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Counsel for Ally Financial, Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**DECLARATION OF JONATHAN D. JANOW IN SUPPORT OF ALLY FINANCIAL,
INC’S OMNIBUS REPLY TO THE OBJECTIONS TO THE DEBTORS’ SECOND
SUPPLEMENTAL MOTION PURSUANT TO THE FED. R. BANKR. P. 9019 FOR
APPROVAL OF THE RMBS TRUST SETTLEMENT AGREEMENTS**

I, JONATHAN D. JANOW, hereby declare, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel to Ally Financial, Inc. (“Ally”) in the chapter 11 cases of the above captioned matter. I respectfully submit this declaration in support of Ally’s Omnibus Reply to the Objections to the Debtors’ Second Supplemental Motion Pursuant to the Fed. R. Bankr. P. 9019 for the Approval of the RMBS Trust Settlement Agreements.

2. Attached to my Declaration are the following Exhibits in support of Ally’s reply.

EXHIBIT	DESCRIPTION OF EXHIBIT
A	Excerpts from the Deposition Testimony of Thomas Marano, dated November 12, 2012.
B	Excerpts from the Deposition Testimony of James Whitlinger, dated November 15, 2012.
C	Excerpts from the Deposition Testimony of Mark Renzi, dated November 7, 2012.
D	Excerpts from the Deposition Testimony of John Ruckdaschel, dated November 8, 2012.
E	Excerpts from the Deposition Testimony of Tammy Hamzhepour, dated November 13, 2012
F	Excerpts from the Deposition Testimony of Timothy Devine, dated November 19, 2012
G	Excerpts from the Deposition Testimony of John Mack, dated November 14, 2012.
H	Email dated May 7, 2012 from Timothy Devine to Mark Renzi, Gary Lee, Tammy Hamzhepour and others. <i>See Ex. 9019-41.</i>

Dated: January 15, 2013
Washington, D.C.

/s/ Jonathan D. Janow
Jonathan D. Janow

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

-----x

H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF THOMAS MARANO

New York, New York

November 12, 2012

9:56 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27645

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. What I told Carpenter was it
3 would take a lot more than 750 million to
4 get a quick resolution. Doesn't mean it
5 was fair for it to be a 2 billion charge
6 to Ally; 750 was fair. But people are
7 going to want more.

8 Q. What made you think that 750 was
9 the top dollar you were going to be able
10 to get from AFI?

11 A. The -- I relied on the
12 independent directors who, you know, spent
13 weeks, if not months, negotiating with
14 Carpenter; and they told us this was the
15 best deal they could get. And we looked
16 at what the legal professionals said were
17 valid claims, and we concluded at the
18 board meeting this was fair.

19 Q. Based on a two-page presentation
20 you got 22 minutes before, in an hour
21 meeting?

22 MR. PRINCI: Objection, that's
23 just argumentative. Is there a
24 question? Excuse me, is there a
25 question?

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. Sure.

3 Q. That was what you testified
4 about earlier?

5 A. Yes.

6 Q. You would reach out to
7 Mr. Carpenter or you would have discussed
8 the solvency and liquidity situation of
9 ResCap with Mr. Carpenter?

10 A. Correct.

11 Q. Earlier in your testimony today
12 you testified that Mr. Ilany and Mr. Mack
13 from ResCap's board were responsible for
14 engaging with Ally Financial in the
15 negotiations with respect to a settlement
16 with Ally. Do you recall that testimony?

17 A. Yes.

18 Q. Okay. Were you kept up to date
19 on the status of negotiations with Ally?

20 A. Not in detail. Periodically I'd
21 be posted as to what was going on but I
22 was not informed of the details in a way
23 that I could tell you the blow-by-blow
24 descriptions.

25 Q. Understood. Who would provide

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 you those updates?

3 A. I would receive those updates
4 from either Mr. Mack or Mr. Ilany but they
5 would be of a nature of we are talking to
6 Carpenter.

7 Q. Did you ever tell Mr. Ilany or
8 Mr. Mack that you thought \$2 billion was a
9 reasonable number to settle with Ally
10 Financial?

11 A. Again, just to make sure the
12 record is clear, I communicated to many
13 people that I thought that we would not be
14 able to settle with the bondholders or buy
15 their peace for less than \$2 billion.
16 That wasn't necessarily based on the
17 merits of the claims in the end when the
18 work was completed.

19 Q. I understand but did you tell
20 Mr. Ilany and Mr. Mack that you thought \$2
21 billion was a reasonable number?

22 MR. PRINCI: Objection. Asked
23 and answered.

24 You can answer it again.

25 A. They knew my views.

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Q. So they knew?

3 A. (Witness nods.)

4 Q. What was the initial ask by
5 ResCap's board to Ally in connection with
6 the Ally set of negotiations?

7 MR. PRINCI: Objection to form.

8 You can answer the question if
9 you wish to.

10 A. I don't actually recall but it
11 was a really big number. It was much
12 bigger than \$2 billion.

13 Q. Was it \$3 billion?

14 A. You know, if I recalled the
15 exact number, it was very big. Ally's
16 reaction was NFW, we'd rather litigate.

17 Q. Do you recall if it was more
18 than \$10 billion?

19 A. No, I don't think it was over 10
20 billion.

21 Q. Do you recall if it was more
22 than 5 billion?

23 A. I would say, you know, it had to
24 be somewhere south of 5. I just don't --
25 I don't recall the exact number.

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Q. Okay. So somewhere above 2 but
3 south of 5?

4 MR. PRINCI: Objection. That's
5 not his testimony.

6 A. I don't recall the exact number.

7 MR. SIDMAN: Actually, I think
8 it was but that's fine.

9 Q. I'm going to show you -- again I
10 apologize if it's been marked previously
11 not here but some other deposition I'll
12 mark it has 64. And a copy for counsel.

13 (9019 Exhibit 64, e-mail chain
14 dated March 16, 2012, Bates
15 Ally-0226065, marked for
16 identification, as of this date.)

17 MR. SIDMAN: For the record,
18 Exhibit 64 is an e-mail chain dated
19 March 16, 2012, and Bates number is
20 Ally-0226065.

21 Q. My first question to you,
22 Mr. Marano, is, do you recall the first
23 e-mail on the e-mail chain which is an
24 e-mail from you to Mr. Solomon,
25 Ms. Hamzephour, cc'ing Mr. Carpenter, sent

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Friday, March 16th, 2012 at 1:47 p.m.?

3 A. Yeah, I do recall this.

4 Q. Okay. Have you had a chance to
5 look at the e-mail?

6 A. Just give me one second.

7 Q. Let me know when you are ready.

8 A. Yeah, go ahead.

9 Q. So the first e-mail which was
10 sent from you to Mr. Solomon,
11 Ms. Hamzephour discusses a tolling
12 agreement between AFI and ResCap. Do you
13 see that?

14 A. Yes.

15 Q. And what was the subject matter
16 of the tolling agreement between AFI and
17 ResCap?

18 A. We were looking for a tolling
19 agreement between ResCap and AFI to cover
20 all causes of actions that ResCap may have
21 against AFI. So we didn't have the
22 statute of limitations period expire prior
23 to reaching a settlement with AFI or a
24 bankruptcy filing.

25 Q. And what was your understanding

1 THOMAS MARANO - HIGHLY CONFIDENTIAL
2 of the potential applicable statute of
3 limitations period that would expire in
4 March of 2012?

5 MR. PRINCI: Object. If your
6 understanding of that is based --
7 comes from communications with
8 counsel, I'm going to direct you not
9 to answer the question. If it comes
10 from a source other than your
11 communications with counsel, you can
12 answer the question.

13 A. In the context of this comes
14 from counsel.

15 Q. Okay.

16 DI MR. PRINCI: I'm going to direct
17 you not to answer the question.

18 Q. Do you have any -- other than
19 with your counsel do you have any
20 understanding as to why the statute of
21 limitations involved dealt with four years
22 as opposed to another time frame, 6 years,
23 2 years, 1 year?

24 MR. PRINCI: Same admonition.

25 MR. SIDMAN: I instructed -- I

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 told him already not to --

3 A. The answer is no.

4 Q. Do you see at the bottom there
5 that -- you report, second-to-last
6 paragraph, that the cost of -- the cost to
7 draft this complaint in the condensed time
8 period is likely 750,000 to \$1 million.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And who told you that the
12 cost to draft this complaint in this time
13 period was likely to be 750,000 to
14 \$1 million?

15 MR. PRINCI: Can I ask a
16 question. I have allowed a lot of
17 questions today that I think really
18 are the subject of the examiner's
19 inquiry and ultimately will be the
20 subject of the examiner's report. And
21 I think some leeway has to be provided
22 to everybody here in that regard. But
23 since you began questioning the
24 witness I think the entirety of
25 your -- of your inquiry has been in

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 that field. And now I think you want
3 to know who told him what the cost of
4 the complaint would be against Ally.
5 I just don't understand what this has
6 to do with the 9019 motion. Could you
7 edify that for me?

8 MR. SIDMAN: No. But if you are
9 instructing him not to answer, that's
10 fine.

11 DI MR. PRINCI: Okay. No, don't
12 answer.

13 MR. SIDMAN: Okay.

14 MR. PRINCI: Can we take a
15 break?

16 MR. SIDMAN: Yes.

17 MR. PRINCI: Thanks.

18 THE VIDEOGRAPHER: The time is
19 4:48 p.m. and we are off the record.

20 (Whereupon, there is a recess in
21 the proceedings.)

22 THE VIDEOGRAPHER: The time is
23 4:54 p.m. and we are back on the
24 record.

25 Q. Good afternoon again,

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Mr. Marano. You testified early that
3 Mr. Ilany and Mr. Mack were responsible
4 for the Ally ResCap negotiations, right,
5 and you also testified earlier that -- I'm
6 sorry the court reporter can't take down a
7 head nod. Is that yes or no?

8 A. Yes.

9 Q. You also testified earlier --
10 backup. You also testified earlier that
11 another group of people were responsible
12 for negotiations with Ms. Patrick and
13 Mr. Franklin's group; is that correct?

14 A. Yes.

15 Q. And who were those people
16 responsible for negotiations with
17 Ms. Patrick's group?

18 A. Tammy Hamzephour from general
19 counsel of ResCap and Gary Lee who was --
20 who was counsel to ResCap via Morrison &
21 Foerster.

22 Q. Anyone else responsible for
23 negotiations with Ms. Patrick?

24 A. In the early stages when
25 Ms. Patrick's letter first arrived Tim

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 Devine had been present but he did not
3 represent ResCap in that meeting.

4 Q. I understand but my question is
5 something different. I'm asking you
6 overall who was responsible for the
7 negotiations with Ms. Patrick?

8 A. Tammy and Gary Lee.

9 Q. Not Mr. Devine?

10 A. No. Not -- not on behalf of
11 ResCap, no.

12 Q. I understand but I'm not -- I'm
13 not making that distinction you are. So
14 let me ask my question. Who was
15 responsible for negotiating the RMBS
16 settlement with Ms. Patrick?

17 MR. PRINCI: Objection. Asked
18 and answered.

19 You can answer again.

20 A. Tim Devine was there. But Tammy
21 Hamzephour represented ResCap and Gary
22 Lee.

23 Q. And who did Mr. Devine
24 represent?

25 A. Mr. Devine was there as a

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 reasonable or the loss amount was
3 reasonable.

4 Q. When you were provided updates
5 or information about the RMBS settlement
6 negotiations, who provided them to you?

7 A. I would have received the
8 financial information from Jeff
9 Cancelliere, Jim Whitlinger may have been
10 on the calls. And from a legal point of
11 view I would have gotten updates from
12 Tammy Hamzephour and Gary Lee.

13 Q. Did you ever discuss strategy
14 with anyone at Ally Financial with respect
15 to the RMBS settlement negotiations?

16 A. Early on I did interact with Tim
17 Devine when we were contracting for Tim's
18 services from Ally.

19 Q. I'm sorry. You said you
20 contracting for Tim's services?

21 A. Well, when -- there was a period
22 of time where there was global functions.
23 And the entire legal department was under
24 the global functions of Ally. And then
25 sometime in 2012 we began to pull those

1 THOMAS MARANO - HIGHLY CONFIDENTIAL

2 A. I believe that, you know, they
3 would have been working together on this.
4 I just don't know.

5 Q. So you believe that they were
6 working together?

7 A. Yeah. I knew Gary was there
8 watching our interest as was Tammy.

9 Q. But he wasn't the one
10 negotiating the deal with Ms. Patrick?

11 MR. PRINCI: Objection. That
12 misstates his testimony.

13 A. Gary was there to represent our
14 interest. Mr. Devine could talk to
15 Ms. Patrick until he was blue in the face.
16 Until we looked at the numbers that she
17 was proposing versus possible range that
18 Jeff Cancelliere came up with, there was
19 going to be no agreement.

20 Q. But you will agree with me that
21 with respect to at least this e-mail, back
22 and forth between Mr. Devine and
23 Ms. Patrick, where numbers were exchanged,
24 the only people were talking were
25 Mr. Devine and Ms. Patrick?

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF JAMES WHITLINGER

New York, New York

November 15, 2012

9:39 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27649

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JAMES WHITLINGER

as an allowed claim by the institutional investors?

MR. RAINS: Misstates his testimony.

A. I would say that it was important to know that the 8.7 billion was the maximum amount claim that could be brought forth. And you would want to know what that dollar amount is.

Q. Did you know how that \$8.7 billion number was arrived at?

A. Yes.

Q. How was it arrived at?

A. Through our teams that negotiated with Kathy Patrick.

Q. And when you say -- and who are the people on the team that negotiated with Kathy Patrick?

A. I wasn't -- wasn't at the negotiations but Gary Lee and Tammy Hamzephour were the people that on our side that were very important to the process.

Q. Do you know whether Mr. Devine

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JAMES WHITLINGER

accept a \$750 million contribution to the restructure from AFI without first knowing what the size -- what the settlement amount would be with the institutional investors?

MR. RAINS: Object to the form of the question. It's vague and ambiguous and assumes facts not in evidence.

A. So the first point that I would make is, is there are two separate things. The \$8.7 billion locks in based on an arm's length negotiation that happened between Kathy Patrick and our side. And irrespective of a -- of a settlement that \$8.7 billion would stay.

If you're -- you know, this is my opinion, I probably shouldn't -- shouldn't give opinions but if you are Kathy Patrick, you would also want to know what you think your constituents are going to get through a waterfall analysis. And so you would want to know what Ally would want to contribute. But they're two

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JAMES WHITLINGER

separate things. Because if -- if the AFI agreement, you know, falls apart, we are still -- we still have \$8.7 billion claim settled, which we think is a very good deal based on litigation facts and what our -- our professionals told us.

Q. Can you tell me all the reasons why you concluded as a board member that it was a good deal?

A. First we had a process. It was negotiated with, you know, with knowledgeable people on the types of litigation claims that could be made on our side. It was negotiated with Kathy Patrick and her group who are knowledgeable on what claims they would bring forth, and, you know, we had -- we had independent, you know, our legal counsel evaluating what those claims could be versus the releases we would get and it was a good process.

MR. RAINS: You said first so I couldn't tell whether you were finished with your answer.

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

-----x

VIDEOTAPE DEPOSITION OF MARK RENZI

New York, New York

November 7, 2012

1:08 p.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27640

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MARK RENZI

Most of the meetings with Kath Patrick that I was -- that I attended were at MoFo's offices. I actually believe all were at MoFo's offices.

Q. Did you make any part of the presentation to Ms. Patrick that day?

A. Yes.

Q. Did you make the entire presentation?

A. No.

Q. Who else made part of the presentation?

A. Excuse me. Marc Puntus was available from Centerview Partners.

Q. He was present?

A. I believe so. On the 25th, I believe so. Although he's not cc'd in this e-mail, I believe so.

Q. Okay. Looking at the presentation attached to your e-mail --

A. Yes.

Q. -- was this a document that you prepared?

A. Not in its entirety but portions

1 MARK RENZI

2 including the many audits that we
3 described before, to understand what would
4 be a reasonable allocation between the two
5 legal entities that are reflected on this
6 page.

7 Q. Mr. Renzi, I don't mean to
8 misstate anything you've said but I seem
9 to recall your saying that the 3 billion,
10 4 billion and 6 billion dollar valuations
11 that were used for purposes of this
12 presentation to Ms. Patrick, came from
13 Morrison Foerster and representatives from
14 ResCap, is that true?

15 A. I can't remember specifically
16 what I said but we collectively discussed
17 what range to present for these
18 negotiations.

19 Q. Was Mr. Devine a participant in
20 that discussion?

21 A. Mr. Devine was involved in these
22 meetings certainly. That specific
23 discussion I'm sure he e-mailed what he
24 thinks but I don't -- I don't work for
25 Mr. Devine.

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MARK RENZI

additional waterfall numbers to Kathy
Patrick?

A. It would not be -- I don't work
for Tim Devine.

Q. I didn't ask you that.

A. I'm not --

Q. Didn't you send this response to
his request?

MR. RAINS: Let him finish his
answer.

A. I wasn't done with my response.

Q. Go ahead.

A. Thank you. So you are asking me
about chronology. So the chronology is --
may I grab these other ones?

Q. You can grab anything you like.

A. Thank you. So you are asking me
about an e-mail that went out at 6:00 p.m.
on Sunday. In between 6:00 p.m. and
10:00 p.m. there's approximately four
hours. What I likely did because I don't
work for Tim Devine is I talked to Gary
Lee and Jamie Levitt and discussed what
scenarios made sense to run. Tim Devine

Exhibit D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

-----x

VIDEOTAPE DEPOSITION OF JOHN RUCKDASCHEL

New York, New York

November 8, 2012

9:37 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27643

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JOHN RUCKDASCHEL

consider yourself a ResCap employee and not an Ally employee?

A. That is correct.

Q. Who did you report to as an in-house lawyer in structured finance?

A. Today I report to Tammy Hamzephour.

Q. Prior to the petition date who did you report to?

A. I reported to John Cooney who was in a different role from when I originally started at RFC. I reported to him up until sometime in the first quarter of 2012.

Q. Which corporate entity pays your salary?

A. The check is deposited electronically. And so I, all I get is a receipt. I ultimately don't know which entity is paying for it.

Q. So you don't know?

A. Well, I mean again I'm an employee of GMAC Mortgage and my client is ResCap.

1 JOHN RUCKDASCHEL

2 office.

3 Q. Is Tim Devine in that office
4 also?

5 A. No.

6 Q. Is Bill Solomon in that office?

7 A. No.

8 Q. Is Tammy Hamzephour in that
9 office?

10 A. Tammy splits her time between
11 Fort Washington and Minneapolis.

12 Q. Do you report to Tim Devine?

13 A. I do not report to Tim Devine.

14 Q. So is it -- just so I make sure
15 I'm understanding correctly, at all times
16 you have been a ResCap employee as opposed
17 to Ally?

18 A. You know, the -- we were a
19 global and integrated legal department.
20 I -- I don't know up until, you know,
21 during the time that we were integrated,
22 you know, where HR, you know, which
23 spreadsheet my name sat on. But I do know
24 that in twenty -- I believe it would be
25 2011 or even 2010 it was made clear to me

1 JOHN RUCKDASCHEL

2 charge of deciding which department you
3 would be in?

4 A. He's the general counsel of
5 Ally.

6 Q. So is he your boss ultimately?

7 A. When we were an integrated legal
8 department, we would report up the chain
9 all the way to Bill.

10 Q. And when did you stop being an
11 integrated legal department?

12 A. The representation for me was
13 always ResCap. In the first quarter as
14 the bankruptcy planning began to
15 accelerate, the legal departments began to
16 separate. But I think the important thing
17 to remember is that -- who your client
18 was. And the client for me was always
19 ResCap.

20 Q. Do you remember a date when the
21 integrated legal departments began to
22 separate or was it a process?

23 A. It was a process because of the
24 nature of preparing for a bankruptcy.

25 Q. So there wasn't a particular

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JOHN RUCKDASCHEL

things were going, my only concern was who is my client. And my client was ResCap.

Q. I'm not sure you answered my question. My question was, was there any date by which you were told you should no longer report up the chain to Bill Solomon?

A. You know, that's a good question. I don't recall the official date on which I began reporting to Tammy Hamzephour. But there was a point where that was clear. And I think it was even before they sort of made some, sent around an e-mail saying, you know, we have these departments, these separate legal departments. I was reporting to her already I think, I think by March but I'm not sure.

Q. So there was at some point an e-mail that was sent around saying we have a different legal department?

A. Yes, I believe that's correct.

Q. And you don't recall the date of that e-mail?

1 JOHN RUCKDASCHEL

2 A. I think it was. I think it was
3 sometime in April.

4 Q. Do you recall if it was the
5 beginning of April or end of April?

6 A. I think it was, you know,
7 towards the end of April. But again, I
8 can't emphasize enough, the client is
9 ResCap.

10 Q. And you were already reporting
11 to Tammy Hamzephour starting in March?

12 A. I think that's right, yeah.

13 Q. So what is the title of your
14 current position at ResCap?

15 A. Associate general counsel.

16 Q. Can you describe your
17 responsibilities in your current position?

18 A. Primarily, you know, it's --
19 I'll give you the sort of, the textbook
20 answer, right, because the bankruptcy has
21 sort of, you know, moved everything
22 around. It's not like we are doing
23 transactions today. But all things being
24 equal, I would support, if we were
25 actually engaging in, for example, loan

1 JOHN RUCKDASCHEL

2 A. Right, I don't know.

3 Q. Did you ever hear of anyone
4 meeting with Kathy Patrick between
5 November 2012 and April 2012?

6 A. No, I don't recall hearing of
7 meetings.

8 Q. In April 2012 when you met with
9 Kathy Patrick was that an in-person
10 meeting?

11 A. Yes. It was here in New York.

12 Q. And who else was there?

13 A. It was at the offices of our
14 lawyers at Morrison & Foerster. For
15 ResCap it was the Morrison & Foerster
16 lawyers, Tammy Hamzephour, Bill Thompson
17 and myself. Tim Devine was there. And
18 I -- I don't recall if -- I think Kirkland
19 & Ellis, they sent a lawyer at one -- but
20 I don't know if they were able to stay the
21 whole time that's why I'm just not sure.

22 Q. Now, when Tim Devine was at this
23 meeting in April 2012, was he representing
24 Ally, ResCap or had there not yet been a
25 division?

1 JOHN RUCKDASCHEL

2 met with her in the room.

3 Q. Did you subsequently meet with
4 someone else from Gibbs & Bruns?

5 A. I think there was a subsequent
6 meeting. It was prior to the bankruptcy.
7 I assume it was sometime in May and I
8 think it was their co-counsel bankruptcy
9 lawyers.

10 Q. Was that Ropes & Gray?

11 A. Yes, yes.

12 Q. And who else -- who was at that
13 meeting?

14 A. I don't recall all of the folks
15 who were there. It was held at Morrison &
16 Foerster's office as counsel to ResCap. I
17 believe Tammy was there, I was there and I
18 recall Tim was there. And maybe Bill
19 Thompson but I'm not 100 percent sure on
20 that.

21 Q. Did you understand that
22 Mr. Devine was representing Ally at that
23 point?

24 A. My understanding is in
25 connection with the, these RMBS

1 JOHN RUCKDASCHEL

2 A. The --

3 MR. RAINS: Wait for a question.

4 THE WITNESS: Okay. Sorry.

5 Q. Did you understand Mr. Devine in
6 that conversation to be representing Ally
7 or ResCap?

8 A. As I said earlier, my
9 understanding is that in the RMBS
10 settlement discussions that Tim was
11 representing Ally.

12 Q. Do you recall Mr. Devine's
13 response to your indemnification issue
14 that you raised?

15 A. I don't -- I don't recall the
16 specifics.

17 Q. Do you recall if he agreed or
18 disagreed?

19 A. I think he -- I think he agreed
20 with me that it was -- it was a good idea
21 but as I recall I think it wasn't
22 something that we were -- that the parties
23 wanted to, you know, have the deal fall
24 apart just on a trustee indemnity issue.

25 Q. So it wasn't drop dead for the

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TAMMY HAMZEPHOUR

New York, New York

November 13, 2012

9:43 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27903

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TAMMY HAMZEPHOUR

the Minneapolis office. Also my capital markets partner, John Ruckdaschel, was there, and Tim Devine from Ally.

Q. How long did the meeting last?

A. Three hours, maybe. I don't remember exactly.

Q. Can you please describe for me, in as much detail as you can remember, what the discussion was?

A. Ms. Patrick did most of the talking in the beginning of meeting. She talked to us a bit about who her investor clients were and their holdings that were represented across the spectrum of our securitization deals. She indicated that they believed they have claims against us and against Ally.

We talked about some of the work she had done in preparation for the meeting, and she mentioned that she had reviewed our prospectuses for the deals, that she had reviewed loan and servicing agreements, that she was familiar with the structure and the language and the

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TAMMY HAMZEPHOUR

Ms. Patrick take place on April 25, 2012?

A. Yes.

Q. And was a waterfall presentation given to her during that meeting?

A. Yes.

Q. Did the presentation incorporate the 3, 4, 6 numbers recommended by Mr. Devine for the low, medium and high valuations of ResCap's RMBS exposure?

A. Yes, I believe it did.

Q. Did it also incorporate Mr. Devine's recommendation to use \$750 million rather than \$1 billion as AFI's potential contribution towards a settlement?

A. I believe there were a range of potential AFI contributions reflected. 750 would have been the highest one in the range.

Q. Okay. Who attended the meeting on April 25th with Ms. Patrick?

A. There were a lot of people. Maybe as many as are in this room. I'll tell you the ones I can remember. Gary

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TAMMY HAMZEPHOUR

Lee was there, Tim Devine, Mark Renzi from FTI, I believe John Ruckdaschel was present, Ms. Patrick. At least one, maybe two of her colleagues. I believe Marc Puntus or Sam Greene, one or the other, from Centerview Partners was there for at least part of the meeting. I don't remember if they stayed for the whole meeting. And there may have been one or more MoFo lawyers there, I don't recall.

Q. You were there?

A. Sure. I was there. I couldn't tell you who was in the room if I weren't there.

Q. Who led the meeting?

A. Gary Lee.

Q. Did you --

A. From a legal perspective Gary Lee. There were parts of the meeting that different people were handling so.

Q. What part, if any, did you handle?

A. I didn't take the lead on any of the issues other than we had a short

1 TAMMY HAMZEPHOUR

2 discussion on servicing standards. And we
3 talked about part of Ms. Patrick's
4 interest and that of her clients was in
5 not only achieving a monetary settlement
6 but also a settlement that would provide
7 enhanced servicing standards for their
8 investors' continuing interest in these
9 loans.

10 Q. Who made the waterfall
11 presentation?

12 A. I believe Mark Renzi from FTI
13 did that.

14 Q. What was Mr. Devine's role
15 during the meeting as you understood it?

16 A. What was his role?

17 Q. What did he do?

18 A. He was in the meeting. I don't
19 remember specific parts of the
20 conversation that he led. There were --
21 there was discussion around the waterfall
22 and the ranges of recoveries, losses, et
23 cetera, that were the topic of discussion
24 around the settlement. He participated in
25 that.

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TAMMY HAMZEPHOUR

different?

A. Yes.

Q. In what way?

A. Because there were circumstances under which we would, ResCap, the debtors would have settled with Ms. Patrick whether or not Ally was contributing in getting third-party releases. So our decision to settle wasn't contingent on that.

MR. KAUFMAN: Let's mark as the next exhibit two e-mails from Mr. Devine on May 1, 2012. Bates number RC 9019_00048984.

(9019 Exhibit 81, two e-mails from Mr. Devine on May 1, 2012, Bates RC 9019_00048984, marked for identification, as of this date.)

Q. Looking at the exhibit we have just marked. Did you receive each of these e-mails from Mr. Devine?

A. Yes.

Q. The subject of both e-mails was meeting with KP Steering Committee,

1 TAMMY HAMZEPHOUR

2 A. No.

3 Q. You weren't coordinating that,
4 were you?

5 A. No. Gary Lee was coordinating
6 that.

7 Q. Who was the one who was
8 communicating with Ms. Patrick about the
9 status of the documents?

10 MR. RAINS: Objection. Assumes
11 facts not in evidence.

12 Q. To your knowledge?

13 A. Gary was communicating with her
14 and Tim as well. I assume K&E was
15 involved for Ally.

16 Q. Okay. Was Mr. Devine
17 coordinating the negotiations with
18 Ms. Patrick concerning the amount of the
19 allowed claims she would get in a
20 settlement?

21 A. No. He participated in those
22 discussions.

23 Q. What was your participation in
24 that discussion?

25 A. I was present for some of the

Exhibit F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.
3 I'm asking you to tell me at the time that
4 you were preparing to provide this
5 waterfall presentation to Ms. Patrick in
6 connection with proposed settlement with
7 her, wasn't it your understanding that AFI
8 in return for whatever contribution it
9 would be making to that settlement was
10 going to require releases from both the
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in
13 response. One, I wasn't preparing the
14 waterfall.

15 Two, we were not negotiating,
16 Kathy Patrick and me -- Kathy Patrick and
17 I with regard to whether or not the 750
18 would be consideration for anything that
19 the debtor received in connection with the
20 resolution of a debtor and Kathy Patrick
21 settlement agreement.

22 Q. Weren't those things all being
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated
25 with Kathy Patrick.

1 TIMOTHY DEVINE

2 Q. Yes.

3 A. No, she did not indicate that to
4 me.

5 Q. Did she indicate that it was
6 important?

7 A. Yes.

8 Q. Okay. What did she say about
9 that?

10 A. Kathy Patrick understood that
11 the negotiation of a dollar number between
12 AFI and ResCap was going on separately
13 from the discussions over the RMBS
14 settlement. Notwithstanding that, she
15 understood that she had no direct role
16 or -- or standing to bargain for a number
17 there since the number -- since that
18 agreement was between the estate and Ally.
19 She did care about the number and she told
20 me that she cared about the number for the
21 obvious reason that she wanted to maximize
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she
24 expressed an amount that she expected from
25 AFI if she were going to proceed with a

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TIMOTHY DEVINE

discussed or what was agreed to with respect to the court. Perhaps we should go off the record and discuss this and resolve it.

MR. KAUFMAN: Okay. Let's go off the record.

THE VIDEOGRAPHER: The time is 2:48 p.m. and we are off the record.

(Brief recess.)

THE VIDEOGRAPHER: The time is 2:51 p.m. and we are back on the record.

THE WITNESS: Thanks.

Q. Please look at the e-mail that you sent at 10:14 p.m. on May 7th which begins at the bottom of the first page of Exhibit 41 and continues over to the second page. Do you see that?

A. I see that e-mail, yeah.

Q. And did you send that e-mail?

A. Yes. It looks like I sent that e-mail.

Q. The first part of your e-mail was addressed specifically to Mark Renzi

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TIMOTHY DEVINE

and Jeff Cancelliere, right?

A. Yes.

Q. And you said "KP needs defect rate. If we can persuade her team that they are using wrong severities, etc., and can preserve the defect rate, we can pick away at the \$10 billion."

Why did you believe Ms. Patrick needed a certain defect rate for her settlement?

A. I believe that she told me that her analysis and assessment of the loans at issue had indicated a certain defect rate. And notwithstanding the very natural process of negotiation I understood that she was reaching a point where she wasn't going to compromise with regard to what defect rate applied to this loan population based on the analysis of her team.

Q. What did you understand the term "defect rate" to mean?

A. It -- the simplest way to understand it is the rate at which loans

1 TIMOTHY DEVINE

2 Q. Did the information
3 Mr. Cancelliere gave to you in this e-mail
4 make you comfortable with an allowed claim
5 at \$8.7 billion?

6 MR. BRYAN: Object to form.

7 A. What do you mean by comfortable?

8 Q. Willing to go along with it.

9 A. All right. So with that
10 understanding in terms -- willing to go
11 along with it in the context of the
12 negotiation of a settlement by ResCap of
13 an allowed claim based on that number?

14 Q. Yes.

15 A. I'm not sure as of 5/9/2012 at
16 that time whether I was comfortable with
17 it or not. Because it was only one term
18 in a very complicated series of
19 transactions. And it would have been
20 within that much, much larger context as
21 to whether or not I would have advised the
22 client or not that that was a comfortable
23 number.

24 Q. Were you representing ResCap on
25 May 9th, 2012?

1 TIMOTHY DEVINE

2 A. In connection with the
3 resolution with Kathy Patrick, no.

4 Q. Were you -- okay. So what you
5 just said is incorrect, right? It had
6 nothing to do with your advising the
7 client on that number. I'm asking you
8 whether you were comfortable as Ally's
9 lawyer with an \$8.7 billion number based
10 on the information Mr. Cancelliere gave to
11 you in his May 9th e-mail?

12 MR. PRINCI: Objection as to
13 form.

14 MR. BRYAN: Objection as to
15 form.

16 A. That's how I understood your
17 question.

18 Q. Right, okay. So that was the
19 client, AFI?

20 A. Correct.

21 Q. Okay. Do you recall one way or
22 another whether an \$8.7 billion allowed
23 claim had been agreed to as of May 9th,
24 2012, at 7:17 a.m.?

25 A. Do I recall that right now

1 TIMOTHY DEVINE

2 Q. Okay. Did there come a time
3 when you learned who it was, what
4 individuals were negotiating a settlement
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned
9 that.

10 Q. Did you learn it before or after
11 the ResCap board gave its approval to the
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you
15 come to learn negotiated the settlement
16 between AFI and ResCap?

17 A. Well, I may or may not be
18 correct but you are asking me for my
19 understanding. It was Mike Carpenter for
20 AFI with the independents of the ResCap
21 board.

22 Q. During the course of the
23 negotiations with Ms. Patrick, up until
24 May 9th, weren't you -- weren't you being
25 kept advised about the progress of

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TIMOTHY DEVINE

will support the \$8.7 billion allowed claim. There is no new Ally money. Hard stop at 750 plus 200 plus 100. Thanks, Tim." Right?

A. Yes. That's what it says.

Q. At the time you sent this e-mail to Mr. Lee, had the amount of AFI's contribution to a settlement been agreed upon to your knowledge?

A. As I said before, I don't know when that amount was agreed upon.

Q. Had Mr. Lee been pressing you for a larger contribution from AFI?

A. Mr. Lee knew because I told him that I was not going to negotiate that number with him. That I didn't have authority to negotiate it for him -- with him and that I didn't intend to do so.

Q. But you did make clear to him, did you not, in this e-mail, that there was not going to be more Ally money, isn't that what you say?

A. The e-mail here does not refer to -- it does not constitute an e-mail

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TIMOTHY DEVINE

describe as the RMBS or put back litigation, and I'd include in that definition both the monoline claims that were in litigation and any put back claims that -- that might have been asserted?

A. The first substantial contact I had within my job duties with the mortgage business was in the summer of 2010 when the FHFA propounded 64 subpoenas across the industry and I was asked to coordinate the response to the subpoenas that were issued to the company.

Q. Did you supervise outside counsel with respect to the monoline litigation either MBIA or FGIC litigation?

A. Have I done that?

Q. Yes.

A. Yes.

Q. When you were representing AFI from the time of the October letter that Ms. Patrick sent to the signing of the settlement agreement, were you solely representing AFI or were you also representing ResCap during that time

1 TIMOTHY DEVINE

2 period from October forward?

3 A. Well, we should probably be
4 careful with regard to what you mean by
5 representing. The -- as I recall, the
6 first communication from Kathy Patrick
7 came in to Bill Solomon in his capacity as
8 general counsel of Ally Financial, Inc.
9 He responded by indicating to Ms. Patrick
10 that Ally Financial, Inc. did not have
11 exposure of the variety that she wanted to
12 talk about settling. And referred her to
13 Tammy Hamzephour, general counsel for
14 ResCap.

15 What -- my participation in
16 connection with meeting with Ms. Patrick,
17 I think Mr. Sheeren was there at the first
18 meeting in Minnesota, I don't recall
19 exactly. But in any event, I was there in
20 my capacity as chief counsel for
21 litigation for ResCap, given that
22 Ms. Patrick purported to represent clients
23 who purported to have rep and warrant
24 essentially contract claims against the
25 contracting parties, all of whom were

1 TIMOTHY DEVINE

2 within the ResCap structure and none of
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,
5 if I understand, it took place sometime
6 between October, November, December,
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took
9 place. I think we have had some testimony
10 on it today. If there's a document we
11 could refer to it.

12 Q. I'm going to try to do this
13 without -- without taking the time to go
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were
17 representing ResCap in what I will call
18 the Kathy Patrick negotiations with
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would
23 call them negotiations. So I think that
24 term is going to end up being understood
25 in a number of different ways. What --

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TIMOTHY DEVINE

a compromise of those claims within the context of a ResCap filing.

Q. At any point?

A. Yeah. So I believe that she did at one point in the negotiations but now this was within the context of a potential ResCap filing at which time I was not representing ResCap in connection with a potential resolution of claims against the ResCap estate.

Q. Okay. So if I understand your testimony correctly, you initially started out representing ResCap and then at some point you were no longer representing ResCap. Could you explain to me when your role and responsibility changed?

A. I think you've slightly misunderstood but I don't blame you. At some point -- because it wasn't entirely clear, right. At some point -- look, when we started the discussions with Kathy Patrick, I was representing the ResCap entities in connection with the assertion that they had -- that Kathy Patrick did

1 TIMOTHY DEVINE

2 represent clients who did or did not under
3 the relevant documents have contract
4 claims against ResCap. And that was
5 natural because I had been dealing with
6 that kind of assertion of claim, although
7 not by investors and trustees but rather
8 by the monolines against the ResCap
9 entities theretofore.

10 At some point ResCap began to
11 consider a Chapter 11 restructuring. I
12 did not represent ResCap at all in
13 connection with this Chapter 11
14 restructuring, unless you consider the
15 nature of our discussions according to the
16 common interest or joint defense privilege
17 in which case that's why I don't blame you
18 for misunderstanding the nature of what I
19 just talked about. But so, yes, I did
20 represent ResCap in connection with the
21 sort of bilateral claim of Kathy Patrick's
22 clients against the ResCap entities and
23 rep and warrant. Once the context of the
24 restructuring became a part of that
25 dialogue, ResCap was represented by Gary

1 TIMOTHY DEVINE

2 Lee of MoFo. I never represented ResCap
3 on a bankruptcy related resolution. At
4 least unless you -- as I say, I did
5 continue to advise ResCap in connection
6 with plain sort of legal analysis on rep
7 and warrant issues but not so much as
8 would be implicated in connection with the
9 filing.

10 Q. Thank you for that and let me
11 try to make sure I understand correctly.
12 To try to summarize. In the beginning of
13 from October for some period of time in
14 the initial stages that you've described
15 as essentially information gathering
16 stages, you were representing ResCap. By
17 the end, by the April and May time period
18 that we have looked at a variety of
19 e-mails by that time period you were no
20 longer representing ResCap, you would have
21 solely been representing AFI, is that
22 correct, am I bracketing the change in
23 role correctly?

24 A. No. I think you are missing one
25 part of it. But it's -- it's

1 TIMOTHY DEVINE

2 directionally correct. So first of all,
3 the difficulty with the word
4 "representing" given that there were no
5 pleadings in the matter, nobody appeared
6 as counsel of record, et cetera. So let's
7 for a moment agree that the term
8 "representing" is somewhat subject to a
9 variety of definitions and understandings.

10 Q. I would use representing as
11 representing in the context of the
12 negotiations. Representing a client, be
13 it AFI or ResCap, in dealing with
14 Ms. Patrick or the Talcott Franklin group
15 that came in at the end. If you
16 understand that.

17 A. Uh-hum. So there -- there were
18 certainly throughout the relevant period
19 transactions and discussions,
20 communications -- transactions meaning
21 information exchange, et cetera, between
22 the ResCap parties and Kathy Patrick on
23 the one hand or Talcott Franklin on the
24 other, which I assisted and advised ResCap
25 in accomplishing.

1 TIMOTHY DEVINE

2 At the same time I was
3 representing -- I was chief counsel to
4 Ally as well so of course I was advising
5 both ResCap and Ally in connection with
6 the -- the claims that Kathy Patrick
7 purported to make on behalf of those
8 clients.

9 Q. When you were representing
10 ResCap in the initial stages of this
11 discussions and negotiations with
12 Ms. Patrick, who did you report to at
13 ResCap?

14 A. I certainly included Tammy
15 Hamzephour in any discussions. She was
16 general counsel to the ResCap entities. I
17 had conversations with and gave advice to
18 and took input from a variety of business
19 clients.

20 Q. So in addition to Ms. Hamzephour
21 you spoke to other not -- not in-house
22 counsel but other business representatives
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

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TIMOTHY DEVINE

that you would no longer represent ResCap
and solely be representing AFI?

A. I'm going to answer your
question without revealing privileged
communications. At some point it was
determined that people performing
functions like the one I was performing,
which spanned across -- across the Ally,
the nondebtor to the debtor line, should
reorient so that they were aligned with
one or the other. And that was a process
that took place across the various
business units and functions to the extent
that there was any overlap.

Q. Do you know when that was?

A. With regard to my own role?

Q. Yes.

A. I don't know exactly when it
was. I understand you would think I would
have an exact date and hour. I don't.
But because -- the reason I don't is
because it's probably accurate to say that
in some measure I continued to be a
resource for the ResCap client even as

Exhibit G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re: Case No.
RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)
Debtors.

-----x

H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27647-A

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 Q. What about K&E and Timothy
3 Devine, did you view them as your lawyers
4 or as AFI's lawyers or something else?

5 MR. PRINCI: Objection as to
6 form.

7 A. AFI's lawyers.

8 MR. PRINCI: Excuse me one
9 second. Just pause for one second,
10 Tom.

11 MR. MOLONEY: Wait a second.
12 You can just tell them that he needs
13 to wait -- I'll put it on the record
14 that you need to wait to allow
15 Mr. Princi to state his objection.

16 I think we should note now that
17 counsel is conferring with the
18 witness, and it's not appropriate.

19 Q. What did you understand Timothy
20 Devine's position to be?

21 A. I don't know Timothy Devine.

22 Q. Okay. Do you know whether or
23 not he had a role in negotiating the RMBS
24 deal with Ms. Patrick?

25 A. No.

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 Q. Did it concern you, if he was
3 the chief of litigation for AFI, and he
4 took the lead in the settlement
5 negotiations and negotiated material terms
6 of the RMBS with Kathy Patrick, without
7 the involvement of Morrison & Foerster?

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Objection to form.

10 MR. MOLONEY: Noted.

11 Q. You may answer.

12 A. Generically speaking, yes, I
13 would not understand that.

14 Q. As of May 2012, was there any
15 real connection between the amount that
16 the ResCap board was going to require AFI
17 to contribute to a Chapter 11 resolution
18 and the size of the RMBS claim that was
19 negotiated with Ms. Patrick?

20 A. No.

21 Q. So at least as of May 2012,
22 there was no additional cost to AFI in
23 agreeing to a larger claim from
24 Ms. Patrick's clients, in return for an
25 AFI release, correct?

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 MR. PIEDRA: Objection as to
3 form.

4 MR. PRINCI: Misstates the
5 facts.

6 A. Yes. I was going to say no,
7 that's not the liability to ResCap.

8 Q. Isn't that the amount that
9 ResCap is agreeing to pay, the settlement
10 plan the ResCap group is agreeing to pay
11 \$8.7 billion to settle the claim?

12 MR. PRINCI: Objection as to
13 form.

14 A. That is correct, they are
15 agreeing to pay that.

16 Q. Right. And why -- if their
17 maximum exposure could only be \$4 billion,
18 why would they agree to pay 8.7 billion?

19 MR. PRINCI: Objection as to
20 form.

21 A. I don't know that the 4 -- the 4
22 billion is not the maximum, that's just an
23 estimate. This number is supposed to be,
24 it is negotiated; it is a cap, in essence.

25 Q. Okay. You are saying the

1 JOHN MACK - HIGHLY CONFIDENTIAL

2 \$4 billion was an estimate, but this was a
3 negotiated number, the 8.7?

4 A. Correct.

5 Q. Now, it wasn't determined by a
6 court that ResCap was liable for \$8.7
7 billion, right?

8 A. That is correct.

9 Q. So it was just determined by two
10 human beings who negotiated a number, \$8.7
11 billion, right?

12 MR. PRINCI: Objection as to
13 form.

14 A. It was a negotiated number.

15 Q. Who were the two people who
16 negotiated the number?

17 MR. PRINCI: Objection as to
18 form.

19 A. Our advisors from MoFo, and
20 Kathy Patrick, representing the investors.

21 Q. Now, the person who was
22 representing you, your advisor for MoFo,
23 you would think that they should negotiate
24 a number that's consistent with what they
25 think are their potential liabilities, if

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2 in the proceedings.)

3 THE VIDEOGRAPHER: The time is
4 11:04 a.m. and we are back on the
5 record.

6 Q. Are you ready, Mr. Mack?

7 A. Yes.

8 Q. Okay. Good. Looking still at
9 95. I want to go on to under the key
10 assumptions, the first key assumption,
11 which says, REDACTED

12 REDACTED

13 REDACTED

14 REDACTED

15 REDACTED

16 Do you see that sentence?

17 A. Yes.

18 Q. Okay. Who negotiated that
19 number, the 1 million -- 1 billion 50
20 million dollar number?

21 MR. PRINCI: Objection as to
22 form.

23 A. The Ally settlement was
24 primarily Jonathan Ilany and myself. But
25 at this point this was an assumption.

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2 This was not an actual number. It was not
3 a fact.

4 Q. Okay. Did this represent the
5 settlement that was negotiated between you
6 and -- who represented Ally in the
7 negotiations or AFI?

8 MR. PRINCI: Objection. You got
9 two questions again, Tom.

10 Q. Let me ask the question who
11 represented AFI in the negotiation of the
12 settlement?

13 A. Mike Carpenter and Lenard
14 Tessler.

15 Q. And just for the record, who are
16 they?

17 A. Mike Carpenter is the CEO.
18 Lenard Tessler is with Cerberus and I
19 believe is the director of AFI.

20 Q. And you are saying this
21 assumption number is not the same as the
22 number that you negotiated by way of the
23 settlement; is that correct?

24 A. At this point in time it was
25 still an assumption. We did not have an

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2 discussions, not with counsel, but with
3 any other board members, non-privileged
4 discussions about why there was this
5 disparity?

6 MR. PRINCI: Objection as to
7 form. Misstates the record.

8 A. Again, I think that the
9 8.7 billion and the 4 are apples and
10 oranges. They are slightly different.
11 The 8.7 billion represents a settlement of
12 all claims. The 4 billion is an
13 accounting-driven answer, involving an
14 estimation.

15 Q. Was that the result of
16 discussions you had with other people or
17 your own opinion?

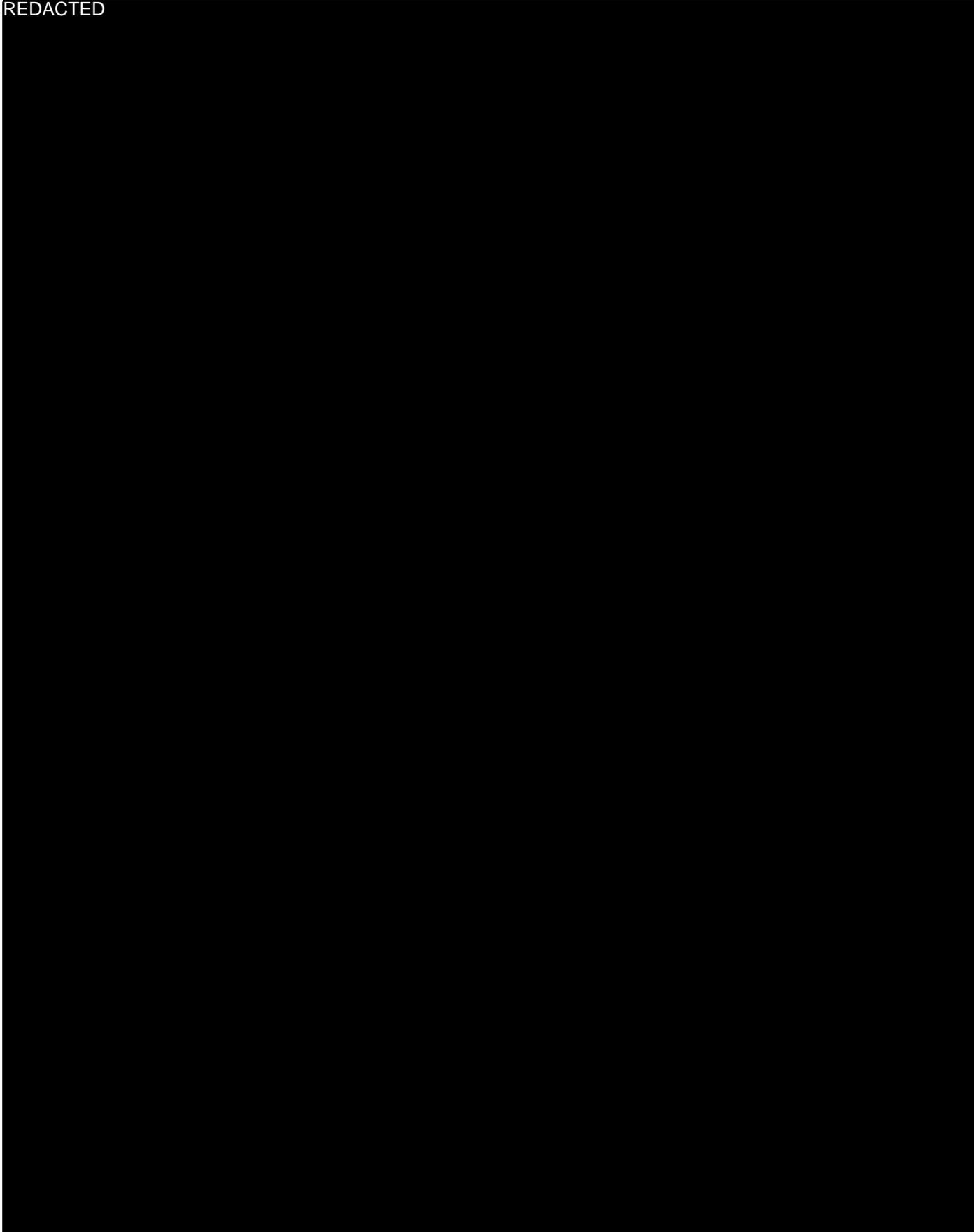
18 A. It was -- these were discussions
19 held in audit committee.

20 Q. And do you recall any,
21 specifically, any individuals who held
22 that opinion, the opinion you just
23 expressed about the difference?

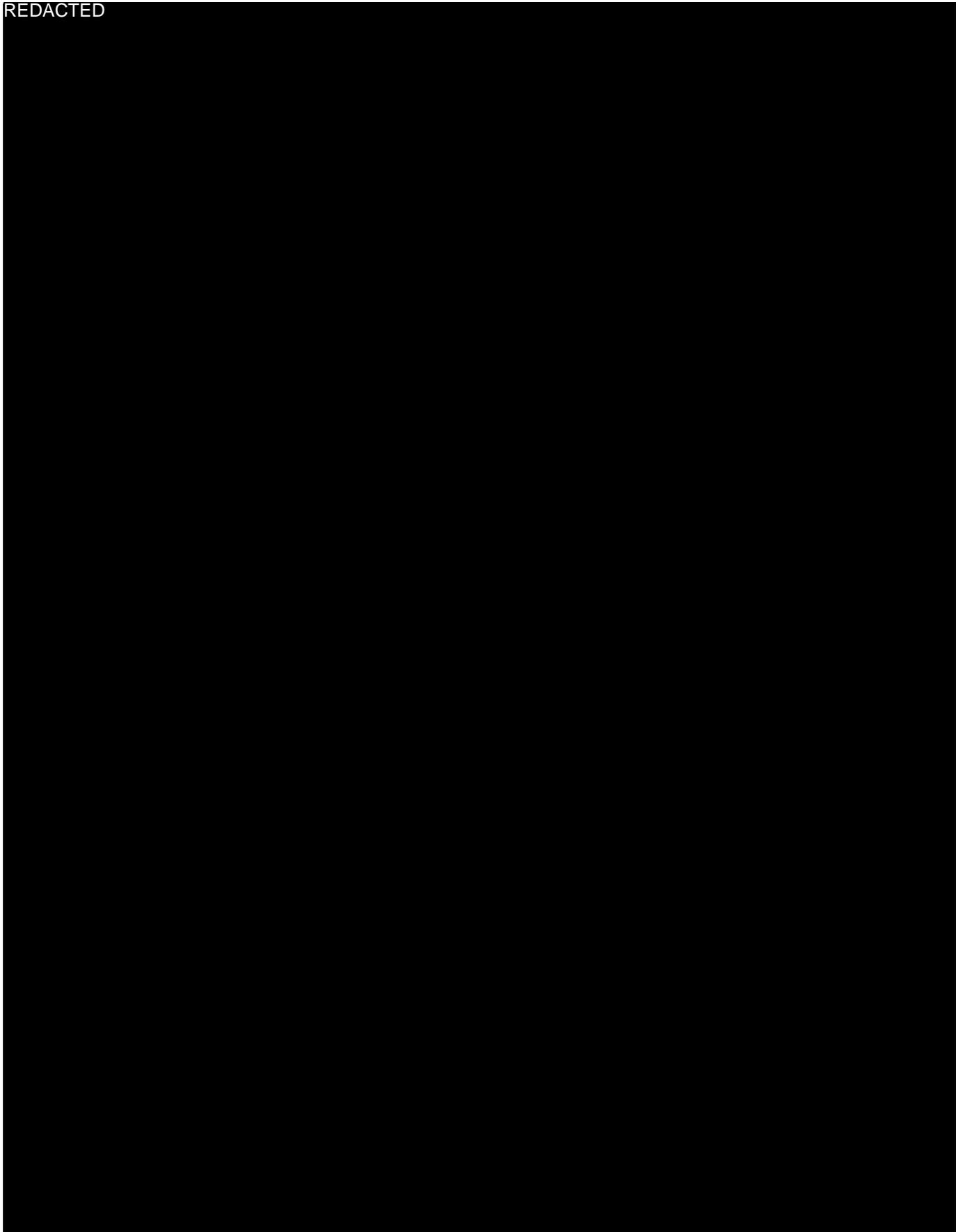
24 A. Well, I think the audit
25 committee presentations on accounting

Exhibit H

REDACTED



REDACTED



REDACTED

