

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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: Index No. 401265/2012
In the Matter of the Rehabilitation of :
FINANCIAL GUARANTY INSURANCE : Doris Ling-Cohen, J.
COMPANY. :
: Motion Sequence No. 16
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AFFIDAVIT OF JOHN S. DUBEL

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

JOHN S. DUBEL, being duly sworn, deposes and says:

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

2. I respectfully submit this affidavit on behalf of FGIC and in support of the Omnibus Reply Memorandum of Law in Further Support of Approval of the Settlement Agreement. FGIC was appointed to the Official Committee of Unsecured Creditors (the “OCC”) in the ResCap chapter 11 cases by the United States Trustee, and I represented FGIC on the OCC. I was the principal negotiator for FGIC with respect to the global mediation in the Residential Capital (“ResCap” and together with its subsidiaries, the “Debtors”) bankruptcy case. The ResCap bankruptcy case is very

large in size, and the estimated claims of administrative, secured and unsecured creditors is almost \$18 billion. See Disclosure Statement for the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, *et al.* and the Official Committee of Unsecured Creditors (July 4, 2013) (Docket No. 4157) (“Debtors’ Disclosure Statement”) (attached hereto as Exhibit A), Ex. 6 (ResCap Recovery Analysis).

The Mediation Process

3. The mediation was conducted pursuant to an order of the Bankruptcy Court beginning in December 2012, and I was personally involved in all mediation sessions and negotiations on behalf of FGIC. I personally participated in the negotiation of the Plan Support Agreement¹ signed on or about May 13, 2013 and the related term sheets and agreements negotiated and signed then and on May 23, 2013, as part of the overall global bankruptcy plan settlement. An integral part of the global bankruptcy plan negotiations, and a condition precedent to the ResCap bankruptcy plan proceeding to confirmation by the Bankruptcy Court, was the negotiation and development of the settlement agreement (the “FGIC Settlement Agreement”), also signed on May 23, 2013, among FGIC, the Debtors, the Trustees (defined below), the Steering Committee Group (defined below), and the Talcott Franklin Group (defined below).

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

¹ When I use terms not otherwise defined herein, I intend those terms to have the same meanings as in the Rehabilitator’s Omnibus Reply Memorandum of Law in Further Support of Approval of the Settlement Agreement, dated July 30, 2013.

5. The Steering Committee Group² is a group of 18 sophisticated institutions that includes banks and financial institutions such as Goldman Sachs, ING, BlackRock, Teachers Insurance and Annuity Association, TCW, Metropolitan Life, PIMCO, and Western Asset Management. They hold approximately \$12.1 billion in current amount, and \$29.8 billion in original face amount, of RMBS securities issued by various ResCap related trusts. Attached hereto as Exhibit B is the latest Bankruptcy Rule 2019 filing (Docket No. 1741), indicating the holdings of the Steering Committee Group. The Talcott Franklin Group³ is a similar group of 57 banks, financial institutions and funds, which includes CQS and holds \$17 billion in original face amount, of RMBS securities issued by various ResCap related trusts. *Debtors' Second Supplemental Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Trust Settlement Agreements* at 30 (Docket No. 1887).

² The investors in the “Steering Committee Group” consist of AEGON USA Investment Management, LLC, Angelo Gordon, Bayerische Landesbank, BlackRock Financial Management Inc., Cascade Investment, LLC, Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management, L.P., ING Investment Management Co. LLC, ING Investment Management LLC, Kore Advisors, L.P., Pacific Investment Management Company LLC, Maiden Lane LLC and Maiden Lane III LLC (by the Federal Reserve Bank of New York as managing member), Metropolitan Life Insurance Company, Neuberger Berman Europe Limited, SNB StabFund, The TCW Group, Inc., Teachers Insurance and Annuity Association of America, Thrivent Financial for Lutherans, Western Asset Management Company, and certain of their affiliates, either in their own capacities or as advisors or investment managers. *Debtors' Second Supplemental Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Trust Settlement Agreements* at 4 n.8 (Docket No. 1887).

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

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

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

with the mediation by parties participating in the mediation should be kept confidential. The Mediation Order states:

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

¶ 4 (emphasis added).

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

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

Committee Group and the Talcott Franklin Group participated both in discussions and meetings with the Trustees and others.

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

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

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

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

12. From January through the end of May, 2013, I personally participated in dozens of meetings and innumerable conference calls with various parties to the mediation process, as well as significant internal work with FGIC's counsel as part of the mediation and negotiation process.

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

14. The first global group mediation session occurred on or about April 22, 2013, and lasted ten hours, and was followed by another session on April 23, 2013, which lasted approximately nine hours. I have reviewed the attendance list for the first day's session, and not including Judge Peck and his two law clerks, there were 140 participants. There were representatives from approximately 23 different creditors and creditor groups (groups such as the Steering Committee Group and the Talcott Franklin Group I only count as one group, even though they include many institutions). There were a total of 29 creditors or creditor group business representatives in attendance, along with 75 attorneys and 36 financial advisors to the various parties.

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

Mac served special notice requests in the Bankruptcy Court and participated therein through its counsel, the same counsel that filed the objections in this Court.

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

The Global Settlement and the FGIC Settlement Agreement

17. As reflected in the documents signed on May 23, 2013, and the related and supplemental term sheets and agreements, the global mediation successfully resolved the key major issues in the ResCap chapter 11 cases and obviated years of difficult, expensive, protracted and uncertain litigation. AFI agreed to contribute \$2.1 billion to the ResCap bankruptcy estate, nearly tripling its prior agreement, and all of the significant participating creditor groups agreed to provide releases to AFI for all claims asserted against AFI in dozens of state and federal lawsuits. The parties participating in the Plan Support Agreement also agreed to allocation of the total cash available for distribution to unsecured creditors, estimated at \$2.62 billion. *See Debtors' Disclosure Statement at 38.*

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

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

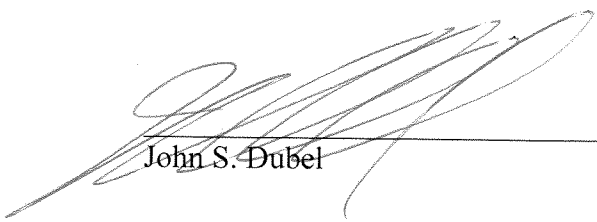
20. First, the FGIC Insured Trusts will receive the immediate, lump sum settlement payment of \$253.3 million in lieu of partial cash payments over decades to come on account of potentially \$1.1 billion in policy claims. This settlement payment will be made by FGIC in cash immediately after both of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

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

22. Third, if the plan of reorganization contemplated by the Plan Support Agreement is confirmed, and AFI's \$2.1 billion settlement payment is realized, the FGIC Insured Trusts will be entitled to a distribution in excess of \$90 million from the Trustees. *See generally* Debtors' Disclosure Statement. Specifically, if the Bankruptcy Court confirms the proposed plan of reorganization, the Trustees collectively will receive an allowed general unsecured claim in the bankruptcy cases of \$7.301 billion. *See* Debtors' Disclosure Statement at 27. This \$7.301 billion allowed general unsecured claim will net the Trustees a distribution under the proposed reorganization plan of approximately \$698.7 million (the "RMBS Proceeds"). *See* Debtors' Disclosure Statement, Ex. 6 (ResCap Recovery Analysis). The Plan Support Agreement (and the reorganization plan) provides that the RMBS Proceeds will be distributed to RMBS trusts in accordance with the RMBS Trust Protocol attached as Annex III to the supplemental term sheet. The RMBS Trust Protocol provides that insured RMBS trusts that both (i) have made policy claims against a monoline insurer and (ii) have not received full payment on their claims by the plan of

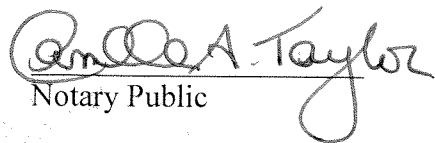
reorganization's effective date, will be entitled to receive a distribution of the RMBS Proceeds on the terms provided for therein. The FGIC Insured Trusts—which have made policy claims against FGIC that will not be paid in full at the time of the plan's effective date—will thus, if the reorganization plan is confirmed, be entitled to receive a distribution of RMBS Proceeds on the terms provided in the RMBS Trust Protocol. I am informed that the Trustees have calculated the amount of RMBS Proceeds to which the FGIC Insured Trusts will be entitled, and I have also reviewed the Disclosure Statement filed in the bankruptcy cases, and I understand the amount of RMBS Proceeds to which the FGIC Insured Trusts will be entitled is in excess of \$90 million.

23. Finally, and significantly, if the FGIC Settlement Agreement becomes effective, FGIC will forego its right to receive any and all reimbursements from the FGIC Insured Trusts pursuant to the waterfall provisions under the governing documents of the various trusts (as such reimbursement rights may be modified pursuant to the FGIC Rehabilitation Plan). These amounts will instead be retained by the FGIC Insured Trusts and will likely be paid to the investors in the FGIC Insured Trusts.



John S. Dubel

Sworn to before me this
30 day of July, 2013



Notary Public

Camille A. Taylor
Notary Public, State of New York
No. 43-OITA4994058
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 30, 2014