process that has, to date, not resulted in the global compromise envisioned by the Court at its inception. Perversely, these well-intentioned efforts to achieve consensus through mediation have seemingly emboldened certain parties to harden their negotiating positions, secure in the knowledge that the Debtors' present plan construct – with its non-consensual third party release provisions with Ally – remains the only show in town. Even the best efforts of a sitting bankruptcy

> judge and experienced and respected mediator have been unable to break this impasse.

Objection of Ad Hoc Group of Junior Secured Noteholders to Debtors' Motion for the Entry of an Order Further Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof at 2-3 (Docket No. 2997).

14. From January through the end of May, 2013, I personally participated in dozens of meetings and innumerable conference calls with various parties to the mediation process, as well as significant internal work with FGIC's counsel as part of the mediation and negotiation process. A partial list of the dates of significant meetings and multi-party external conference calls is attached hereto on the "Timeline" labeled Exhibit D.[4]

15. There were a large variety of complex issues to understand and attempt to resolve through the mediation process. As reflected in the Timeline, Judge Peck participated in meetings with the OCC and other significant creditors from January through March, 2013, when he determined that it was appropriate to convene a series of large group mediation sessions, all of which I personally attended.

16. The first global group mediation session occurred on or about April 22, 2013, and lasted ten hours, and was followed by another session on April 23, 2013, which lasted approximately nine hours. I have reviewed the attendance list for the first day's session, and not including Judge Peck and his two law clerks, there were 140 participants. There were representatives from approximately 23 different creditors and creditor groups (groups such as the Steering Committee Group and the Talcott Franklin Group I count as only one group, even though they include many institutions). There were a total of 29 creditors or creditor group

[4] The Timeline does not include individual calls between FGIC, the Debtors or other single mediation participants.

business representatives in attendance, along with 75 attorneys and 36 financial advisors to the various parties.

17. The mediation was far from a secret or clandestine process. There were literally dozens of pleadings filed in the Bankruptcy Court and served on the Objectors' counsel that mentioned the mediation, along with extensive discussion at public court hearings, as well as substantial press coverage. Significantly, attending the mediation were attorneys for the Federal Housing Finance Agency, Freddie Mac's conservator and the federal agency currently exercising legal control over Freddie Mac, and attorneys for the Talcott Franklin Group, of which CQS was a member. Freddie Mac served special notice requests in the Bankruptcy Court and participated therein through its counsel, the same counsel that recently filed objections in this Court.

18. Over the next month, in late April and throughout much of May 2013, there were approximately five more large group mediation sessions, as well as many conference calls and smaller group meetings. The last set of large group negotiations started in the morning of May 22, 2013, and went through the following night, only ending with the signing of documents at approximately 9 a.m. on May 23, 2013.

The Global Settlement and the FGIC Settlement Agreement

19. As reflected in the documents signed on May 23, 2013, and the related and supplemental term sheets and agreements, the global mediation successfully resolved the key major issues in the ResCap chapter 11 cases and obviated years of difficult, expensive, protracted and uncertain litigation. AFI agreed to contribute $2.1 billion to the ResCap bankruptcy estate, nearly tripling its prior agreement, and all of the significant participating creditor groups agreed to provide releases to AFI for all claims asserted against AFI in dozens of state and federal lawsuits. The parties participating in the Plan Support Agreement also agreed to allocation of the

total cash available for distribution to unsecured creditors, estimated at $2.62 billion. *See* Debtors' Disclosure Statement at 38.

20. The FGIC Settlement Agreement, as reflected in the Plan Support Agreement, is a key component of this global plan construct, and is a required condition to effectiveness of the plan. Although the FGIC Settlement Agreement is a stand-alone settlement agreement, the global plan construct cannot move forward—and the $2.1 billion AFI settlement contribution cannot be realized—absent approval by this Court and the State Court overseeing the FGIC rehabilitation proceeding.

21. The FGIC Insured Trusts will receive value under the settlement in a number of different ways.

22. First, the FGIC Insured Trusts will receive an immediate, lump sum settlement payment of $253.3 million in lieu of partial cash payments over decades to come on account of potentially $1.1 billion in policy claims. FGIC will make this settlement payment in cash immediately after both court approvals are obtained and the FGIC Settlement Agreement becomes effective. The FGIC Insured Trusts and investors therein will not have to wait for confirmation of the ResCap Chapter 11 plans, which could take many months.

23. Second, if the FGIC Settlement Agreement becomes effective, FGIC will forgo its right to collect a gross amount of approximately $40 million in future installment policy premium payments, which when discounted at a 15% rate, results in approximately $18.3 million in future policy premiums that FGIC estimates the FGIC Insured Trusts would otherwise be obligated to pay to FGIC over the life of FGIC's insurance policies. These amounts will instead be retained by the FGIC Insured Trusts and likely paid to the investors in the FGIC Insured Trusts.

24. Third, if the plan of reorganization contemplated by the Plan Support Agreement is confirmed, and AFI's $2.1 billion settlement payment is realized, the FGIC Insured Trusts will be entitled to a distribution in excess of $90 million from the Trustees. *See generally* Debtors' Disclosure Statement; *see also* Expert Report of Allen M. Pfeiffer, ¶ 59 (July 19, 2013). Specifically, if the Bankruptcy Court confirms the proposed plan of reorganization, the Trustees collectively will receive an allowed general unsecured claim in the bankruptcy cases of $7.301 billion. *See* Debtors' Disclosure Statement at 27. This $7.301 billion allowed general unsecured claim will net the Trustees a distribution under the proposed reorganization plan of approximately $698.7 million (the "RMBS Proceeds"). *See* Debtors' Disclosure Statement, Ex. 6 (ResCap Recovery Analysis). The Plan Support Agreement (and the reorganization plan) provides that the RMBS Proceeds will be distributed to RMBS trusts in accordance with the RMBS Trust Protocol attached as Annex III to the supplemental term sheet. The RMBS Trust Protocol provides that insured RMBS trusts that both (i) have made policy claims against a monoline insurer and (ii) have not received full payment on their claims by the plan of reorganization's effective date, will be entitled to receive a distribution of the RMBS Proceeds on the terms provided therein. The FGIC Insured Trusts—which have made policy claims against FGIC that will not be paid in full at the time of the plan's effective date—will thus, if the reorganization plan is confirmed, be entitled to receive a distribution of RMBS Proceeds on the terms provided in the RMBS Trust Protocol. I am informed that the Trustees have calculated the amount of RMBS Proceeds to which the FGIC Insured Trusts will be entitled, and I have also reviewed the Disclosure Statement filed in the bankruptcy cases. I understand the amount of RMBS Proceeds to which the FGIC Insured Trusts will be entitled exceeds $90 million.

25. Finally, and significantly, if the FGIC Settlement Agreement becomes effective, FGIC will forgo its right to receive any and all reimbursements from the FGIC Insured Trusts

pursuant to the waterfall provisions under the governing documents of the various trusts (as such reimbursement rights may be modified pursuant to the FGIC Rehabilitation Plan). These amounts will instead be retained by the FGIC Insured Trusts and likely paid to the investors in the FGIC Insured Trusts.

26. The Expert Witness Report of Charles R. Goldstein (the "Goldstein Report") submitted by Monarch Alternative Capital LP, Stonehill Capital Management LLC, Bayview Fund Management LLC, CQS ABS Master Fund Limited, and CQS ABS Alpha Master Fund Limited does not acknowledge this very significant financial benefit to the FGIC Insured Trusts (and their respective investors), among other errors. These other errors include, for example, the failure to account for any possibility for downside risk, including the risks presented by FGIC's substantial exposure to municipal bonds issuances, which account for one third of FGIC's portfolio. The analyses prepared by the objectors' experts ignore the possibility of future negative adjustments to the cash payment percentage ("CPP") resulting from the poor performance of certain FGIC-wrapped municipal bonds, including bonds issued by the City of Detroit and other distressed municipalities.

27. The Goldstein Report (¶¶ 12, 29) refers to FGIC's March 31, 2013 quarterly statements as projecting more than $1 billion in gross recoveries from loss mitigation activities. This statement mischaracterizes the nature of these projected gross recoveries. FGIC did not include in its March 31, 2013 quarterly statements any estimate of recoveries from loss mitigation activities, including litigation claims, as FGIC has not determined them to be probable and estimable. The approximately $1.06 billion projected recovery amount in FGIC's March 31, 2013 quarterly statements comprises recoveries that FGIC estimated it would receive through the waterfall provisions under the governing documents of the various trusts insured by FGIC from funds available from projected collateral cash flows and projected payments from other providers

of credit enhancement in the subject transactions. These projected recoveries were based on assumptions used by FGIC for statutory accounting purposes to estimate, among other things, collateral performance, which assumptions are subject to change; and it is uncertain whether and to what extent any projected recoveries will be realized.

28. Also, these projected recoveries did not account for the terms of the FGIC Rehabilitation Plan, which limit FGIC's right to receive recoveries that otherwise would have been payable to FGIC pursuant to the waterfall provisions under the governing documents of the various trusts insured by FGIC. If such $1.06 billion projected gross recovery is realized, FGIC would be entitled to receive only approximately $300 million (utilizing the base case present value payout percentage of 28.5%) and the remainder would be retained by the trusts for application in accordance with such waterfall provisions, likely for payment to the trusts' investors.

29. However, since approximately half of that $1.06 billion projected gross recovery amount represents FGIC's estimate of the reimbursements that will be due to FGIC in connection with ResCap-related transactions pursuant to the various trust waterfall provisions under the governing documents for the FGIC Insured Trusts, approximately half of that projected $300 million recovery will be forgiven by FGIC pursuant to the FGIC Settlement Agreement (§2.01(b)), which will allow the FGIC Insured Trusts to retain for themselves (and their investors) the portion of those estimated reimbursements that would otherwise be paid to FGIC. This is a significant benefit and improvement over the terms of the FGIC Rehabilitation Plan for the FGIC Insured Trusts (and their investors). If FGIC's projected gross recovery for the FGIC Insured Trusts is realized, the FGIC Insured Trusts would be entitled to retain (and pay to their investors) an additional $140 million (utilizing the base case present value payout percentage of

28.5%) that they would otherwise be required to pay to FGIC in the absence of the FGIC Settlement Agreement.

Executed on July 31, 2013
New York, New York

John S. Dubel

Exhibit C

In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV001	2/21/2013	Morrison & Foerster; Carpenter Lipps	Lewis Kruger (ResCap)			Legal memorandum prepared by counsel regarding claims asserted by monoline insurers	AC/WP
PRIV002	3/7/2013	Jennifer Shank (ResCap)	John Mack (ResCap); Johnathan Ilany (ResCap); Lewis Kruger (ResCap); Pamela West (ResCap); Ted Smith (ResCap); Thomas Marano (ResCap); Jim Whitlinger (ResCap)		Patrick Fleming (ResCap)	Email sent at the direction of counsel with attached board materials prepared by or at the direction of counsel regarding mediation	AC/WP/MC
PRIV003	3/7/2013	Jennifer Marines (MoFo)	Tom Marano (ResCap); Jim Whitlinger (ResCap); Tammy Hamzehpour (ResCap); Pam West (ResCap); Jonathan Ilany (ResCap); John Mack (ResCap); Patrick Fleming (ResCap); Lewis Kruger (ResCap)	Jim Moldovan (Morrison Cohen); William Nolan (FTI); Mark Renzi (FTI); Filip Szymik (FTI); Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Jennifer Marines (MoFo)		Email from counsel with attached board materials prepared by or at the direction of counsel regarding mediation	AC/CI/WP/MC

AC = Attorney-Client Communication; WP = Work Product Protection; MC = Mediation Confidentiality Order; CI = Common Interest Privilege

In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV004	4/4/2013	Gary Lee (MoFo)	Tammy Hamzehpour (ResCap); John Mack (ResCap); Thomas Marano (ResCap); Pamela West (ResCap); Jim Tanenbaum (MoFo); Michael Connolly (Morrison Cohen); Jim Whitlinger (ResCap); Joe Moldovan (Morrison Cohen); David Piedra (Morrison Cohen); Bill Thompson (ResCap); Lewis Kruger (ResCap); Teresa Brenner (ResCap); Johnathan Hany (ResCap); Ted Smith (ResCap); Jill Horner (ResCap)	Karn Chopra (Centerview); William Nolan (FTI); Mark Renzi (FTI); Marc D. Puntus (Centerview)		Email from counsel with attached settlement materials	AC/CI/WP/MC
PRIV005	4/8/2013	Jennifer Marines (MoFo)	Lewis Kruger (ResCap); Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo)			Email from counsel attaching materials prepared by counsel for mediation	AC/WP/MC
PRIV006	4/8/2013	Jennifer Marines (MoFo)	Gary Lee (MoFo); Lewis Kruger (ResCap)			Email chain with counsel attaching materials prepared by counsel for mediation	AC/WP/MC
PRIV007	4/10/2013	Morrison & Foerster	Lewis Kruger (ResCap)			Draft court filings prepared by counsel	AC/WP

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV008	4/11/2013	Jennifer Marines (MoFo)	Lewis Kruger (Lewis Kruger (ResCap);Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo)	Jennifer Marines (MoFo)		Email from counsel attaching materials prepared by counsel for mediation	AC/WP/MC
PRIV009	4/15/2013	Gary Lee (MoFo)	Thomas Marano (ResCap); Jim Whitlinger (ResCap)	Lewis Kruger (ResCap)		Email chain with counsel attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV010	4/16/2013	Mark Renzi (FTI)	Jennifer Marines (MoFo); Marc Puntus (Centerview); Karn Chopra (Centerview); Todd Goren (MoFo)	William Nolan (FTI); Filip Szymik (FTI); Lorenzo Marinuzzi (MoFo); Gary Lee (MoFo); Lewis Kruger (ResCap); Erica Richards (MoFo); Ryan Kielty (Centerview); Benjamin Weingarten (Centerview)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV011	4/16/2013	Jennifer Marines (MoFo)	Karn Chopra (Centerview); Todd Goren (MoFo); Mark Renzi (FTI)	William Nolan (FTI); Filip Szymik (FTI); Marc Puntus (Centerview); Lorenzo Marinuzzi (MoFo); Gary Lee (MoFo); Lewis Kruger (ResCap); Erica Richards (MoFo); Ryan Kielty (Centerview); Benjamin Weingarten (Centerview)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV012	4/16/2013	Jennifer Marines (MoFo)	Karn Chopra (Centerview); Todd Goren (MoFo); Mark Renzi (FTI)	William Nolan (FTI); Filip Szymik (FTI); Marc Puntus (Centerview); Lorenzo Marinuzzi (MoFo); Gary Lee (MoFo); Lewis Kruger (ResCap); Erica Richards (MoFo); Ryan Kielty (Centerview); Benjamin Weingarten (Centerview); Jennifer Marines (MoFo)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV013	4/16/2013	Karn Chopra (Centerview)	Todd Goren (MoFo); Mark Renzi (FTI)	Jennifer Marines (MoFo); William Nolan (FTI); Filip Szymik (FTI); Marc Puntus (Centerview); Lorenzo Marinuzzi (MoFo); Gary Lee (MoFo); Lewis Kruger (ResCap); Erica Richards (MoFo); Ryan Kielty (Centerview); Benjamin Weingarten (Centerview)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV014	4/17/2013	Mark Renzi (FTI)	Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap); Todd Goren (MoFo); Karn Chopra (Centerview)	William Nolan (FTI); Filip Szymik (FTI).		Email with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV015	4/18/2013	Filip Szymik (FTI)	Gary Lee (MoFo); William Nolan (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap); Todd Goren (MoFo); Mark Renzi (FTI); Karn Chopra (Centerview)	William Nolan (FTI)		Email with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV016	4/18/2013	Mark Renzi (FTI)	Gary Lee (MoFo); Jennifer Marines (MoFo); Karn Chopra (Centerview); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Lewis Kruger (ResCap)	William Nolan (FTI); Filip Szymik (FTI)		Email with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV017	4/18/2013	Filip Szymik (FTI)	Mark Renzi (FTI); Gary Lee (MoFo); Jennifer Marines (MoFo); Karn Chopra (Centerview); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Lewis Kruger (ResCap)	William Nolan (FTI)		Email with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV018	4/18/2013	Jennifer Marines (MoFo)	Filip Szymik (FTI); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Lewis Kruger (ResCap)	Mark Renzi (FTI); Gary Lee (MoFo); Karn Chopra (Centerview); William Nolan (FTI)		Email chain with counsel and retained professionals discussing materials prepared by or at the direction of counsel for mediation	AC/MC
PRIV019	4/19/2013	Gary Lee (MoFo)	Lewis Kruger (ResCap)			Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV020	4/19/2013	Gary Lee (MoFo)	Lewis Kruger (ResCap)			Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV021	4/19/2013		Lewis Kruger (ResCap)			Draft materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV022	4/19/2013	Filip Szymik (FTI)	William Nolan (FTI); Gary Lee (MoFo)	Mark Renzi (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap); Gary Lee (MoFo)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV023	4/19/2013	Jennifer Marines (MoFo)	Gary Lee (MoFo)	Lorenzo Marinuzzi (MoFo); Erica Richards (MoFo); Lewis Kruger (ResCap)		Email from counsel attaching non-final settlement documents	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV024	4/19/2013	Filip Szymik (FTI)	William Nolan (FTI);Gary Lee (MoFo)	Mark Renzi (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap);Gary Lee (MoFo)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV025	4/20/2013	Filip Szymik (FTI)	Gary Lee (MoFo); William Nolan (FTI)	Mark Renzi (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV026	4/20/2013	Gary Lee (MoFo)	Filip Szymik (FTI)	William Nolan (FTI); Mark Renzi (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap)		Email chain with counsel and retained professionals discussing materials prepared by or at the direction of counsel for mediation	AC/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV027	4/20/2013	Lewis Kruger (ResCap)	Gary Lee (MoFo)			Email chain with counsel regarding mediation issues	AC/WP/MC
PRIV028	4/20/2013	Lewis Kruger (ResCap)	Gary Lee (MoFo)			Email chain with counsel regarding mediation issues	AC/WP/MC
PRIV029	4/20/2013	Filip Szymik (FTI)	Gary Lee (MoFo); William Nolan (FTI)	Mark Renzi (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV030	4/21/2013	Filip Szymik (FTI)	Gary Lee (MoFo); William Nolan (FTI); Lorenzo Marinuzzi (MoFo); Jennifer Marines (MoFo); Lewis Kruger (ResCap); Todd Goren (MoFo); Mark Renzi (FTI); Kam Chopra (Centerview)			Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV031	4/22/2013		Lewis Kruger (ResCap)			Draft materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV032	4/22/2013		Lewis Kruger (ResCap)			Draft materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV033	4/23/2013	Filip Szymik (FTI)	Gary Lee (MoFo); Lewis Kruger (ResCap); Todd Goren (MoFo); Marc Puntus (Centerview); Karn Chopra (Centerview); Jennifer Marines (MoFo); Lorenzo Marinuzzi (MoFo)	Mark Renzi (FTI); William Nolan (FTI)		Email attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV034	4/24/2013	Mark Renzi (FTI)	Jennifer Marines (MoFo)	Lorenzo Marinuzzi (MoFo); Lewis Kruger (ResCap); Jennifer Marines (MoFo)		Email chain with counsel and retained professionals regarding mediation issues	AC/WP/MC
PRIV035	4/25/2013	Gary Lee (MoFo)	Lewis Kruger (ResCap); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Jennifer Marines (MoFo)			Email from counsel attaching materials prepared by counsel for mediation	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV036	4/29/2013	Gary Lee (MoFo)	Jim Beha (MoFo); Jeff Cancelliere (ResCap); Thomas Marano (ResCap)	Lewis Kruger (ResCap); Joel Haims (MoFo); Jim Whitlinger (ResCap); Ken Brock (ResCap)		Email chain with counsel regarding mediation issues	AC/WP/MC
PRIV037	5/14/2013	Jennifer Marines (MoFo)	Lew Kruger (ResCap); Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo)			Email chain with counsel and mediation parties attaching non-final settlement documents	AC/WP/MC
PRIV038	5/14/2013	Jennifer Marines (MoFo)	Lew Kruger (ResCap); Gary Lee (MoFo); Lorenzo Marinuzzi (MoFo)			Email chain with counsel and mediation parties attaching non-final settlement documents and materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV039	5/14/2013	Jennifer Marines (MoFo)	Gary Lee (MoFo); Todd Goren (MoFo); Lewis Kruger (ResCap); Lorenzo Marinuzzi (MoFo)			Email chain with counsel and mediation parties attaching non-final settlement documents	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Privilege Log

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV040	5/14/2013	Lorenzo Marinuzzi (MoFo)	Gary Lee (MoFo); Lewis Kruger (ResCap)'; Todd Goren (MoFo); Jennifer Marines (MoFo)			Email chain with counsel and mediation parties attaching non-final settlement documents	AC/WP/MC
PRIV041	5/18/2013	Mike Talarico (FTI)	William Nolan (FTI); Gary Lee (MoFo); Todd Goren (MoFo); Jordan A. Wishnew (MoFo); Lorenzo Marinuzzi (MoFo); Lewis Kruger (ResCap); Norman Rosenbaum (MoFo)	Gina Gutzeit (FTI); Tanya Meerovich (FTI); Mark Renzi (FTI); Filip Szymik (FTI); Yash Mathur (FTI); Brett Witherell (FTI)		Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/WP/MC
PRIV042	5/20/2013	Erica Richards (MoFo)	Todd Goren (MoFo); Lorenzo Marinuzzi (MoFo); Lewis Kruger (ResCap)			Email from counsel attaching non-final settlement documents	AC/WP/MC
PRIV043	5/22/2013	James Newton (MoFo)	Gary Lee (MoFo)	Lewis Kruger (ResCap)		Email chain with counsel and retained professionals regarding FGIC settlement	AC/WP/MC

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In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion – Supplemental Privilege Log – July 10, 2013

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV044	5/12/2013	Morrison & Foerster; ResCap				Draft board resolution prepared by or at the direction of counsel regarding the PSA and Plan Term Sheet	AC/WP

AC = Attorney-Client Communication; WP = Work Product Protection; MC = Mediation Confidentiality Order; CI = Common Interest Privilege1

In re Residential Capital LLC, et al., 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion – Supplemental Privilege Log – July 15, 2013

No.	Date	Author/From	Recipients	CC	BCC	Description	Privilege
PRIV045	3/16/2013	Gary Lee (MoFo)	Tom Marano (ResCap); Tammy Hamzehpour (ResCap); Jim Whitlinger (ResCap); William Thompson (ResCap); Patrick Fleming (ResCap); Pam West (ResCap); John Mack (ResCap); Jonathan Ilany (ResCap)	James Tanenbaum (MoFo); Lewis Kruger (ResCap); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Jim Moldovan (Morrison Cohen)		Email from counsel regarding upcoming meetings	AC/WP
PRIV046	5/23/2013	Gary Lee (MoFo)	Tammy Hamzehpour (ResCap); Jennifer Shank (ResCap); Thomas Marano (ResCap); Jill Horner (ResCap); Jonathan Ilany (ResCap); Ted Smith (ResCap); Teresa Brenner (ResCap); John Mack (ResCap); Pamela West (ResCap)	Lewis Kruger (ResCap); Joe Moldovan (Morrison Cohen); David Piedra (Morrison Cohen); Jim Tanenbaum (MoFo); Bill Thompson (ResCap); Nilene Evans (MoFo); Lorenzo Marinuzzi (MoFo); Larren Nashelsky (MoFo); Anthony Princi (MoFo); Darryl Rains (MoFo); Charles Kerr (MoFo); Joel Haims (MoFo); Jamie Levitt (MoFo); Todd Goren (MoFo)		Email from counsel regarding the settlement agreements.	AC/MC

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In re Residential Capital LLC, Case No. 12-12020(MG) (Bankr. S.D.N.Y.)

FGIC 9019 Motion - Redaction Log – July 16

Bates No.	Date	Author/From	Recipients	CCs	BCC	Description	Privilege
RC_FGIC9019_00034884-RC_FGIC9019_00034886	5/13/2013	Jennifer Shank (ResCap)				Attorney client communication during the course of a meeting of the board of directors	AC/MC
RC_FGIC9019_00034892-RC_FGIC9019_00034893	5/21/2013	Jennifer Shank (ResCap)				Attorney client communication during the course of a meeting of the board of directors	AC/MC
RC_FGIC9019_00034836	5/22/2013	Jennifer Shank (ResCap)	Thomas Strauss (Wilmington Trust); Garry Hills (Wilmington Trust); Mindy Waiser (Wilmington Trust); William Tyson (ResCap); Deanna Horst (ResCap); Dave Cunningham (ResCap); Tammy Hamzehpour (ResCap); Lewis Kruger (ResCap); Nilene Evans (MoFo); Lorenzo Marinuzzi (MoFo)			Email sent at the direction of counsel with attached board materials prepared by or at the direction of counsel	AC/WP
RC_FGIC9019_00034899-RC_FGIC9019_00034900	5/22/2013	Jennifer Shank (ResCap)				Attorney client communication during the course of a meeting of the board of directors	AC/MC
RC_FGIC9019_00034839	5/22/2013	Jennifer Shank (ResCap)	Thomas Strauss (Wilmington Trust); Garry Hills (Wilmington Trust); Mindy Waiser (Wilmington Trust); William Tyson (ResCap); Deanna Horst (ResCap); Dave Cunningham (ResCap); Tammy Hamzehpour (ResCap); Lewis Kruger (ResCap); Nilene Evans (MoFo); Lorenzo Marinuzzi (MoFo)			Email sent at the direction of counsel with attached board materials prepared by or at the direction of counsel	AC/WP
RC_FGIC9019_00034890	6/14/2013	Jennifer Shank (ResCap)				Attorney client communication during the course of a meeting of the board of directors	AC/MC

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In re Residential Capital LLC, et al., Case No. 12-12020(MG) (Bankr. S.D.N.Y.)
FGIC 9019 Motion - Redaction Log – July 16

Bates No.	Date	Author/From	Recipients	CCs	BCC	Description	Privilege
RC_FGIC9019_00034849-RC_FGIC9019_00034853	06/14/2013	Jennifer Shank (ResCap)	Tom Marano (ResCap); Tammy Hamzehpour (ResCap); Jim Whitlinger (ResCap); William Thompson (ResCap); Patrick Fleming (ResCap); Pam West (ResCap); John Mack (ResCap); Jonathan Ilany (ResCap); Jill Horner (ResCap); Teresa Brenner (ResCap); Ted Smith (ResCap); Gary Lee (MoFo); James Tanenbaum (MoFo); Lewis Kruger (ResCap); Lorenzo Marinuzzi (MoFo); Todd Goren (MoFo); Jim Moldovan (Morrison Cohen); David Piedra (Morrison Cohen); Michael Connolly (Morrison Cohen); Jack Levy (Morrison Cohen); Robert Dakis (Morrison Cohen); Karn Chopra (Centerview); Marc Puntus (Centerview); Ryan Kielty (Centerview); Bill Nolan (FTI); Mark Renzi (FTI); Oliver Ireland (MoFo)			Email sent at the direction of counsel with attached board materials prepared by or at the direction of counsel regarding mediation	AC/WP/CI

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