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Attorneys for Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re: | : | Chapter 11 |
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| RESIDENTIAL CAPITAL, LLC, <i>et al.</i> | : | Case No. 12-12020 (MG) |
| | : | |
| Debtors. | : | Jointly Administered |
| | : | |
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**STATEMENT AND RESERVATION OF RIGHTS
OF AMBAC ASSURANCE CORPORATION AND THE
SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION
WITH RESPECT TO THE JOINT CHAPTER 11 PLAN PROPOSED BY RESIDENTIAL
CAPITAL, LLC, ET AL. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Ambac Assurance Corporation (“Ambac Assurance”) and the Segregated Account of Ambac Assurance Corporation (“Segregated Account” and, collectively with Ambac Assurance, “Ambac”) respectfully submit this statement and reservation of rights (“Statement”) with respect to the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors*, dated August 23, 2013, Dkt. No. 4819 (“Plan”).

BACKGROUND

1. Ambac Assurance is a financial guaranty insurance company, a “mono-line,” organized under the laws of the State of Wisconsin with its principal place of business at One State Street Plaza, New York, New York.



2. The Segregated Account is a segregated account that was established on March 24, 2010 pursuant to Wis. Stat. § 611.24, with the approval of the Office of the Commissioner of Insurance of the State of Wisconsin (“Commissioner”). Upon the Verified Petition of the Commissioner, the Circuit Court for Dane County, Wisconsin placed the Segregated Account into statutory rehabilitation under Wis. Stat. §§ 645.31 and 645.32 on March 24, 2010. Pursuant to Wis. Stat. § 611.24(3)(e), the Segregated Account is a separate Wisconsin insurer with the legal capacity and authority to sue in its own name and right.

3. In order to enhance the marketability of securities issued in connection with certain of their securitization transactions (commonly and hereinafter referred to as “RMBS Transactions”), the Debtors regularly obtained financial guarantee insurance policies from Ambac Assurance, which policies guaranteed principal and interest payments to certain classes of securities issued in connection with these RMBS Transactions. In connection with the issuance of such policies, certain Debtors entered into Insurance and Indemnity Agreements with Ambac Assurance providing Ambac Assurance with certain rights and remedies, and Ambac Assurance was also expressly named as a third-party beneficiary of, and has a variety of rights and remedies against the Debtors under, certain of the other principal transaction documents that comprise an RMBS Transaction (collectively the “Transaction Documents”).

4. On May 14, 2012, the Debtors filed their *Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), and (m), 365 and 1123, and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 For Order: (A)(I) Authorizing and Approving Sale Procedures, Including Break-Up Fee and Expense Reimbursement; (II) Scheduling Bid Deadline and Sale Hearing; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief and (B)(I) Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Au-*

thorizing and Approving Asset Purchase Agreements Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief, Dkt. No. 61. On July 26, 2012, the Debtors filed a *Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto*, Dkt. No. 924, which was amended and restated on September 18, 2012, Dkt. No. 1484 (as amended and restated, "Notice"). Pursuant to the Notice, the Debtors sought to assume and assign substantially all of the Transaction Documents.

5. On October 12, 2012, Ambac timely filed an objection to the Notice, Dkt. No. 1810 ("Objection"). On November 21, 2012, the Court entered an Order, Dkt. No. 2246 ("Sale Order") approving the Sale of the Debtors' servicing platform and other assets to Ocwen Loan Servicing, LLC ("Ocwen"). The Sale Order expressly excepted Ambac from its scope, and the hearing to consider the Objection was adjourned to a later date. See Sale Order ¶ 61.

6. On March 4, 2013, in anticipation of an evidentiary hearing to determine the Objection and pursuant to an Order of this Court, Ambac and the Debtors submitted the *Joint Stipulation of Facts Regarding the Sale Objection of Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation*, Dkt. No. 3094. Also on that date, the Debtors filed a reply to the Objection, Dkt. No. 3098, which was joined by the Committee, Dkt. No. 3099. On March 11, 2013, Ambac filed a sur-reply in further support of the Objection, Dkt. No. 3136. Throughout this process, the parties remained engaged in good-faith negotiations in an effort to achieve a consensual resolution of the Objection. The hearing on the Objection was adjourned from time to time with the consent of Ambac and the Debtors while these negotiations continued.

7. On October 9, 2013, after nearly a year of difficult and complex negotiations – with assistance from and ultimately the support of the Committee – the Debtors, Ambac and, for certain limited purposes, Ocwen reached a comprehensive agreement that resolves the Objection and, subject to confirmation of the Plan, fixes the allowed amounts of Ambac’s claims against the Debtors. Their agreement was memorialized in a proposed *Stipulation and Order: (I) Resolving the Objection of Ambac Assurance Corporation and the Segregated Account of Ambac Assurance Corporation to the Debtors’ Proposed Assumption and Assignment of Certain Executory Contracts, (II) Approving Sale, Assumption and Assignment of Certain Servicing Rights to Ocwen Loan Servicing, LLC, and (III) Granting Related Relief*, dated October 9, 2013, Dkt. No. 5321 (“Stipulation”). No party objected to the Stipulation and it was approved by this Court on October 18, 2013, Dkt. No. 5389.

RESERVATION OF RIGHTS

8. Ambac supports confirmation of the Plan. The Plan resolves many of the most significant claims against the Debtors, including those of monoline insurers, on a largely consensual basis. It is far preferable to years of costly and uncertain litigation.

9. The Plan does not – indeed, it could not – resolve *all* claims related to the Debtors’ RMBS Transactions. In this respect, the Plan contains the so-called “Monoline Reservation,” which provides that, “[e]ach Insured RMBS Trust shall retain the ability to enforce its rights, in the Bankruptcy Court or otherwise, against any Monoline (other than FGIC) that does not, in the future, perform in accordance with an insurance policy for the benefit of that RMBS Trust.” Plan, Art. IV.C.4. The Monoline Reservation thus confirms that an Insured RMBS Trust may seek to enforce any rights it has against any non-performing monoline insurer in a court which might be the Bankruptcy Court.

10. But the language of the Monoline Reservation, which preserves the ability of an Insured RMBS Trust to “enforce its rights, *in the Bankruptcy Court or otherwise*,” might be misconstrued subsequent to confirmation. This provision should not be read to, because it cannot, *create* jurisdiction of the Bankruptcy Court to hear a dispute between an Insured RMBS Trust and a monoline where such jurisdiction would not otherwise exist. The jurisdiction of the Bankruptcy Court is well-delineated in this Circuit. As this Court has already explained in this case:

Section 1334(b) provides that a district court has jurisdiction over cases under title 11, proceedings arising under title 11, proceedings arising in a case under title 11, and proceedings related to a case under title 11. 28 U.S.C. § 1334(b). Section 157(a) permits the district court to refer all such cases to the bankruptcy court. 28 U.S.C. § 157(a). [. . .] In the Second Circuit, before confirmation of a chapter 11 plan, ‘related to’ bankruptcy jurisdiction exists in any civil action where the outcome ‘might have any conceivable effect on [a bankruptcy] estate.’ Post-confirmation, cases in this Circuit and elsewhere apply a more stringent ‘close nexus’ test for ‘related to’ jurisdiction[.]

Bayerische Landesbank v. Deutsche Bank AG (In re Residential Capital, LLC), 488 B.R. 565, 572-73 (Bankr. S.D.N.Y. 2013)(citations omitted).

11. It is not necessary for the Court to determine now whether a hypothetical action by an Insured RMBS Trust against a monoline insurer would have any “conceivable effect” on the Debtors’ estates or a “close nexus” to the Plan after confirmation. Instead, lest its silence be deemed consent to the jurisdiction of this Court in a proceeding over which it would otherwise not have jurisdiction, Ambac submits this Reservation of Rights to preserve its ability to raise these concerns and address these issues at the appropriate time and in the appropriate forum.¹

¹ Jurisdictional concerns are particularly acute for Ambac because, as noted above, the Segregated Account is the subject of a rehabilitation proceeding in the State of Wisconsin.

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| | : : |
| ----- X | |

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

PATRICK FAY, being duly sworn, deposes and says:

1. I am over 18 years of age, not a party to this action, and employed by the law firm of Patterson, Belknap, Webb & Tyler LLP, located at 1133 Avenue of the Americas, New York, New York 10036.

2. On October 21, 2013, I served a true and correct copy of the foregoing **STATEMENT AND RESERVATION OF RIGHTS OF AMBAC ASSURANCE CORPORATION AND THE SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION WITH RESPECT TO THE JOINT CHAPTER 11 PLAN PROPOSED BY RESIDENTIAL CAPITAL, LLC, ET AL. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS** upon the parties herein by enclosing a true copy of same in a postage prepaid wrapper and depositing it in a depository maintained by the U.S. Postal Service at 1133 Avenue of the Americas, New York, New York, directed to them at the address below:

Office of the United States Trustee for the Southern District of New York

Office of the United States Trustee 33 Whitehall Street
21st Floor
New York, NY 10004
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Office of the United States Attorney General

U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001
Attn: US Attorney General, Eric H. Holder, Jr.

Office of the New York Attorney General

Office of the New York State Attorney General
The Capitol
Albany, NY 12224-0341
Attn: Nancy Lord, Esq., Neal Mann, Esq.

Office of the U.S. Attorney for SDNY

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Attn: Joseph N. Cordaro, Esq.,

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Attn: Jonathan H. Hofer, Ken Ziman

Nationstar Mortgage LLC

Nationstar Mortgage LLC
350 Highland Drive
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Attn: General Counsel

Counsel to Nationstar Mortgage LLC

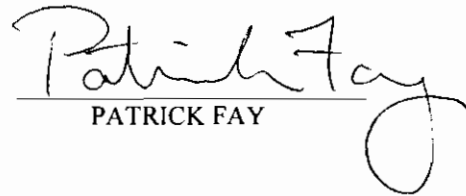
Sidley Austin LLP
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Internal Revenue Service

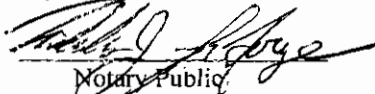
Internal Revenue Service
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Philadelphia, PA 19101-7346

U.S. Securities and Exchange Commission

Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281-1022
Attn: George S. Canellos, Regional Director


PATRICK FAY

Sworn to before me this 21st
day of October, 2013


Notary Public

NICHOLAS J. LaFORGE
Notary Public, State of New York
No. 01LA6249453
Qualified in Kings County
Certificate Filed in New York County
Commission Expires October 11, 2015