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

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

**SUPPLEMENTAL OBJECTION OF THE AD HOC GROUP OF JUNIOR
SECURED NOTEHOLDERS TO THE DEBTORS’ FGIC SETTLEMENT MOTION**

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 supplemental objection (the “Supplemental Objection”) to its objection (the “Objection”) to the FGIC Motion submitted by the above-captioned debtors (the “Debtors”) in these chapter 11 cases (the “Cases”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving the Settlement Agreement (the “Settlement Agreement”), dated May 23, 2013, among the Debtors, Financial Guaranty Insurance Company (“FGIC”), the FGIC Trustees, and the Institutional Investors.¹ In further support of its Objection, the Ad Hoc Group respectfully states as follows:

¹ Objection of the Ad Hoc Group of Junior Secured Noteholders to 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. 4027].

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PRELIMINARY STATEMENT

1. By this Supplemental Objection, the Ad Hoc Group seeks to apprise the Court of certain discovery taken and events occurring after the filing of the Objection and to inform the Court as to how those developments affect the Court's hearing and disposition of the Motion.² As set forth below, discovery from the Debtors in this contested matter has answered certain questions raised in the Ad Hoc Group's Objection, has confirmed some concerns raised in the Objection as to both the process and substance of the proposed settlement, and has raised new issues that the Court now needs to address in connection with the hearing and disposition of the Motion.

2. Fundamentally, the FGIC Settlement Agreement has two moving pieces – the allowance of at least \$596 million in aggregate general unsecured claims by FGIC at GMACM and RFC and the conditional allowance of a \$337 million general unsecured claim by FGIC at ResCap LLC, the Debtors' ultimate parent entity. If these claims are allowed, FGIC will become the second largest stakeholder in these Cases in terms of recoveries (the JSNs are by far the largest) and the second largest unsecured creditor (behind the Senior Unsecured Notes.) Because the elevation of FGIC from a contingent litigation claimant with no liquidated claim to a holder of as much as a \$900 million in allowed general unsecured claims at multiple estates is occurring outside of a plan, the Ad Hoc Group has been keenly interested in ensuring that the allowance of claims occurs fairly and in accordance with the law. Those concerns have been even more heightened because the Official Committee of Unsecured Creditors (the "Committee"), which was such a staunch opponent of allowing any RMBS claims outside a plan, has now taken no position with respect to the Motion, presumably because each of its members is hoping to receive

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection. This Supplemental Objection is filed in accordance with paragraph 11 of the Scheduling Order entered by the Court on July 8, 2013 [Docket No.4168].

a similar treatment at confirmation. As set forth below, the FGIC Settlement Agreement fails for many of the same reasons so fervently advocated by the Committee up until the point that its members obtained their own individual claims allowances.

3. With respect to the \$596 million in claim allowance at GMACM and RFC, discovery has clarified the mechanics around how those claims will be addressed at those estates and how the releases of all of FGIC's filed proofs of claim will operate under various scenarios, all of which can be clarified at the hearing on the Motion. Discovery has also raised, however, two troubling facts with respect to the \$596 million allowance.

4. First, in connection with the Motion, the Debtors submitted two declarations—from Mr. Ron D'Vari and Mr. Jeffrey Lipps—upon which the Debtors base their assertion that the \$596 million settlement is a reasonable compromise of complex and potentially significant claims asserted against GMACM and RFC. Discovery has shown that both declarations are, in fact, post-hoc justifications for the settlement, despite the clear implication of the Motion that the declarations and analyses were used to support Mr. Kruger's exercise of his business judgment. Neither the declarations nor the conclusions expressed in them were ever shared with the Debtors before the FGIC Settlement Agreement was signed. Nor could they have been—both experts were hired after the Settlement Agreement was signed and the Debtors and counsel apparently met to discuss how to support the Motion without having to disclose their actual thought-processes and negotiations. To that end, the Debtors have not (a) produced similar analyses prepared or reviewed prior to signing the agreement, (b) described what they actually relied upon when agreeing to the claim amount, or (c) demonstrated that they followed any corporate governance with respect to claims at GMACM or RFC. Instead, they have insisted that any inquiry into the reasonableness of, or process related to, the settlement would either be protected

by the attorney-client privilege or a broadly defined concept of a mediation privilege. In light of those positions taken in discovery, the record on the Motion lacks any evidence on key issues relating to the Settlement and is instead premised on the Court accepting the old adage that “sometimes even a blind squirrel finds a nut.” The FGIC Motion suffers from the very same deficiencies that the Committee raised in its objection to the RMBS Settlement, that “the Debtors have presented no reliable evidence to support the reasonableness” of the Settlement and that the evidence offered “amount[s] to reverse-engineering a desired result, and [the] resulting opinions as to the Settlement’s reasonableness should carry limited weight for this reason alone.” (Comm. Obj. to RMBS Trust Settlement Motion [Docket No. 2825] at 23.)

5. Second, while the Debtors have offered at least flawed post-hoc justifications with respect to the potential costs, delay and size of potential damages if FGIC’s claims against GMACM and RFC were litigated to conclusion, the Debtors have failed to provide any evidence with respect to the underlying merits of the asserted claims at those estates, most notably, the implications of how the subordination provisions in section 510(b) of the Bankruptcy Code would affect the quantum of recovery on FGIC’s Claims. As set forth in the initial Objection, FGIC’s damage claims, whatever they might be, cannot ever be allowed pari passu with general unsecured claims at GMACM or RFC and instead have to be subordinated as claims arising out of the purchase or sale of a security of the Debtors or their affiliates. Thus, even if there were admissible evidence to support the conclusion that \$596 million is at least an approximation of what FGIC’s damage claim might be in a full-blown litigation, FGIC’s recovery of that claim amount could still be zero if its claims were subordinated. Without that evidence about how the Debtors measured the settlement consideration in actual deliberations and negotiations, which

the Debtors have refused to provide in discovery, there is a fatal hole in the factual record supporting approval of any claims at GMACM and RFC.

6. The evidence adduced with respect to the \$337 million general unsecured claim being allowed at ResCap, LLC suffers not only from both of the foregoing defects but also raises significant additional issues with respect to the manner in which the Debtors have generally approached claims allowance against ResCap, LLC in connection with the Global Settlement. In the Objection, the Ad Hoc Group raised concerns that the \$337 million claim did not appear to fall anywhere near the range of reasonable recoveries that one could expect if the Debtors actually litigated FGIC's Claims for alter ego, piercing the corporate veil or other derivative liability theories expressed in the proofs of claim filed against ResCap LLC were litigated to conclusion. That was so, among other reasons, based upon the Debtors' own prior repeated assertion that those claims lacked merit. (See Objection at ¶¶ 24-26) The Debtors' post-hoc experts confirmed that neither the liability of ResCap, LLC nor the specific costs and delays of ResCap, LLC defending itself in litigation were considered at all in their reports. Similarly, when Mr. Kruger was asked as the Debtors' 30(b)(6) witness on the Motion for the Debtors' views as to how the \$337 million claim relates, if at all, to expected litigation outcomes for ResCap, LLC, Mr. Kruger responded as follows:

Q. . . . Does \$337 million reflect your understanding of the likely result or within the range of results that would occur if independent of the global settlement FGIC pressed its [allowed GMACM and RFC claims against ResCap LLC]?

A. I don't know the answer to that question.

(Kruger Dep. Tr. at 185:2-10.)³

7. Given this and other responses like it in discovery, the record lacks any facts or law upon which this Court can perform the requisite searching inquiry into the reasonableness of

³ Transcript of the July 11, 2013 Deposition of Lewis Kruger ("Kruger Dep. Tr.").

ResCap, LLC's settlement of assertions that it is derivatively liable for the prepetition actions of GMACM or RFC. What discovery has revealed, however, is that the allowance of a \$337 million claim at ResCap, LLC has little to do with ResCap, LLC's liability to FGIC. In his deposition, Mr. Kruger testified that he has not considered whether a "\$337 million claim at ResCap outside the context of the global settlement would be an appropriate claim amount." (Kruger Dep. Tr. at 167:7-12.) When pressed, then, as to the basis for allowing a \$337 million claim at ResCap, LLC (which is anticipated to result in a \$100 million recovery to FGIC under current plan constructs) in the event a plan is confirmed, Mr. Kruger gave a surprising response. He testified that, in light of the Global Settlement's release of FGIC's claims alleged against AFI, "[i]t's not inappropriate for part of the proceeds of [AFI's] contribution to be used to satisfy the FGIC claims." (Kruger Dep. Tr. at 168:8-13.) In other words, the allowance of FGIC's claim at that entity was apparently used as a mechanism by which the Debtors channeled to FGIC a portion of the Ally Contribution without having to establish a fund for the payment of all creditors releasing claims against AFI. That approach is both backwards and legally unjustifiable. The quantum of FGIC's claims at ResCap, LLC should have nothing to do with whether or not AFI settles with the Debtors or obtains third-party releases. FGIC's damage claims against the Debtors are what they are, even though its recoveries on those claims could go up or down depending on one's views of the value of the Ally Contribution.

8. Similarly, if certain creditors are entitled to have their claims against AFI satisfied with legally unjustifiable claims at ResCap, LLC, all creditors should be treated equally and one estate should not bear the cost of that distribution. The Debtors cannot prefer certain contingent creditors like FGIC—holding tenuous claims at best—over ResCap, LLC scheduled creditors like the JSNs—holding secured claims in an allowed amount of at least \$2.2 billion—on the sole

basis that one supports the Global Settlement and the other does not.⁴ Moreover, the Court certainly cannot endorse the allowance of an unsecured claim at ResCap, LLC that channels AFI recoveries to FGIC before it addresses the Global Settlement at confirmation or whether FGIC even has colorable claims against Ally. Given these facts, there is no legitimate basis for this Court to allow any FGIC claim at ResCap, LLC at this time.

SUMMARY OF THE EVIDENCE

9. In response to the FGIC Motion, the Ad Hoc Group issued document requests on June 26, 2013 and a notice of deposition seeking a Rule 30(b)(6) witness on June 19, 2013. (The Ad Hoc Group's Request to the Debtors for the Production of Documents is attached hereto as Exhibit A. The Ad Hoc Group's Notice of Deposition is attached hereto as Exhibit B.) Specifically, the Ad Hoc Group sought production of all documents reviewed by the Debtors in connection with any Debtor's consideration and/or determination to enter into the Settlement Agreement and Term Sheets as they pertain to any FGIC claims and all communications related thereto, and all corporate records of each of the Debtors, including but not limited to minutes, consents and agreements, relating to the Settlement Agreement and Term Sheets as they pertain to any FGIC Claims. In addition, the Ad Hoc Group requested that the Debtors designate a 30(b)(6) witness to testify on three topics: (a) the FGIC Settlement Motion; (b) any materials or analysis concerning substantive consolidation in these cases reviewed or prepared in connection with the Settlement Agreement and/or the FGIC Settlement Motion; and (c) any materials or analysis concerning the claim that ResCap is derivatively liable for the debts of its subsidiaries reviewed or prepared in connection with the Settlement Agreement and/or the FGIC Motion.

⁴ Under a fair and equitable treatment, the JSNs' more than \$2 billion claim at ResCap, LLC would be entitled to at least the same 33 cent recovery that FGIC is obtaining, which would thereby render the JSNs entitled to postpetition interest (even assuming the Debtors' collateral value of \$1.69 billion).

A. The Debtors' Limited Production Of Documents

10. The Debtors' production in response to the Document Requests consisted of 595 documents, consisting of (i) a handful of redacted board minutes, (ii) over 200 pages of entirely redacted board presentations and other attachments, and (iii) over 36,000 pages of publicly filed pleadings or other publicly available documents, including executed settlement, insurance and indemnity and assignment and assumption agreements. The Debtors did not produce a single substantive email, letter, presentation, spreadsheet, term sheet, or draft agreement relating to the Settlement Agreement. Nor did the Debtors produce a single communication with FGIC or its representatives in these Cases. The Debtors also provided privilege logs (attached hereto as Exhibit C), which identified approximately 50 documents, primarily email correspondence, between Lewis Kruger, the Board of Directors of ResCap, LLC and ResCap, LLC's advisors attaching materials regarding mediation, the Settlement Agreement and Board meetings. Indeed, based on the Debtors' log and the absence of any unprivileged documents it appears that Mr. Kruger relied solely on privileged materials in deciding to settle and conducted no independent review or analysis of the claims the Debtors seek to settle.

B. The Deposition Of The Debtors' Chief Restructuring Officer, Lewis Kruger

11. In connection with the Deposition Notice, the Debtors agreed to produce Mr. Kruger, as the Debtors' representative, for a limited, four-hour deposition, conducted on July 11, 2013. Mr. Kruger was questioned extensively about his declaration dated June 7, 2013 (the "Kruger Declaration") [Docket No. 3929-3], submitted in support of the FGIC Motion. At that deposition, Debtors' counsel instructed Mr. Kruger over twenty times during the course of the deposition not to answer questions about certain aspects of his declaration on the grounds of

attorney client privilege and mediation privilege.⁵ With respect to what counsel would let him speak to, Mr. Kruger provided little testimony supporting the conclusory statements in his Declaration.

12. First, Mr. Kruger asserts in his Declaration that despite “strong defenses” to FGIC’s claims, he believes the Debtors “would face substantial litigation uncertainty in connection with litigating these issues.” (Kruger Decl. ¶ 23). Mr. Kruger’s deposition testimony, however, shed no light on how he came to the conclusion that settling outweighed litigation or what documents and information he reviewed and analyzed to inform that conclusion. 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 Kruger Dep. Tr. 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.”).) Instead, Mr. Kruger testified with generalities that, in determining to execute the FGIC Settlement Agreement, he relied upon the fact that the “FGIC Settlement Agreement was part of the general overall global settlement . . . an outstanding good result for the various participants in the process and for all creditors of the various estates.”

(Kruger Dep. Tr. at 125:10-16.) Questions with respect to the merits of the Global Settlement,

⁵ 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.”).

however, were curtailed as being irrelevant, privileged and premature. (See, e.g., id. at 50:21-51:3; 170:13-20; 207:12-18).

13. With respect to the facts and legal issues related specifically to the FGIC Claims and FGIC Trustee Claims, Mr. Kruger read only one of the multiple FGIC complaints, none of the RMBS claims as they related to the FGIC wrapped trusts, conducted no independent factual investigations, and no independent legal research. (See Kruger Dep. Tr. at 108:9-11; 109:15-18; 110:9–114:11; 109:22-25.) While Mr. Kruger did read a Carpenter Lipps memorandum on the facts alleged in the FGIC proof of claim, and “some” presentations on the legal issues arising from the monoline claims prepared by Morrison & Foerster, no description of the substance of those presentations or how those presentations informed Mr. Kruger’s conclusions have been offered and the Debtors refused to produce any of those documents. (See Id. at 112:6-13; 114:21–115:9.) Mr. Kruger never received a presentation from a financial advisor specifically on the FGIC Claims or FGIC Trustee Claims and only received presentations on the amounts of FGIC and FGIC Trustee Claims under various scenarios in the context of the mediation as to which the Debtors claim privilege. (See Kruger Dep. Tr. at 118:11-21; 190:13–191:7 (stating that he did not use Mr. D’Vari’s report on FGIC wrapped trusts in coming to a decision on whether to enter into the Settlement Agreement).)

14. Moreover, Mr. Kruger was aware of financial presentations showing that, if the FGIC Claims are subordinated to general unsecured creditor claims, such claims would not receive a distribution at any of the Debtors, but apparently gave that defense no weight. (See Kruger Dep. Tr. at 152:2-153:12.) Notwithstanding the potential that allowed FGIC claims could ultimately be worthless, Mr. Kruger determined without explanation, that the alternative of the settlement agreement “was far superior to [the Debtors] engaging in litigation.” (Id.)

15. Second, under the heading “The Likelihood of Complex and Protracted Litigation” in his Declaration, Mr. Kruger asserts that litigation “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.” (Kruger Decl. ¶ 28.) Mr. Kruger offered no testimony, however, of how the costs of litigation with FGIC were determined or what such costs would be. (Kruger Dep. Tr. at 189:15–190:2 (“Q. Did you have any views, form any views of what it would take, how much it would cost to litigate the FGIC issues at the time you entered into the settlement agreement? A. I was aware that there had been MBIA litigation against ResCap prior to the filing of the petition and had gone on for three and a half years. So I assumed this was going to be a lengthy litigation, as well. I believe in the MBIA more than a million documents were produced. This looks to me like complex and long-term litigation.”).) Mr. Kruger’s conclusion that litigation would be protracted was informed exclusively by his knowledge of the Debtors’ litigation with MBIA in New York state court and the Carpenter Lipps memorandum that the Debtors refused to produce. (See Kruger Dep. Tr. at 190:4-12 (“Q. Other than your knowledge that the MBIA litigation had gone on for three and a half years, did you have any other view, any other basis on which you formed your conclusions that it would be a complex and protracted litigation? A. I had read, I think I referred to before, the Carpenter Lipps report, memorandum. That’s what informed my view.”).) Importantly, Mr. Kruger’s understanding as to litigation prospects was not based on a review of FGIC-wrapped RMBS trust claims, a litigation budget, a timeline, or any independent research into the issues being settled. (See id. 108:9-11; 109:15-18; 110:10–114:11; 109:22-25; 189:15-190:12)

16. Third, under the heading “The Paramount Interests of Creditors” in his Declaration, Mr. Kruger concludes that “the Settlement Agreement represents a compromise that

is in the paramount interests of creditors.” (Kruger Decl. ¶ 29.) But Mr. Kruger offered no testimony as to how the settlement benefits creditors of ResCap, LLC, against which FGIC holds, at best, tenuous veil piercing and alter ego claims. When asked about the veil piercing and alter ego theories upon which the FGIC claim against ResCap is based, Mr. Kruger responded that he had conversations with his counsel and advisors and came to the conclusion that, in the context of a confirmed plan, “it was not an appropriate for there to be a FGIC claim at ResCap because they had alleged theories why they should have claims at the ResCap level and theories why they should have claims against Ally. So it seemed not inappropriate for them to have a claim against ResCap in the context of a confirmed plan” (Kruger Dep. Tr. at 165:23–166:8.) Notably, Mr. Kruger admitted that he had not considered whether the \$337 million allowed claim at ResCap would be appropriate outside the context of the Global Settlement. (Kruger Dep. Tr. at 167:7-12 (“Q. Do you believe that \$337 million claim at ResCap outside the context of the global settlement would be an appropriate claim amount? A. I haven’t considered that, no.”).) As noted above, Mr. Kruger also testified that he did not know whether the \$337 million amount was within the range of results that would occur if FGIC pressed its claim against ResCap. (*Id.* at 185:4-10.) In short, the only support Mr. Kruger offered for the allowance of the \$337 million claim against ResCap is that such claim amount was reached as a part of the mediation and results from the Global Settlement. (*Id.* at 195:15–196:11; 184:20-25 (“\$337 million claim in the context of the global settlement agreement is an appropriate resolution”).) The Debtors, however, have offered no evidence that the Global Settlement is a fair one and have left that issue for confirmation. (*Id.* at 156:11-157:10; 158:4-159:10; 187:9-12.)

17. Fourth, in a heading entitled “Arm’s-Length Negotiations” in his Declaration, Mr. Kruger attests to the conduct of negotiations over the Settlement Agreement. (See Kruger Decl.

¶ 34 (“I . . . believe that the Settlement Agreement was the result of arm’s-length bargaining.”).) But when asked to testify as to his basis for that belief, Mr. Kruger was instructed not to answer on the basis of attorney-client privilege and/or mediation protection. (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.”).) Based on Debtors’ counsel’s articulated views, Mr. Kruger was repeatedly instructed not to answer any questions about communications with FGIC. (See *id.* at 112:17-113:8 (“Q. And when did you speak with [John Dubel]? A. During the context of the mediation over the course of months. Q. And did you speak with him about underlying facts asserted in the, either the FGIC proof of claim or the FGIC complaint? Mr. Kerr: Objection. To the extent this was during the mediation, I’m going to direct him not to answer.”).)

C. The Deposition Of The Debtors’ Expert, Jeffrey Lipps

18. In addition to offering Mr. Kruger as a fact witness, the Debtors offered Mr. Jeffrey Lipps, special counsel to the Debtors, to provide expert testimony on (a) the legal uncertainty associated with the Debtors litigating FGIC’s claims, and (b) the expense and delay of such litigation. Mr. Lipps was asked to provide expert opinion on the FGIC Settlement on May 31, 2013 (eight days after the Settlement Agreement was signed); following a meeting in which he, Mr. Kruger and Morrison & Foerster met to determine how they would obtain approval of the Settlement Agreement, apparently without providing evidence of what was actually considered or discussed. (See Lipps Dep. Tr. at 14:21-15:21; 127:17-130:17.)

19. With respect to his lead opinion, the legal uncertainty of litigating with FGIC, Mr. Lipps' report contains certain statements about New York law on RMBS litigation. (See Lipps Dep. Tr. at 143:3-20). Mr. Lipps is not a licensed New York lawyer, and did not testify to having ever tried an RMBS claim to resolution in any jurisdiction. And, more importantly, Mr. Lipps could not speak to litigation of any RMBS claims in the context of any bankruptcy case. Outside of his role as special counsel in these cases, Mr. Lipps admitted that he has never appeared in a Bankruptcy Court in connection with RMBS claims. (Id. at 145:24-146:4.) Mr. Lipps has never prosecuted a proof of claim of any sort. (See Id. at 152:7-25.) He has never participated in a claims estimation proceeding and did not factor estimation proceedings, as they specifically relate to FGIC claims, into his opinion. (Id. at 153:2-5; 159:4-10.) Notably, Mr. Lipps did not analyze subordination under section 510(b) of the Bankruptcy Code or other bankruptcy specific affirmative defenses for the purposes of offering his opinions in his declaration. (Id. at 150:5-151:7.)

20. Mr. Lipps testified that he was not asked and did not provide an opinion in his declaration on the range of reasonableness of the Settlement Agreement. (See Lipps Dep. Tr. at 129:19-130:7; 146:9-21 (“Q. Did anybody at MoFo or at the Debtors ask you informally whether you had a view as to whether the claims amounts set forth in the FGIC Settlement Agreement were in the zone of reasonableness as you understood it? . . . A. Not that I recall.”).) In addition, Mr. Lipps testified that he has not conducted an analysis of FGIC’s claims against ResCap, LLC, because, for the purpose of offering his opinion, he “didn’t need to concern [himself] with allocation between the various entities.” (Id. at 163:25-164:6; 162:18-24 (“Q. Did you perform any analysis of [aiding and abetting, piercing the corporate veil or alter ego] claims in connection with forming the opinions you expressed . . . A. I did not get down into an allocation and an

assessment of allocation at various entity levels. I was looking at the aggregate. . .”). In fact, prior to the Petition Date, Mr. Lipps had sought leave to dismiss certain FGIC Claims asserted against ResCap, LLC for failure to state an alter ego claim. (See March 16, 2012 Letter to Judge Crotty at 2-3 (“[I]n some of the cases, FGIC tries to pierce the corporate veil by alleging that ResCap is an ‘alter ego’ of its subsidiaries. This claim fails because FGIC has not sufficient pled that ResCap exercised complete domination and control over RFC or GMACM, and that its complete domination was used to commit an injustice against FGIC . . . there are few allegations relating to ResCap , and the ones made do not make FGIC’s alter ego claim plausible.”).)

21. With respect to his second opinion, on the expense and delay of litigating with FGIC over its claims, Mr. Lipps did not quantify the costs to litigate the FGIC Claims. (Lipps Dep. Tr. at 161:12-14 (“In my declaration I don’t think I put a range in, as I recall, or a specific dollar amount.”).) Mr. Lipps did not prepare or review any projected budgets or timelines for either litigating FGIC’s Claims in District Court or, more importantly, litigating FGIC’s proofs of claims in Bankruptcy Court. (Id. at 160:22-161:25). In fact, Mr. Lipps admitted that he had never prepared a budget or created a timeline for the litigation of any proof of claim of any sort. (See id. at 156:12-22.)

22. Mr. Lipps also admitted that, outside of his role as special counsel in these Cases, he has never prepared a discovery plan for the litigation of a proof of claim and any experience he has preparing a discovery plan did not help form his opinions expressed in his declaration. (See id. at 156:23-158:12.) As a result, Mr. Lipps based his opinion solely on the assumption that litigation of a proof of claim in a bankruptcy would have the same costs and delay associated with litigating a claim outside of bankruptcy. (Id. at 154:18-155:16 (“It’s the same range of claims and the same type of discovery”)).

D. The Deposition Of The Debtors' Expert, Mr. D'Vari

23. The Debtors' also offered Mr. Ron D'Vari, the chief executive officer and co-founder of NewOak Capital, LLC ("NewOak") to provide expert testimony on (a) the lifetime expected collateral losses of the RMBS trusts (i.e., the FGIC Insured Trusts), and (b) the extent of any past or future losses to holders of securities issued by the FGIC Insured Trust that were not insured by FGIC and are outside the scope of the Settlement Agreement release. The Debtors' retained Mr. D'Vari on May 24, 2013, after Mr. Kruger had executed the Settlement Agreement and with the knowledge that Mr. D'Vari had previously worked for FGIC analyzing the RMBS trusts at issue in this proceeding.⁶ (See D'Vari Dep. Tr. at 70:19-71:19; 183:3-184:22).

24. Mr. D'Vari spent "twenty to forty hours" over two weeks conducting his post-hoc analysis. (See D'Vari Dep. Tr. at 176:15-178:12.) In the course of preparing his Declaration, Mr. D'Vari did not speak to ResCap management, the board of directors of ResCap, LLC, Lewis Kruger, or any representatives of the Official Committee of Unsecured Creditors or their counsel, Kramer Levin. (Id. at 178:13-179:11). Mr. D'Vari testified that he does not know who Mr. Kruger is. (Id. at 178:23-24). In addition, when forming the opinions expressed in his Declaration, Mr. D'Vari did not study the Settlement Agreement, review any of the FGIC

⁶ In his deposition, Mr. D'Vari revealed for the first time that, in 2010-2011, he personally provided expert services and advice to FGIC with respect to all of the 47 FGIC-insured trusts that are the subject of the Settlement Agreement. (D'Vari Dep. Tr. at 70:14-71:19). FGIC's counsel, however, instructed him not to answer any questions with respect to the substance of his advice or whether that advice contradicted his present opinions. (Id. at 27:6-28:12; 37:20-42:7; 133:6-22). That direction, made solely on confidentiality grounds, was interposed despite explicit offers to have counsel hold all answers on an "attorney's eyes only" basis. (Id. at 33:20-35:6). The Ad Hoc Group reserves all rights with respect to the Debtors' application to retain NewOak [Docket No. 3953], which states that any advice or services provided by NewOak were not "adverse" to the estates. (NewOak Retention Appl., ¶ 29.) If the Debtors were told the substance of the advice, then all parties should get it; if not, then the Debtors had no basis to make that representation to the Court. In addition, a failure to disclose the advice or additional details raises serious questions as to Mr. D'Vari's ability to be impartial as an expert.

insurance policies or look at the individual representations or warranties that any of the Debtors made in the constituent documents. (See D’Vari Dep. Tr. at 185:5-186:12).

25. The sum and substance of Mr. D’Vari’s testimony was limited to his opinion of the aggregate amount that the FGIC Trustee could claim against the Debtors for any losses with respect to FGIC-insured trusts regardless of who caused those losses. (D’Vari Dep. Tr. at 185:9-19, 187:8-15 (“For us, [\$5 billion] is the aggregate amount that the trustee had claimed. I don’t know from who and when and what. That’s a legal question. . . . [W]e are saying if that is the total number, they are claiming, if, if they release that – I mean, if the rest of this and you subtract it from our total, then that’s the number you get. But there is no other representation or opinion attached to that number.”).) Mr. D’Vari testified that he is not opining that the FGIC trustees could present a valid claim under the policies in the amount of \$5 billion against FGIC. (See D’Vari Dep. Tr. at 185:24-186:3 (“Q. So you’re not opining that the FGIC trustees could make a claim under those policies in the amount of \$5 billion? A. Absolutely not.”). With respect to the claims released by the FGIC Trustees under the Settlement Agreement, Mr. D’Vari admitted that he is not expressing an opinion as to which of the Debtor entities the trustees could assert a claim of \$5 billion against, the priority of what that claim would be, or the legal basis for any of those claims, including fraud, contract, aiding and abetting or veil piercing. (Id. at 187:16-188:12).

**E. The Deposition Of FGIC’s Chief Executive Officer,
John Dubel**

26. FGIC produced its CEO, John Dubel, for a four-hour deposition on July 10, 2013. Mr. Dubel provided very limited testimony with respect to the FGIC Settlement Agreement and provided no testimony with respect to settlement of FGIC Claims, the allowed claims against RFC, GMACM or ResCap, LLC, including veil piercing, alter ego or aiding and abetting claims.

Mr. Dubel's testimony was also restricted by his counsel's instruction not to answer questions on the grounds of attorney client 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.")) Mr. Dubel's deposition testimony does not provide any justification for the allowed claims against GMACM, RFC or ResCap LLC.

SUPPLEMENTAL OBJECTION

27. In addition to the grounds in the Objection, the Ad Hoc Group now asserts the following three additional grounds based upon discovery taken in this contested matter.

I. THE DEBTORS CANNOT RELY ON ADVICE OF COUNSEL OR THE MEDIATION TO SUPPORT THE SETTLEMENT AGREEMENT

28. Discovery has shown that, in making the decision to enter into the Settlement Agreement, the Debtors relied heavily on communications and information exchanged during the mediation process and the privileged advice of counsel, none of which have they produced in discovery. (See supra ¶¶ 10-17.)

29. This Court has made very clear that, in the context of a proposed settlement under Rule 9019, a movant's failure to disclose advice or communication on the grounds that such advice or communication is privileged will preclude the party asserting the privilege from later putting forth such privileged or confidential information to support its positions. See 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. 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.”). As the Committee argued in connection with the RMBS settlement motion, “where a party ‘invoke[s] attorney-client privilege throughout discovery, [this] automatically constitutes a waiver of the advice-of-counsel defense.” (Comm. Mot. to Preclude Debtor Evidence [Docket No. 2906] ¶ 24 (quoting Cary Oil Co. v. MG Refining & Mktg., Inc., 257 F. Supp. 2d 751, 761 (S.D.N.Y. 2003) (citations omitted). And, as the Committee stressed, the Court should “exclude any testimony or evidentiary presentations by the Defendants at trial if that same testimony or evidence was withheld from Plaintiffs during discovery based on attorney-client privilege.” (Id. (quoting Cary Oil, 257 F. Supp. 2d at 761).)

30. In the context of this specific contested matter, this Court has made clear that such reasoning extends also to a reliance on the mediation defense, stating “I mean, it’s just like you can’t assert a reliance on the advice of counsel and then refuse to produce the advice you got.” (July 15, 2013 H’rg Tr. at 24:18-20.) Moreover, counsel to the Debtors has agreed on the record that they will not assert reliance on counsel or reliance on mediation as a basis for approving the Settlement Agreement. (See Kruger Dep. Tr. at 126:21-24 (Mr. Kerr) (“We’re not asserting a reliance on counsel, defense or however you want to characterize it here. Mr. Kruger made his independent judgment.”); July 15, 2013 H’rg Tr. at 13:17 (“The Court: So that would include – I take it you would agree that the proponents of the plan or in the case of FGIC – the FGIC settlement cannot have a reliance on mediation defense. Ms. Levitt: Correct.”).)

31. Because the Debtors cannot assert attorney-client privilege or mediation protection as both a shield and a sword, they cannot seek any relief based upon the advice rendered or the mediation process. See In re Adelpia Commc’ns. Corp., 2007 Bankr. LEXIS 660, 12 (Bankr. S.D.N.Y. Feb. 20, 2007) (“The ‘at issue’ waiver doctrine prevents unfair use of the attorney-client privilege as a sword, to disclose only self-serving communications, and as a

shield, to bar discovery of other communications that an adversary could use to challenge the truth of the claim”); In re Bakalis, 199 B.R. 443, 450 (Bankr. E.D.N.Y. 1996) (finding that attorney-client privilege cannot be used as both a shield and a sword and “that it ‘may implicitly be waived when [a party] asserts a claim [or defense] that in fairness requires examination of protected communications’”) (quoting United States v. Bilzerian, 926 F.2d 1285, 1292 (2d Cir. 1991)); U.S. v. Doe, 219 F.3d 175, 182 (2d Cir. 2000) (“a party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.”).

32. Nor should the settlement proponents be permitted to waive the mediation privilege selectively as to particular documents when it suits them. Unbeknownst to the Ad Hoc Group, the Debtors, FGIC and other objecting parties sought the Court’s guidance on whether one particular mediation document—a FGIC-prepared mediation slide—could be disclosed without violating any mediation privilege. (See July 25, 2013, H’rg Tr. at 35:17-36:8.) The Ad Hoc Group was not informed of either the correspondence with the Court or the hearing, despite having repeatedly requested that the Debtors and other parties notify the Group of any such proceedings. Had the Ad Hoc Group been apprised, it would have objected to the selective nature of the relief granted—if a party can waive confidentiality in order to prevent the exclusion of an expert, they can waive it in order to provide requisite discovery.

II. THE EXISTING EVIDENTIARY RECORD REQUIRES THAT THE COURT REFUSE TO ALLOW AN AGGREGATE ALLOWED FGIC CLAIM OF \$596.5 MILLION AT GMACM AND RFC

33. Fundamentally, the Debtors seek final approval of an aggregate allowed general unsecured \$596.5 million claim at GMACM and RFC regardless of whether a plan is confirmed. The evidentiary record does not support the allowance of these FGIC claims at these two estates

because the Debtors have presented no evidence of the process by which they determined to enter into the Settlement and the evidence the Debtors do present does not support the terms of that deal.

34. First, the Debtors refused to produce any information concerning the arm's-length nature of the negotiations between the Debtors and FGIC. (See Kruger Dep. Tr. at 160:2-20; 191:11-192:11). The Debtors did not produce a single substantive communication between parties concerning the Settlement and all of the ResCap, LLC board's deliberations on the matter were redacted. (See supra ¶ 9.) As far as what Mr. Kruger considered in informing himself, the sum of Mr. Kruger's personal diligence specific to the FGIC Claims was reading one FGIC complaint, and one Carpenter Lipps memo that the Debtors have refused to produce. Mr. Kruger did no independent research into the FGIC Claims, and relied on presentations from Morrison & Foerster on the subject of the monoline claims as a whole, not the FGIC Claims specifically. With respect to the FGIC Trustee Claims, Mr. Kruger did not read any of the RMBS claims as they related to the FGIC wrapped trusts. (See supra at ¶ 12.) Thus, the Debtors have provided no evidence to support the process by which they determined to enter into the Settlement Agreement.

35. Second, the evidentiary record that does exist does not support the allowance of the aggregate FGIC Claims at GMACM and RFC. As an initial matter, the opinions formed by the Debtors' experts, Mr. Lipps and Mr. D'Vari, should carry no weight, because both experts were retained and/or did not form or convey their opinions until after the Debtors entered into the Settlement Agreement. See Gen. Elec. Capital Corp. v. Wickard (In re Wickard), 455 B.R. 628, 636 (Bankr. W.D. Mich. 2011) (assigning "little weight" to "post hoc evidence" comprising retroactive opinions of value offered by adversary plaintiff); cf. Laurel Bay Health &

Rehabilitation Ctr. v. Nat'l Labor Relations Board, 666 F.3d 1365, 1376 n.15 (D.C. Cir. 2012) (giving no weight to NLRB's reference to subsequent contracts with plaintiff-union, as "[s]uch post hoc evidence sheds no light on the contemporaneous understanding of the parties as to the state of negotiations . . ."). In any event, the Debtors offer no evidence as to why FGIC is entitled to lock-in its recoveries on the Global Settlement before that settlement is approved and before any other settling party is allocated a portion of the Ally Contribution. The Debtors also offer no evidence as to why the FGIC Claims and FGIC Trustee Claims should receive different treatment under the Settlement Agreement than other claims asserted by monoline insurers and other wrapped RMBS parties in these Cases. Moreover, no corporate governance entity at either GMACM or RFC met to consider and vote on the Settlement Agreement. (See Kruger Dep. Tr. at 105:18-107:24; 134:21-135:7).

36. The Debtors similarly fail to support their conclusion that the costs of potential litigation of GMACM and RFC claims justify settling. Indeed, the Debtors have not produced any budget or analysis of the hypothetical costs of defending against the FGIC Claims and FGIC Trustee Claims. (Id. at 189:15–190:2 (“I was aware that there had been MBIA litigation against ResCap prior to the filing of the petition and had gone on for three and a half years. So I assumed this was going to be a lengthy litigation, as well.”).)

37. Further, the Debtors did not assess the procedural cost savings of bankruptcy court or bankruptcy-specific defenses in coming to their conclusions. Indeed, the Debtors' expert on the cost of the litigation, Mr. Lipps, has never litigated a claim in bankruptcy court, has never prepared a budget for such a litigation and, like Mr. Kruger, seems to have based his analysis entirely on the Debtors' experience with the MBIA litigation in state court. (See supra at ¶14.) The Debtors apparently did not consider subordination under section 510(b), claims

estimation proceedings under section 502(c), or any other potential bankruptcy defense in deciding to allow the FGIC Claims.⁷ Mr. Kruger was, however, aware of financial presentations showing that if the FGIC Claims are subordinated that such claims would not receive a distribution at any of the Debtors, yet determined, without explanation, that, “the alternative of the settlement agreement was far superior to them engaging in litigation.” (Kruger Dep. Tr. at 152:2-18, 153:3-12.)

38. Finally, discovery provided by the Debtors as to allowance of claims at GMACM and RFC shows that the allowance should not occur outside of a plan resolving all AFI issues. Specifically, it appears that the Debtors gave almost no consideration to the reasonableness of a failed plan scenario to the FGIC Claims. In the failed plan scenario, the Settlement Agreement allows FGIC to assert any and all of its claims directly against AFI. But, if FGIC were successful in such claims, AFI could then make a claim for indemnity or contribution against one or more of the Debtors for any amounts FGIC recovered. Thus, rather than obtaining a release of approximately \$6.25 billion against any one Debtor, as Mr. Kruger’s Declaration indicates (Kruger Decl. at n. 7), the Settlement Agreement, in the absence of a plan confirming a Global Settlement, leaves the Debtors exposed to indemnification and contribution claims from AFI for up to the full amount of the FGIC Claims. Indeed, Mr. Kruger admitted in his deposition that the Settlement Agreement allowed for such a possibility. (Kruger Dep. Tr. at 144:9-16 (“Q. But you agree with me that technically the way the settlement agreement works, FGIC would be able to assert claims against Ally and Ally might be able to assert claims back against the debtors? A. I have to stop and read the agreement to be sure. You are correct.”).) Notwithstanding the potential impact of such claims, Mr. Kruger admitted that he had not formed a business view as

⁷ As set forth in the Objection, the section 510(b) subordination defense, in particular, is a strong one. (See Objection ¶¶ 32-33.)

to the risk of AFI asserting such claims for contribution or indemnity. (Id. at 144:6-8 (“Q. And did you perform a business view as to the level of risk of [such claims] happening? A. No.”).)

III. THE EVIDENTIARY RECORD REQUIRES THAT THE COURT REJECT AN ALLOWED FGIC CLAIM OF \$337 MILLION AT RESCAP, LLC

39. Independent of any deficiencies with respect to the \$596 million allowance at GMACM and RFC, the Debtors have failed to produce any documents or testimony showing that the negotiations or analysis of the Settlement Agreement considered its effect and appropriateness from the perspective of ResCap, LLC. Rather, the Settlement Agreement was at best analyzed and negotiated on a global basis and in the context of the Global Settlement. (See FGIC Motion ¶ 50 (“The Debtors have determined, exercising their business judgment, that the terms of the Settlement Agreement are fair, equitable and eminently reasonable to the Debtors’ estates and creditors, thereby satisfying the standards of Rule 9019.”); Kruger Dep. Tr. at 183:12–184:2 (“In my judgment, the arguments . . . all of those I believe are the subject of litigation that would be time consuming, costly, destroy the global settlement agreement, and ultimately not be for the benefit of the creditors for this estate or for the estates of which I’m responsible. So, in my mind, a global settlement agreement is a far better outcome.”).)

40. Notably, the Debtors failed to conduct any analysis of the merits of a FGIC claim against ResCap, LLC, or offer any explanation for why the Debtors would settle alter ego and veil piercing claims that the previously argued were meritless and in any event belong to the GMACM and RFC estates, not to FGIC. As noted in the Objection, the Debtors’ lawyers have consistently estimated such claims as speculative throughout these cases.⁸ (See Objection ¶ 25).

⁸ In a similar context, the Examiner concluded that, “it is unlikely that any pending or potential claims by Third-Party Claimants seeking to hold AFI liable on a veil-piercing or alter ego theory of liability for RMBS Claims asserted against the Debtors would prevail.” (Examiner Report at I-38.) The Examiner further noted that, “any such veil-piercing claim seeking to hold AFI liable for RMBS Claims against the Debtors would also appear vulnerable to an argument that such claim constitutes property of the Estates and Third-Party Claimants would lack standing to pursue it.” (Id.)

41. Beyond invoking the benefits of Global Settlement, the Debtors have offered no basis for (a) allowing a claim at ResCap, LLC under the Settlement Agreement or (b) allowing such claim in the amount of \$337 million. In the Objection, the Ad Hoc Group expressed concern that FGIC's claim bore no rational relation to expected recoveries at ResCap, LLC. (See Objection ¶¶ 26-29). As noted above, Mr. Kruger admitted that he did not know whether the \$337 million amount was within the range of results that would occur if FGIC pressed its claim against ResCap, LLC. (Id. at 185:4-10.) Nor did Mr. Kruger consider whether the \$337 million allowed claim at ResCap, LLC would be appropriate outside the context of the Global Settlement. (Kruger Dep. Tr. at 167:7-12 (“Q. Do you believe that \$337 million claim at ResCap outside the context of the global settlement would be an appropriate claim amount? A. I haven’t considered that, no.”).) In fact, the only justification the Debtors have provided for the existence of any allowed FGIC Claim at ResCap, LLC is that such a claim makes sense in the context of the Global Settlement and, specifically, to compensate FGIC in part for releasing its claims against AFI as part of the Global Settlement:

I came to a conclusion myself that it was not [in]appropriate for there to be a FGIC claim at ResCap because they had alleged theories why they should have claims at the ResCap level and theories why they should have claims against Ally. So it seemed not inappropriate for them to have a claim against ResCap in the context of a confirmed plan

(Kruger Dep. Tr. at 165:23–166:8). Mr. Kruger shut down any attempts to get further clarification: “that claim amount results from the global settlement agreement. . . . That’s it.” (Id. at 196:7-11; see also 166:17–167:5 (“Well, there is an Ally settlement as part of the global claim settlement, global claim agreement. And I think and my thought was that in light of that and in view of the fact that, in my mind, the prospect of litigating with FGIC . . . the global plan agreement was a far better outcome. And part of that global plan agreement was an acknowledgment that they’re entitled to a claim against ResCap.”).)

42. The fundamental problem here is that, according to Mr. Kruger, the Debtors are providing FGIC with a claim at ResCap, LLC not because that estate actually risks an unsecured, unsubordinated claim allowance of \$337 million, but rather because allowance of a ResCap, LLC claim is a convenient mechanism for allowing one monoline to get its proverbial “cookies” out of the Global Settlement. The Debtors cannot, however, award claims that bear no relation to the facts or law. See In re US Airways, Inc., 2006 Bankr. LEXIS 352, *13 (Bankr. E.D. Va. Mar. 6, 2006) (“A claim is not allowable in bankruptcy to the extent that it ‘is unenforceable against the debtor . . . under applicable law.’”) (citation omitted); In re Distrigas Corp., 75 B.R. 770, 772 (Bankr. D. Mass. 1987) (“The bankruptcy court must first determine that the claim is cognizable as a legal obligation when viewed within the context of nonbankruptcy and bankruptcy laws, and second that the effect of the allowance of the claim in the bankruptcy proceedings would be just and fair in relation to other creditors' under principles of equity jurisprudence.”) (citation omitted). “Reverse-engineering” a claim in order to reward a settlement proponent an acceptable recovery based on claims against non-debtors is neither fair nor reasonable. Creditors are entitled to know that their claims, and those of other creditors, will be litigated or settled on the merits and not resolved as part of an entirely secret settlement process. (Kruger Dep. Tr. at 193:22-194:11 (“Q. And that’s the extent of your defense of a concern that creditors at ResCap, LLC might have that a 330 million, \$337 million claim was given in exchange for a plan support agreement to foster the global settlement which, of course, is important? . . . A. Because I believe that if there was no global settlement agreement and there would be no \$337 million claim available at ResCap, there would be no \$2.1 billion coming into the estate, there would be very little recovery for a creditors out of this estate, and ResCap, GMAC or RFC.”).)

CONCLUSION

WHEREFORE, for the reasons set forth in the Objection and herein, the Ad Hoc Group respectfully requests that the Court deny the Motion and grant such further relief as it deems just.

Dated: July 29, 2013
New York, New York

Respectfully submitted,

By: /s/J. Christopher Shore
J. Christopher Shore

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Exhibit A

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

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

**THE AD HOC GROUP OF JUNIOR SECURED NOTEHOLDERS’ REQUEST TO
THE DEBTORS FOR THE PRODUCTION OF DOCUMENTS**

TO: Residential Capital, LLC and its affiliated debtors (“ResCap”), c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104, Attn: Gary Lee, counsel of record for ResCap.

PLEASE TAKE NOTICE that pursuant to Rules 7026, 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 26 and 34 of the Federal Rules of Civil Procedure, and Rule 7026-1 of the Local Rules for the United States Bankruptcy Court for the Southern

District of New York (“Local Rules”), the Ad Hoc Group of Junior Secured Noteholders (the “Ad Hoc Group”) by and through its undersigned counsel, hereby requests that the Debtors produce, for inspection and copying, true and correct copies of the Documents requested in Exhibit A by July 8, 2013 at 9:00 a.m. (Eastern Standard Time) at the undersigned counsel’s office in New York, or such other time and place as the parties shall agree.

Dated: June 26, 2013

New York, New York

By: /s/ J. Christopher Shore

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EXHIBIT A
DEFINITIONS

The terms and instructions below apply to the attached Deposition Topics:

1. This Notice incorporates by reference the Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, as incorporated by Rule 7026-1 of the Local Rules.
2. “Document” is used in its broadest sense and means any written, typed, printed, recorded or graphic matter of any kind, however produced or reproduced, and all non-identical copies thereof, whether different because of notes made thereon or otherwise, including, but not limited to, and by way of example only: letters or other correspondence, messages, telegrams, telexes, memoranda, notations, reports, analyses, summaries, charts, graphs, studies, tabulations, statements, notes, notebooks, work papers, telephone toll records, invoices, books, pamphlets, brochures, press releases, diaries, minutes of meetings or conferences, transcripts of telephone conversations, transcripts of testimony, cost sheets, financial reports, accountants’ work papers, opinions or reports of consultants, checks (front and back), check stubs, receipts, ledgers, purchase orders, pictures, photographs, contracts, agreements, advertisements, motion picture films, tapes, tape recordings, videotapes, indices, microfilm, other data compilations, including computer data, computer diskettes or the memory units containing such data from which information can be obtained or translated into usable form, drafts of any of the foregoing, English translations or summaries of foreign language documents and all similar documents.

3. References to the singular shall include the plural and references to the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.

4. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

5. “Any,” “all” and “each” shall be construed broadly, and shall mean each, any and all as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

6. “Communication” means the transmittal of information of any kind, in any form and by any means. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents, correspondence, memos, reports, contracts, both initial and subsequent, diaries, logbooks, minutes, notes, studies, surveys and forecasts.

7. “Concerning” means comprising, consisting of, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being in any way legally, logically or factually concerned with the matter or Document described, referred to or discussed.

8. “CRO” means the Debtors’ Chief Restructuring Officer, Lewis Kruger, appointed on March 5, 2013 [Docket No. 2887].

9. “Debtors” shall mean the filing entities listed in Exhibit 1 of Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC In Support of Chapter 11

Petitions and First Day Pleadings [Docket No. 6], and counsel and advisors to the Debtors, including, but not limited to, Morrison & Foerster, LLP and Centerview Partners LLC.

10. “FGIC” means Financial Guaranty Insurance Company.

11. “FGIC Claims” mean the three proofs of claim, numbered 4868, 4870, and 4871, filed by FGIC against Debtors RFC, GMAC Mortgage and ResCap.

12. “FGIC Settlement Motion” means 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. 3939].

13. “Settlement Agreement” means the Settlement Agreement entered into as of May 23, 2013, by and among Residential Capital, LLC and its direct and indirect subsidiaries, FGIC Trustees and the Institutional Investors.

14. “Term Sheets” mean the Plan Term Sheet dated May 13, 2013 and the Supplemental Term Sheet dated May 23, 2013 attached to the Plan Support Agreement as Exhibits A and B [Docket No. 3814].

15. Production Obligations. You are required to produce all responsive Documents that are in your possession, custody or control, which includes, without limitation, any responsive Document that was or is prepared, kept, or maintained for personal use, in the personal files, or as the personal property of any of the Debtors’ Affiliates or representatives and any non-privileged Documents in the possession, custody or control of the Debtors’ present and former attorneys, agents, or any other persons currently acting or who previously acted on the Debtors’ behalf.

16. Redaction. Each request for Documents seeks production of the Document in its entirety, without abbreviation, modification, or redaction, including, but not limited to, all

attachments, actual, proposed or contemplated envelopes, transmittal sheets, cover letters, exhibits, enclosures, or other matters affixed thereto.

17. Drafts. A request for Documents shall be deemed to include a request for all actual, proposed, or contemplated drafts or mark-ups thereof, revisions, modifications, or amendments thereto, and non-identical copies thereof, in addition to the Document itself.

18. Continuing Requests. These requests are continuing. If, after producing the requested Documents, the Debtors obtain or become aware of any further Documents responsive to these requests, the Debtors are required to produce such additional Documents.

19. Privileged or Proprietary Matter. In the event that Debtors withhold any Document on the basis of any legal objection or privilege, Debtors shall indicate the following information for each such withheld Document;

- a) date of Document;
- b) general character or type of Document (i.e. letter, memorandum, notes of meeting, etc.);
- c) the identity of the person in possession of the Document;
- d) the identity of the author of the Document;
- e) the identity of the original recipient or holder of the Document;
- f) relationship of the author, addressee and any other recipient;
- g) the general subject matter of the Document; and
- h) the legal basis, including, but not limited to, any legal objection or privilege for withholding the Document.

20. Lost or Destroyed Documents. If any Document that is the subject of these requests was at one time in existence, but was subsequently lost, discarded or destroyed,

identify such Document as completely as possible, including the following information: (a) type of Document, (b) date of Document, (c) date when the Document became lost, discarded or destroyed, (d) circumstances under which the Document was lost, discarded or destroyed and (e) identity of all persons having knowledge of the contents of the Document.

21. Partial Production. If any Document cannot be produced in full, produce it to the extent possible, stating the reasons for Debtors' inability to produce the remainder, as well as any information, knowledge or belief it has concerning the unproduced portion.

22. No Responsive Documents. If there are no Documents responsive to a particular request, state so in writing.

DOCUMENT REQUESTS

1. All documents reviewed by the CRO in connection with any Debtor's consideration and/or determination to enter into the Settlement Agreement and Term Sheets as they pertain to any FGIC Claims, and all communications related thereto.

2. All corporate records of each of the Debtors, including but not limited to minutes, resolutions, consents and agreements, relating to the Settlement Agreement and Term Sheets as they pertain to any FGIC Claims.

Exhibit B

WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036-2787
Telephone: (212) 819-8200
Facsimile: (212) 354-8113
J. Christopher Shore (JCS – 6031)
Harrison L. Denman (HD – 1945)

and

MILBANK, TWEED, HADLEY & McCLOY LLP
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Gerard Uzzi (GU – 2297)

Attorneys for the Ad Hoc Group
of Junior Secured Noteholders

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

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

NOTICE OF DEPOSITION

TO: Residential Capital, LLC (“ResCap”), Residential Funding Company, LLC (“RFC”) and GMAC Mortgage, LLC (“GMAC Mortgage” and collectively, the “Debtors”), c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104, Attn: Gary Lee, counsel of record for the Debtors.

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 26, 30(b)(6) and 45, made applicable by Federal Rules of Bankruptcy Practice 7026, 7030, 9014 and

9016, the Ad Hoc Group of Junior Secured Noteholders (the “Ad Hoc Group”) will take the deposition upon oral examination of:

- ResCap on June 25, 2013, 2013 at 9:00 a.m. (ET);
- RFC on June 25, 2013 at 10:00 a.m. (ET);
- GMAC Mortgage on June 25, 2013 at 11:00 a.m. (ET);

These depositions will take place at the offices of White & Case LLP, 1155 Avenue of the Americas, New York, New York 10036 (or such other time and place as may be agreed to by the Ad Hoc Group and the Debtors). The deposition will take place before a court reporter and will be recorded by stenographic means, may be videotaped, and shall continue from day to day until it has been completed.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), ResCap, RFC and GMAC must each designate one or more officers, directors, or managing agents, or other persons to testify on behalf of each of ResCap, RFC, and GMAC with regard to all matters known or reasonably available to them on each of the Rule 30(b)(6) Topics identified in Exhibit A to this Notice.

Dated: June 19, 2013
New York, New York

By: /s/ J. Christopher Shore
J. Christopher Shore (JCS – 6031)
Harrison L. Denman (HD – 1945)

WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036-2787
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and

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New York, New York 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Attorneys for the Ad Hoc Group of Junior
Secured Noteholders

EXHIBIT A

DEFINITIONS

The terms and instructions below apply to the attached Deposition Topics:

1. This Notice incorporates by reference the Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, as incorporated by Rule 7026-1 of the Local Rules.

2. References to the singular shall include the plural and references to the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.

3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. “Any,” “all” and “each” shall be construed broadly, and shall mean each, any and all as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

5. “Committee” means the creditors listed in Appointment of Official Committee of Unsecured Creditors [Docket No. 102] and counsel and advisors to the Committee, including, but not limited to, Kramer Levin Naftalis & Frankel LLP and Moelis & Company LLC.

6. “Communication” means the transmittal of information of any kind, in any form and by any means. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents, correspondence, memos, reports,

contracts, both initial and subsequent, diaries, logbooks, minutes, notes, studies, surveys and forecasts.

7. “Concerning” means comprising, consisting of, referring to, reflecting, regarding, supporting, evidencing, relating to, prepared in connection with, used in preparation for, or being in any way legally, logically or factually concerned with the matter or Document described, referred to or discussed.

8. “Debtors” shall mean the filing entities listed in Exhibit 1 of Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC In Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 6], and counsel and advisors to the Debtors, including, but not limited to, Morrison & Foerster, LLP and Centerview Partners LLC.

9. “FGIC” means Financial Guaranty Insurance Company.

10. “FGIC Settlement Motion” means 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. 3939].

11. “Settlement Agreement” means the Settlement Agreement entered into as of May 23, 2013, by and among Residential Capital, LLC and its direct and indirect subsidiaries, FGIC Trustees and the Institutional Investors.

RULE 30(b)(6) TOPICS

1. The FGIC Settlement Motion.
2. Any materials or analysis concerning substantive consolidation in these cases reviewed or prepared in connection with the Settlement Agreement and/or the FGIC Settlement Motion.
3. Any materials or analysis concerning the claim that ResCap is derivatively liable for the debts of its subsidiaries reviewed or prepared in connection with the Settlement Agreement and/or the FGIC Settlement Motion.

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 Hamzeshpour (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 Ilany (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

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
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 Kiely (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

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
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

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
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

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
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

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
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); Karn Chopra (Centerview)			Email chain with counsel and retained professionals attaching materials prepared by or at the direction of counsel for mediation	AC/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
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

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
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

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
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

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 – 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

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

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 Hamzhepour (ResCap); Lewis Kruger (ResCap); Nilene Evans (MoFo); Loreanzo 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 Hamzhepour (ResCap); Lewis Kruger (ResCap); Nilene Evans (MoFo); Loreanzo 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

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

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