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Hearing Date: June 18, 2012 at 10:00 a.m. (ET)
Objection Deadline: June 11, 2012 at 4:00 p.m. (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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RESIDENTIAL CAPITAL, LLC, et al.,	)	Case No. 12-ap-01671 (MG)
Plaintiffs,	)	Bankruptcy Case No. 12-12020 (MG)
v.	)	Jointly Administered
ALLSTATE INS. CO., THE OTHER PARTIES LISTED ON EXHIBIT A TO THE COMPLAINT, JOHN DOES 1-1000,	)	
Defendants.	)	

NOTICE OF DEBTORS' MOTION TO EXTEND THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF CERTAIN LITIGATION AGAINST DEBTORS' DIRECTORS AND OFFICERS AND NON-DEBTOR CORPORATE AFFILIATES

PLEASE TAKE NOTICE that the Debtors and debtors in possession in the above-captioned case have filed concurrently herewith the *Debtors' Motion to Extend the Automatic Stay or, in the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates* (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing will take place on **June 18, 2012 at 10:00 a.m. (prevailing Eastern time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion and the relief requested therein, if any, must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), shall set forth the basis for the objection and the specific grounds therefore, and shall be filed with the Bankruptcy Court

electronically in accordance with General Order M-399, by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at http://www.nysb.uscourts.gov, the official website for the Bankruptcy Court), with a hard copy delivered directly to Chambers and served by first-class mail upon (a) Residential Capital, LLC, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Tammy Hamzehpour); (b) proposed counsel for the Debtors with respect to all Defendants except Federal Home Loan Bank of Boston and Federal Home Loan Bank of Chicago, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Larren M. Nashelsky, Gary S. Lee, Joel C. Haims); (c) proposed conflicts counsel and proposed counsel for the Debtors with respect to Defendants Federal Home Loan Bank of Boston and Federal Home Loan Bank of Chicago, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178 (Attn: Steven J. Reisman, Maryann Gallagher) (d) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attn: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (e) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attn: US Attorney General, Eric H. Holder, Jr.); (f) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attn: Nancy Lord, Esq. and Neal Mann, Esq.); (g) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attn: Joseph N. Cordaro, Esq.) (h) counsel for Official Committee of Unsecured Creditors, Kramer Levin Naftalis & Frankel LLP, 1117 Avenue of the Americas, New York, NY 10036 (Attn: Ken Eckstein and Douglas H. Mannal); (i) Citibank N.A., 390 Greenwich Street, 6th Floor, New York, NY 10013 (Attn: Bobbie Theivakurnaran); (j) Fannie Mae, 3900 Wisconsin Avenue NW, Mail Stop 8H-504, Washington,

D.C. 20016 (Attn: Vice President, Credit Management, John S. Forlines); (k) counsel for Ally Financial Inc., Kirkland & Ellis, 601 Lexington Avenue, New York, NY 10022 (Attn: Richard M. Cieri and Ray C. Schrock) (l) Deutsche Bank Trust Company Americas, 25 DeForest Avenue, Summit, NJ 07901 (Attn: Kevin Vargas); (m) The Bank of New York Mellon, Asset Backed Securities Group, 101 Barclays Street 4W, New York, NY 10286; (n) U.S. Bank National Association, 50 South 16th Street, Suite 2000, Philadelphia, PA 19102 (Attn: George Rayzis); (o) U.S. Bank National Association, 60 Livingston Avenue, EP-MN-WS1D, St. Paul, MN 55107 (Attn: Irina Palchuk); (p) counsel to U.S. Bank National Association, Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 (Attn: James S. Carr and Eric R. Wilson); (q) Wells Fargo Bank, N.A., P.O. Box 98, Columbia, MD 21046 (Attn: Corporate Trust Services, GMACM Home Equity Notes 2004 Variable Funding Trust); (r) counsel to the administrative agent for the Debtors' proposed providers of debtor in possession financing, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036 (Attention: Kenneth S. Ziman and Jonathan H. Hofer); (s) Nationstar Mortgage LLC, 350 Highland Drive, Lewisville, TX 75067 (Attn: General Counsel) (t) counsel to Nationstar Mortgage LLC, Sidley Austin LLP, One South Dearborn, Chicago, IL 60603 (Attn: Larry Nyhan and Jessica CK Boelter); (u) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (v) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attn: George S. Canellos, Regional Director); (w) all defendants in this adversary proceeding, so as to be received no later than **4:00 p.m. (prevailing Eastern time) on June 11, 2012**, or such shorter time as the Bankruptcy Court may hereafter order and of which you will receive subsequent notice**.**

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

PLEASE TAKE FURTHER NOTICE THAT a copy of the Motion may be obtained at no charge at http://www.kccllc.net/rescap or for a fee via PACER at http://www.nysb.uscourts.gov.

Dated: May 25, 2012
New York, New York

/s/ Gary S. Lee
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RESIDENTIAL CAPITAL, LLC, et al.,	Case No. 12-ap-01671 (MG)
Plaintiffs,	
v.	Bankruptcy Case No. 12-12020 (MG)
ALLSTATE INS. CO., THE OTHER PARTIES LISTED ON EXHIBIT A TO THE COMPLAINT, JOHN DOES 1-1000,	Jointly Administered
Defendants.	

DEBTORS' MOTION TO EXTEND AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF CERTAIN PENDING LITIGATION AGAINST DEBTORS' DIRECTORS AND OFFICERS AND NON-DEBTOR CORPORATE AFFILIATES

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The Debtors seek an extension of the automatic stay to stay or enjoin the continued prosecution of twenty-seven lawsuits against the Debtors' non-debtor affiliates or directors and officers, all of which are based on the Debtors' issuance or sale of mortgage-backed securities. Without an extension of the automatic stay pursuant to Section 362(a) or Section 105(a) of the Bankruptcy Code, the protections that the automatic stay provides the Debtors would be nullified and the Debtors' restructuring efforts would be jeopardized.

PRELIMINARY STATEMENT

The Debtors and certain of their non-debtor affiliates have been named as defendants in twenty-seven lawsuits arising from the Debtors' issuance or sale of mortgage-backed securities (the "MBS Actions"). Those MBS Actions name as defendants four of the Debtors' non-debtor corporate affiliates: Ally Financial Inc. ("Ally Financial"), Ally Bank, GMAC Mortgage Group LLC ("GMACM Group"), and Ally Securities LLC ("Ally Securities") (collectively, the "Non-Debtor Corporate Affiliates"). Six of those lawsuits also name certain of the Debtors' former directors and officers (the "D&Os" and together with the Non-Debtor Corporate Affiliates, the "Non-Debtor Affiliates").

The twenty-seven MBS Actions bring either claims based on the Debtors' contractual representations and warranties provided to monoline insurers in conjunction with obtaining insurance on the securities, or securities claims based on the Debtors' statements made in the offering documents associated with the securitizations. The Non-Debtor Affiliates did not issue the mortgage-backed securities and did not provide the representations or warranties in conjunction with those securities. Nor were they responsible for preparing or filing the offering documents accompanying the securitizations.

Instead, the claims against the Non-Debtor Affiliates are dependent on, and inextricably intertwined with, the Debtors' alleged conduct. The complaints, for example, seek to hold the

Non-Debtor Affiliates liable based on control person, aiding and abetting, and alter ego theories. To prove these claims against the Non-Debtor Affiliates, the plaintiffs must first establish the underlying liability of the Debtors—that is, that the ***Debtors'*** offering materials for the subject securitizations contained misrepresentations or omissions regarding the underlying mortgage loans, or that the ***Debtors'*** contractual representations and warranties similarly misrepresented the characteristics of the loans. Without a finding of underlying wrongdoing by the Debtors, there can be no finding of liability against the Non-Debtor Affiliates.

The MBS Actions against the Debtors are now stayed pursuant to the automatic stay of Section 362. This Court should extend the automatic stay pursuant to Sections 362 or 105 to stay or enjoin the continuation of the MBS Actions against the Non-Debtor Affiliates for the following reasons. ***First***, the Debtors will be exposed to a significant risk of collateral estoppel, *stare decisis*, and evidentiary prejudice if the MBS Actions against the Non-Debtor Affiliates are allowed to continue. The Debtors' alleged conduct is the foundation for the plaintiffs' claims and allegations against the Non-Debtor Affiliates. Thus, any judicial decision on the claims against the Non-Debtor Affiliates—whether on the merits or on procedural issues—will inevitably be used later against the Debtors.

Second, if the MBS Actions against the Non-Debtor Affiliates are allowed to continue, the Debtors will face burdensome and overwhelming discovery from both the plaintiffs and the Non-Debtor Affiliates. The Debtors possess virtually all of the information necessary to prosecute and defend against the plaintiffs' claims, including the loan files, underwriting guidelines and memoranda, due diligence materials, relevant emails, quality audit documents, and other loan-level and securitization-related information. Discovery from the Debtors is inevitable if the lawsuits are allowed to continue, even if the claims against the Debtors are

stayed. And the scope of that discovery would be massive: in one exemplar case, the Debtors have produced more than one million pages of documents and their witnesses have sat for more than eighty days of depositions. That discovery cannot be reused in the other lawsuits, as each case involves different securitizations, different mortgage loans, different underwriting policies and procedures, different documents, different witnesses, and different facts. Discovery on the Debtors would consume significant time and resources, distract their management, eviscerate the benefits of the automatic stay, and frustrate their ability to restructure successfully.

Third, the Debtors will face indemnification claims if the MBS Actions against the Non-Debtor Affiliates are allowed to continue. Debtor Residential Capital, LLC ("ResCap") is obligated to indemnify both the D&Os and the Non-Debtor Corporate Affiliates for losses and expenses incurred in the MBS Actions, including for defense costs and any settlements or judgments. Those claims will have adverse consequences on the Debtors' estate.

Fourth, property of the Debtors' estate may be depleted if the MBS Actions against the Non-Debtor Affiliates are allowed to continue. The Debtors and Non-Debtor Affiliates share insurance coverage for certain of the MBS Actions. The Debtors submit that those insurance policies and their proceeds are assets of the Debtors' estate. *See In re Quigley Co., Inc.*, 676 F.3d 45, 58 (2d Cir. 2012). If the MBS Actions are allowed to continue, the Non-Debtor Affiliates will incur defense costs and losses that could draw down these insurance policies, depleting an asset that the Debtors contend is property of the estate.

For these reasons, the Debtors request that the Court extend the automatic stay pursuant to Section 362 or issue an injunction pursuant to Section 105 to stay or enjoin the prosecution of the MBS Actions (identified on Appendix A to this Motion) against the Non-Debtor Affiliates until the effective date of a restructuring plan in these Chapter 11 cases.

STATEMENT OF FACTS

The Debtors are a leading residential real estate finance company indirectly owned by Ally Financial. As of the Petition Date, the Debtors were the fifth largest servicer of residential mortgage loans in the United States. (*See* Aff. of J. Whitlinger in Supp. of Chapter 11 Pets. and First Day Pleadings ("Whitlinger First Day Aff."), Dkt. 6, ¶ 9.) As of March 31, 2012, the Debtors were servicing over 2.4 million mortgage loans with an aggregate unpaid principal balance of approximately $374 billion. (*Id.* ¶ 6.)

I. THE SECURITIZATION OF MORTGAGE LOANS

A fundamental part of the Debtors' business consists of securitizing or selling mortgage loans that they have purchased, brokered, or originated. (*Id.* ¶¶ 14-16.) Until April 30, 2012, the Debtors, through their capital markets function, combined mortgage loans that they originated with mortgage loans purchased from Ally Bank, and pooled those loans for securitization. (*Id.* ¶ 22.) The Debtors sold some of the mortgage loans to Fannie Mae and Freddie Mac for each of them to deposit into securitizations trusts; for other mortgage loans, the Debtors received Ginnie Mae guarantees and deposited those loans into securitization trusts that then issued mortgage-backed securities. (*Id.*)

From approximately 2004 through 2007, the Debtors also sold mortgage loans into so-called "private label securitizations" ("PLS"). (*Id.* ¶ 23 and n.15.) In PLS, the Debtors pooled together mortgage loans in their own names ("private label") and conveyed a pool of loans to a newly formed securitization trust (a "PLS Trust"). (*Id.*) A PLS Trust would raise cash to purchase the mortgage loans from the Debtors through the issuance of mortgage-backed securities ("MBS") to investors. (*Id.*) These private label MBS, which were often purchased by insurance companies, mutual funds, or other institutional investors, entitled holders to receive the principal and interest collected on the mortgage loans in the PLS Trust. (*Id.*) During this time,

the Debtors were involved in 392 private-label securitizations that involved an aggregate original principal loan amount in excess of $226 billion. (*See* Decl. of J. Whitlinger ¶ 9.)

Some private label MBS were insured by monoline insurance companies pursuant to financial guaranty contracts between the monoline insurers and the Debtors. Those insurance agreements guaranteed the repayment of the mortgage principal and interest to the MBS holder. (*See* Whitlinger First Day Aff. ¶ 101.) Thus, if a sufficient number of borrowers defaulted or were delinquent, the MBS holders would be made whole by the monoline insurers. In obtaining those insurance agreements, the Debtors provided the monoline insurers with various contractual representations and warranties relating to the residential mortgage loans pooled for the securitizations. (*See id.*)

II. THE MBS ACTIONS

The Debtors' Non-Debtor Affiliates have been named in twenty-seven lawsuits based on the Debtors' mortgage-backed securities (the "MBS Actions"). (*See* Decl. of J. Lipps ¶ 8.) The Debtors' non-debtor affiliates have been named as defendants in at least seventy-five more lawsuits that also name Debtor entities. The Debtors are not seeking to extend the automatic stay to those lawsuits at this time. Instead, this Motion is limited to the twenty-seven MBS Actions that bring claims against the Non-Debtor Affiliates.

All twenty-seven MBS Actions bring claims against one or more of the Non-Debtor Corporate Affiliates, and six of those bring claims against certain D&Os.[1] (*See id.*) The MBS Actions involve 116 securitizations and over 660,000 mortgage loans with an original principal balance of more than $83 billion. (*See id.*) Attached as Appendix A to this Motion is a list of all twenty-seven MBS Actions, along with a brief summary of the status of each case and the

[1] The named directors and officers are Bruce J. Paradis, Davee L. Olson, David C. Walker, Kenneth M. Duncan, Ralph T. Flees, James G. Jones, David M. Bricker, Lisa R. Lundsten, and James N. Young.

Debtor and Non-Debtor Affiliates named as defendants in each case. All twenty-seven MBS complaints are attached as Exhibits to the Declaration of Joel C. Haims.

The MBS Actions fall into three groups. In eleven lawsuits, monoline insurance companies seek damages for fraud and breach of contractual representations and warranties in connection with the MBS offerings ("Rep & Warranty Cases"). (*See* Lipps Decl. ¶ 9.) Private investors have filed fifteen lawsuits seeking damages for alleged violations of federal and state securities laws, fraud, and misrepresentations and omissions in connection with their purchases of the private-label securities ("PLS Investor Cases"). (*See id.*) Finally, the Federal Housing Finance Agency has brought a lawsuit similar to the PLS Investor Cases based on Freddie Mac's purchase of the Debtors' mortgage-backed securities ("FHFA Case"). (*See id.*)

The MBS Actions bring claims and allegations against the Non-Debtor Affiliates that are based almost entirely on the alleged conduct of the Debtors. (*See id.* ¶¶ 9-19.) The causes of action against the Non-Debtor Affiliates are premised on theories of derivative liability—such as control person, aiding and abetting, and alter ego liability—or are duplicative of allegations and theories asserted against the Debtors. (*See id.* ¶ 12, 37, 49; App'x to Lipps Decl. ¶ 18, 23, 35.) As a result, proving the claims against the Non-Debtor Affiliates first requires proving the Debtors' underlying wrongdoing: the plaintiffs must establish either that the Debtors' offering documents for the securitizations were false or misleading regarding the underlying mortgage loans, or that the Debtors' contractual representations similarly misrepresented the characteristics of those loans. (*See id.* ¶ 14.)

A. Rep & Warranty Cases

Two monoline insurance companies—Financial Guaranty Insurance Company ("FGIC") and Assured Guaranty Municipal Corp. ("Assured Guaranty")—have filed eleven Rep &

Warranty Cases against the Debtors and Non-Debtor Corporate Affiliates Ally Financial and/or Ally Bank. FGIC filed ten of the lawsuits, and Assured Guaranty filed the other.

These Rep & Warranty Cases all relate to the financial guaranty insurance policies that the plaintiffs issued in connection with securitizations sponsored by the Debtors' two operating subsidiaries, Debtor Residential Funding Co. ("RFC") or Debtor GMAC Mortgage LLC ("GMACM").[2] Debtors RFC or GMACM, as the sponsor of the securitizations, allegedly procured financial guaranty insurance policies (which guarantee repayment of mortgage principal and interest) from the plaintiffs to enhance the credit ratings and marketability of the securities that were ultimately issued. For example, FGIC alleges that RFC or GMACM "fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices and the credit quality and characteristics of the tens of thousands of ... loans ... that provided the collateral for the [securities]." *See, e.g., Fin. Guar. Ins. Co. v. Ally Fin., Inc.*, No. 12-cv-1658 (S.D.N.Y. filed Mar. 6, 2012) Compl. ¶ 1 (Ex. 23 to Haims Decl.). Assured Guaranty makes similar allegations. *See Assured Guar. Mun. Corp. v. GMAC Mortg., LLC*, No. 12-cv-3776 (S.D.N.Y. filed May 11, 2012) Compl. ¶ 7 (Ex. 26 to Haims Decl.).

The gravamen of all eleven Rep & Warranty complaints is the Debtors' alleged fraudulent inducement of the insurance agreements. The factual allegations focus on the actions of Debtors RFC and GMACM. All ten FGIC complaints do so in virtually identical language. *See, e.g., Fin. Guar. Ins. Co. v. Ally Fin., Inc.*, No. 12-cv-1658 Compl. ¶¶ 79-84 (Ex. 23 to Haims Decl.) (detailing "GMACM's Securitizations and Financial Guaranty Insurance Generally"); *id.* ¶¶ 93-114 (detailing "GMACM's Fraudulent Inducement of FGIC"); *id.* ¶¶ 130-

[2] As the organizational chart attached as Appendix B reflects, GMAC Mortgage LLC is a Debtor subsidiary of Debtor ResCap, while GMAC Mortgage Group LLC is a wholly separate Non-Debtor Corporate Affiliate.

157 (detailing "GMACM's Representations, Warranties and Affirmative Covenants"); *id.* ¶¶ 192-209 (detailing "GMACM's Fraud"); *id.* ¶¶ 215-221 (detailing "GMACM's Breach of Obligations as Master Servicer"). Assured Guaranty's complaint also centers on the Debtors' alleged actions. *See Assured Guar. Mun. Corp. v. GMAC Mortg., LLC*, No. 12-cv-3776, Compl. ¶¶ 42-65, 70-78, 81-104 (Ex. 26 to Haims Decl.) (describing contracts that Debtors entered into, alleged representations and warranties therein, and alleged breaches thereof).

The complaints attempt to allege facts against the Non-Debtor Affiliates, but even those allegations are tied to, and depend on, the alleged conduct of Debtors RFC and GMACM. For example, all of FGIC's complaints allege:

- "Ally Financial knew that the representations and warranties GMACM made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false." *Fin. Guar. Ins. Co.*, No. 12-cv-1658, Compl. ¶ 119 (Ex. 23 to Haims Decl.).
- "Ally Bank was aware of the representations and warranties GMACM made to FGIC regarding the nature of GMACM's business practices and the characteristics of the Mortgage Loans ...." *Id.* ¶ 117.

In addition, the causes of action in each Rep & Warranty complaint confirm that the Non-Debtor Affiliates' liability is dependent upon the Debtors' liability. The plaintiffs assert that the Non-Debtor Affiliates aided and abetted the Debtors and that Non-Debtor Affiliate Ally Financial was the alter ego of the Debtors. *See, e.g.*, *id.* ¶¶ 283-292. Those alter ego and aiding and abetting claims, however, require the plaintiffs to establish underlying wrongdoing by the primary actor—here, the alleged fraudulent inducement by Debtors GMACM or RFC.

In four lawsuits, the plaintiffs purport to bring direct claims against Non-Debtor Affiliate Ally Bank, but even those claims are inextricably intertwined with the claims against the Debtors. The plaintiffs allege that Ally Bank breached obligations arising from securitization agreements with the plaintiffs and the Debtors based on its role as custodian of the underlying mortgage loans. Those claims, though, are based on the securitization agreements, the mortgage

loan origination and acquisition process, and the handling and transfer of the mortgage loans—all of which involve facts and information in the Debtors' possession and are the foundation for the plaintiffs' claims against the Debtors. (*See* Lipps Decl. ¶¶ 71-72.)

The eleven Rep & Warranty Cases are still in the initial stages of litigation. (*See id.* ¶ 26; App'x to Lipps Decl. ¶¶ 1-6.) In fact, they were all filed within the last six months. (*See id*.) No substantive motions have been filed and discovery has not yet begun. (*See* Lipps Decl. ¶ 26.) Once discovery commences, however, it will be substantial—and directed at the Debtors. (*See id.* ¶¶ 26-31.) The best evidence of this is the discovery already taken in a rep & warranty case filed by MBIA Insurance, another monoline insurer, against only Debtor RFC. (*See id.* ¶ 26-27.) That case involved only five securitizations sponsored by Debtor RFC in less than one year (by contrast, these eleven cases involve nineteen securitizations over several years). (*See id.* ¶ 28.) In that case, Debtor RFC has produced over one million pages of documents and nearly one terabyte of data including source code, other application data, and back-end loan-level data relating to automated systems used in connection with underwriting, pricing, acquiring, pooling, auditing, and servicing the mortgage loans. (*See id.*) The Debtors' current and former employees were deposed for more than eighty days. (*See id.* ¶ 29.)

B. PLS Investor Cases

Purchasers of mortgage-backed securities issued in Debtor-sponsored securitizations have filed fifteen PLS Investor Cases against Non-Debtor Affiliates: Ally Securities is named in thirteen; Ally Financial is named in six; GMACM Group is named in three; Ally Bank is named in two; and certain of the Debtors' directors and officers are named in six.

Like the Rep & Warranty Cases, the PLS Investor Cases are based on the Debtors' conduct. Each PLS Investor Case is premised on the allegation that the Debtors' offering documents "contained untrue statements of material facts and omitted to state material facts

necessary in order to make the Offering Documents not misleading." *See, e.g., Fed. Home Loan Bank of Chi. v. Banc of Am. Funding Corp.*, No. 10 CH 45033 (Ill. Cir. Ct., Cook Cnty. filed Apr. 8, 2011) Am. Compl. ¶ 4 (Ex. 6 to Haims Decl.). Each PLS Investor Case alleges that the Debtors drafted those documents, circulated them to potential investors, filed them with the SEC, and issued the securities:

> Prior to issuing the Securities, the ***Depositor Defendants [Debtors RALI, RAMP, and RASC] prepared and filed*** with the SEC on Form S-3 registration statements under the Securities Act of 1933, 15 U.S.C. § 77k, indicating their intention to sell the Securities. The ***Depositors then issued*** the Securities pursuant to the registration statements, accompanying prospectuses, and subsequent prospectus supplements, or private placement memoranda. The ***Depositor Defendants*** and the Wall Street Banks ***drafted*** the prospectus supplements or private placement memoranda ***and circulated*** these documents to investors, including Plaintiff. The ***Depositor Defendants filed*** the prospectus supplements with the SEC.

Cambridge Place Inv. Mgmt. Inc. v. Morgan Stanley & Co., No. 10-2741-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed July 9, 2010) Compl. ¶ 496 (emphasis added) (Ex. 2 to Haims Decl.).[3]

Like the Rep & Warranty Cases, the PLS Investor Cases assert causes of action against the Non-Debtor Affiliates that are predicated on the Debtors' allegedly wrongful conduct. Non-Debtor Affiliates Ally Financial and GMACM Group are typically referred to as "Control Persons," and their alleged liability is based on such a theory. For example:

- "As controlling persons ... the Controlling Person Defendants [Non-Debtor Affiliates Ally Financial and GMACM Group] are jointly and severally liable to [plaintiff] for the violations ... by the Depositor/Issuer Defendants [Debtors RAMP, RASC, and RFMSI] alleged herein." *Fed. Home Loan Bank of Chi. v. Banc of Am. Funding Corp..*, No. 10 CH 45033, Am. Compl. ¶¶ 678, 693.

- "As controlling persons pursuant to Massachusetts General Laws ... the Corporate ... Controlling Person Defendants [Non-Debtor Affiliates Ally Financial and GMACM Group] are jointly and severally liable with the controlled person or

[3] *See also Cambridge Place Inv. Mgmt. Inc. v. Morgan Stanley & Co.*, No. 11-0555-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed Feb, 11, 2011) Compl. ¶ 487 (Ex. 3 to Haims Decl.) (same); *Huntington Bancshares Inc. v. Ally Fin. Inc.*, No. 27-cv-11-20276 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 19, 2011) Am. Compl. ¶ 48 (Ex. 8 to Haims Decl.) (alleging that Debtor entities "prepared and filed with the SEC the ... registration statements, to which the Certificates purchased by Plaintiff are traceable"); *Stichting Pensioenfonds ABP v. Ally Fin. Inc.*, No. 27-CV-11-20426 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 11, 2011) Compl. ¶ 58 (Ex. 12 to Haims Decl.) (same).

> entity [Debtors RFC and RALI] to the [plaintiff] for violations of Massachusetts General Laws ... alleged herein." *Fed. Home Loan Bank of Bos. v. Ally Fin. Inc.*, No. 11-cv-10952 (D. Mass. filed Apr. 20, 2011) Compl. ¶ 823 (Ex. 5 to Haims Decl.).

The plaintiffs' claims against Non-Debtor Affiliates Ally Securities and Ally Bank are similarly based on allegations that are virtually identical to the allegations against the Debtors. *See, e.g., Cambridge Place Inv. Mgmt.* No. 10-2741-BLS2, Compl. ¶¶ 522, 530 (Ex. 2 to Haims Decl.) (basing liability of Ally Securities and Debtors on exact same factual allegations); *Cambridge Place Inv. Mgmt. Inc. v. Morgan Stanley & Co.*, No. 11-0555-BLS2, Compl. ¶¶ 497, 505 (Ex. 3 to Haims Decl.) (same); *Mass. Mut. Life Ins. Co. v. Residential Funding Co.*, No. 11-cv-30035-MAP (D. Mass. filed May 17, 2012) First Am. Compl. ¶¶ 219-23 (Ex. 9 to Haims Decl.) (asserting same allegations against Debtors and Non-Debtor Affiliate Ally Securities).[4]

Similarly, all of the claims against the D&Os are based on the same allegations as the claims against the Debtors. *See, e.g., Huntington Bancshares Inc. v. Ally Fin. Inc.*, No. 27-cv-11-20276, Am. Compl. ¶¶ 215-27 (Ex. 8 to Haims Decl.) (bringing same claims against "Defendants" without differentiating between acts of D&Os and acts of Debtors); *N.J. Carpenters Health Fund v. RALI Series 2006-QO1 Trust*, No. 08-CV-08781-HB (S.D.N.Y. filed Jan. 3, 2011) Second Am. Compl. ¶¶ 225-29 (Ex. 10 to Haims Decl.) (same); *Stichting Pensioenfonds ABP v. Ally Fin. Inc.*, No. 27-CV-11-20426, Compl. ¶¶ 284-303 (Ex. 12 to Haims Decl.) (same); *Union Cent. Life Ins. Co. v. Credit Suisse First Bos. Mortg. Sec. Corp.*, No. 11-

[4] In two PLS Investor Cases, the plaintiff, Cambridge Place Investment Management Inc., voluntarily dismissed the Debtor defendants after the Debtors commenced these Chapter 11 cases. The plaintiff's claims against the Non-Debtor Affiliates are still founded on, and interwoven with, the conduct of the Debtors—just as they were before the plaintiff strategically chose to dismiss the Debtor defendants. In a third PLS Investor Case, filed after the commencement of these Chapter 11 cases, the plaintiff, the Federal Deposit Insurance Corporation, did not name any Debtors as defendants, instead naming only Non-Debtor Affiliate Ally Securities. The FDIC's claims against Ally Securities are nonetheless based on the Debtors' conduct, like the other PLS Investor Cases. As the FDIC's complaint concedes, the Debtors originated and securitized the loans; Ally Securities was merely the underwriter. *See, e.g., Fed. Deposit Ins. Corp. v. Bear Stearns Asset Backed Sec. I LLC*, No. 12-cv-4000 (S.D.N.Y. filed May 18, 2012) Compl. ¶ 37 Item 37 and ¶ 46 Item 46 (Ex. 4 to Haims Decl.).

cv-02890 (S.D.N.Y. filed May 4, 2012) Am. Compl. ¶¶ 815-16, 818, 828-29, 932-36, 847-60 (Ex. 14 to Haims Decl.) (same); *W. & S. Life Ins. Co. v. Residential Funding Co.*, No. A1105042 (Ohio Ct. Com. Pl., Hamilton Cnty. filed Sept. 9, 2011) Am. Compl. ¶¶ 231-51, 264-77 (Ex. 15 to Haims Decl.) (same); *Mass. Mut. Life Ins. Co. v. Residential Funding Co., LLC*, No. 11-cv-30035, First Am. Compl. ¶¶ 225-34 (Ex. 9 to Haims Decl.) (asserting joint and several liability against D&Os for claims against debtors).

The fifteen PLS Investor Cases that name Non-Debtor Affiliates are primarily at the initial stages of litigation. (*See generally* Lipps Decl.; App'x to Lipps Decl. ¶¶ 7-38.) Discovery is only proceeding in two cases, and that discovery has only just begun. Those two cases, however, make clear that the discovery burdens on the Debtors will be severe. (*See* Lipps Decl ¶¶ 39-43, 54-55.) Because the plaintiffs' claims are based almost entirely on the Debtors' conduct, their discovery requests also focus on the Debtors' documents and witnesses—and those requests are voluminous. In one case involving seven securitizations spanning three years, the plaintiffs have requested the loan files for all 48,000 loans at issue—a request that may generate more than five million pages, and possibly twice that amount. (*See id.* ¶¶ 33, 39.) Those loan files are in the custody and control of Debtor entities, and the burden of responding to that request would inevitably fall on the Debtors' personnel. (*See id.* ¶ 39.) The plaintiffs' sweeping requests also seek all internal communications, and communications with rating agencies, underwriters, due diligence firms, and government agencies, regarding the loans and all related business activities. (*See id.* ¶ 40.) In essence, the plaintiffs are requesting all internal and external communications, including emails, regarding the seven securitizations at issue. Those communications could total hundreds of thousands of pages. (*See id.* ¶¶ 41-42.) And the emails for the relevant time period are only available on thousands of back-up tapes, meaning that the

emails would have to be restored, processed, and searched before document review could begin. (*See id.* ¶ 43.) Those costly, time-consuming efforts would fall upon the Debtors. (*See id.*)

C. FHFA Case

The FHFA has filed one lawsuit against the Debtors and Non-Debtor Affiliates Ally Financial, GMACM Group, and Ally Securities. The FHFA filed similar lawsuits against sixteen other groups of defendants. Fifteen of the other cases are coordinated with the Ally suit before the same federal judge in the Southern District of New York, and pretrial activities are proceeding in a coordinated fashion.

The gravamen of the FHFA Case—like the other MBS Actions—is that the Debtors allegedly made "false and misleading statements and omissions in registration statements, prospectuses, and other offering materials pursuant to which certain residential mortgage-backed securities ... were purchased by Freddie Mac." *Fed. Hous. Fin. Agency v. Ally Fin. Inc.*, No. 652441/2011 (N.Y. Sup. Ct. filed Sept. 2, 2011) (removed to S.D.N.Y., No. 11-cv-07010) Compl. ¶ 1 (Ex. 27 to Haims Decl.). As with the PLS Investor Cases, the focus of the FHFA's factual allegations is the Debtors' alleged wrongdoing:

- "[Debtor] GMAC-RFC employed its wholly-owned subsidiaries, RFC, RALI, RASC and RAMP, in the key steps of the securitization process.... For all 21 Securitizations, RFC was the sponsor and either RALI, RASC or RAMP was the depositor." *Id.* ¶ 63.

- "[Debtor HomeComings] was the GMAC entity responsible for the origination of all of GMAC's residential mortgage loans during the relevant time period." *Id.* ¶ 117.

- "[Debtor] ResCap, as the sole corporate parent of GMAC-RFC, had the practical ability to direct and control the actions of GMAC-RFC, and in fact, exercised such direction and control over the activities of this entity related to the issuance and sale of the Certificates to Freddie Mac." *Id.* ¶ 65.

The causes of action against the Non-Debtor Affiliates likewise make clear that their liability is predicated upon the Debtors' alleged wrongful conduct. For example:

- "This claim is brought under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o ('Section 15'), against ... [Non-Debtor GMACM Group] and [Non-Debtor Ally Financial] for controlling-person liability with regard to the Section 11 and Section 12(a)(2) causes of actions set forth above. *Id.* ¶ 215.

- "Defendant [Non-Debtor GMACM Group] wholly owns [Debtor] ResCap, and is thus, a parent of [Debtors] GMAC-RFC, RFC, and the Depositor Defendants.... It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans." *Id.* ¶ 221.

The claims against Non-Debtor Affiliate Ally Securities are substantially similar to and intertwined with the basis for the Debtors' liability. *See id.* ¶¶ 201-06, 229-31, 234-36, 259-61.

The FHFA cases have not progressed substantially, and discovery has only just begun. (*See* Lipp Decl. ¶ 65.)

D. Discovery Burdens on the Debtors

If the MBS Actions against the Non-Debtor Affiliates are allowed to continue, the Debtors will inevitably face burdensome discovery requests. The lawsuits are based on the Debtors' conduct. The plaintiffs' claims hinge on whether the Debtors' offering materials for the securitizations at issue contained misrepresentations or omissions regarding the underlying mortgage loans, and whether the Debtors' contractual representations and warranties similarly misrepresented the characteristics of the loans. Thus, the key factual areas for discovery include:

a. The mortgage loan underwriting and diligence standards applied ***by the Debtors***;

b. The loan origination and acquisition practices followed ***by the Debtors***;

c. The pooling of mortgage loans for securitization ***by the Debtors***;

d. The preparation of securitization-related documents and risk disclosures ***by the Debtors***; and

e. The monitoring of loan performance and quality audit practices ***of the Debtors***.

The Debtors have possession and control of virtually all of the documents necessary to prosecute or defend against the plaintiffs' claims. (*See* Lipps Decl. ¶ 15.) The mortgage loan files, the transaction documents for each securitization, the securitization-related agreements and disclosures, the loan-level performance data, the underwriting guidelines and memoranda applicable to the loans, the due diligence materials, the quality audit documents and data for the loans, and the historical emails for those involved in every aspect of the business all are in the Debtors' possession—and those are the documents central to determining whether there *was* a contractual misrepresentation or any securities fraud. (*See id.*)

In contrast, the Non-Debtor Affiliates possess very few relevant documents. Neither Ally Financial nor GMACM Group have any documents or information specific to any securitizations or the mortgage loan underwriting process. (*See id.* ¶ 16.) Ally Securities at most would have a small amount of diligence- or sale-related information relating to its role as a securitization underwriter. (*See id.*) Ally Bank would, at a maximum, have a small amount of basic loan-level information relating to loans it contributed to the securitizations or for which it served as custodian, and its own underwriting guidelines—but not RFC's or GMACM's guidelines, which are the ones at issue in the litigation. (*See id.*) None of these materials are sufficient to prosecute or defend against the plaintiffs' claims, because none relate to the underwriting or securitization practices of the sponsors of the securitizations. (*See id.*) The document discovery, therefore, will focus almost exclusively on the Debtors.

The witnesses will also be current or former employees of the Debtors. The Debtors' employees have knowledge of the issues raised in the complaints, including the mortgage loan files, the underwriting policies and practices, the securitizations, and the due diligence and audit

processes. (*See id.* ¶ 74.) The Non-Debtor Affiliates, however, have few employees who can speak to those issues. In fact, GMACM Group does not even have any employees of its own.

Moreover, discovery in each lawsuit will be unique such that little, if any, discovery in one lawsuit will be necessary or relevant to another lawsuit. (*See id.* ¶ 17.) Each MBS Action involves different securitizations that were separately negotiated and structured. (*See id.*) Each securitization shelf (RALI, RAMP, RASC, RFMSI, and RFMSII) involves unique documents, processes, and personnel: for example, RALI was the shelf through which Alt-A first lien securitizations were offered; RASC was the shelf through which subprime first lien securitizations were offered; RFMSI was the shelf through which prime and jumbo first liens were offered; and RFMSII was the shelf through which second lien securitizations were offered. (*See id.*) Each securitization itself involves different mortgage loans. (*See id.*) And different loan products—first liens, second liens, prime, Alt-A, subprime—likewise involve different teams of employees, different automated processes, different underwriting guidelines, different diligence standards, and different audit practices. (*See id.*) The processes and personnel changed over time. (*See id.*)

As a result, each lawsuit essentially poses a new discovery challenge and unique discovery burdens from every other lawsuit. (*See id.*) The documents and witness testimony necessary for one case will not be relevant to other cases. (*See id.*) For example, a lawsuit involving 2005 RALI securitizations of Alt-A first liens will involve entirely different documents and testimony from a lawsuit involving 2006 RFMSII home equity securitizations, which would be different again from a lawsuit involving RASC subprime securitizations of any vintage. (*See id.*) These discovery burdens will primarily fall on the Debtors. (*See id.* ¶¶ 14, 19.)

III. THE SHARED INSURANCE POLICIES

Non-Debtor Affiliate Ally Financial has annually obtained Errors & Omissions insurance policies that also provide coverage to numerous insureds including the Debtors and the other Non-Debtor Affiliates. (*See* Whitlinger Decl. ¶ 25; *see also* Ex. C to Whitlinger Decl.) The Non-Debtor Affiliates and the Debtors are both entitled to use the proceeds to satisfy defense costs, settlements, and judgments for claims covered by the policies. (*See* Ex. C to Whitlinger Decl.) The shared insurance proceeds typically are paid on a first-billed, first-paid basis after the retention is exhausted, such that payments on behalf of the Non-Debtor Affiliates will deplete the proceeds available to the Debtors. (*See id.*) Non-Debtor Affiliate Ally Financial has tendered certain of the MBS Actions to the insurers for coverage under the E&O insurance policies, and the Debtors (and the other insureds, including the Non-Debtor Affiliates) would also be entitled to seek the insurance coverage for those lawsuits.

Attached as Exhibit C to the Whitlinger Affidavit is the primary E&O insurance policy covering the period 2007 to 2008. (*See id.*) That policy is representative of subsequent E&O policies, including the terms and conditions in those policies. There are also excess policies that sit above the primary policy and provide additional coverage for each policy year.

IV. THE DEBTORS' INDEMNIFICATION OBLIGATIONS

The Debtors have certain indemnification obligations to the Non-Debtor Affiliates based on two separate agreements.

Debtor ResCap has certain indemnification obligations to the Non-Debtor Corporate Affiliates pursuant to an Amended and Restated Operating Agreement between Debtor ResCap and Non-Debtor Affiliate Ally Financial. (*See* Whitlinger Decl. ¶ 24.) Section 3(c) of that Operating Agreement provides that "ResCap will, to the fullest extent permitted by law, indemnify, defend and hold harmless" the Non-Debtor Affiliates "from and against any losses

related to ResCap Indemnifiable Liabilities." (*See* Ex. B to Whitlinger Decl.) Pursuant to this provision, the Debtors have agreed to indemnify the Non-Debtor Corporate Affiliates for "Liabilities [that] (a) relate to, (b) arise out of or (c) result principally from" the "businesses and operations . . . of ResCap or its Subsidiaries." (*Id.* § 1.) The MBS Actions bring claims and allegations that "relate to, arise out of or result principally from" the "businesses and operations … of ResCap or its Subsidiaries"—*i.e.*, mortgage servicing and securitization. To the extent that the Non-Debtor Corporate Affiliates incur defense costs and losses through liability decisions in the MBS Actions, they will have direct claims against the Debtors' estate on account of these indemnification obligations.

The Amended and Restated Limited Liability Company Agreement of ResCap ("ResCap LLC Agreement") provides for indemnification of current and former directors, officers, and employees of ResCap and its subsidiaries. (*See* Whitlinger Decl. ¶ 23.) The ResCap LLC Agreement covers any employee, officer, or director who is "a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative" and provides indemnification for "expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the [officer, director, or employee or on that person's behalf] in connection with such action, suit or proceeding and any appeal therefrom." (*See* Ex. A to Whitlinger Decl. § 18(a)(i)-(ii)).) Those indemnification obligations cover losses and defense costs (and require advancement of such fees) associated with claims arising out of an act or omission committed in good faith while acting as an officer, director, or employee—such as the claims alleged in the MBS Actions. (*See id.*)

V. THE PLAN SUPPORT AGREEMENTS AND RMBS TRUST SETTLEMENT AGREEMENTS

The Debtors' efforts to consummate their proposed assets sales and restructure their businesses are proceeding on track. The Debtors have already obtained support for their proposed asset sales and restructuring plan from three key constituencies. (*See* Whitlinger Decl. ¶ 8.) In conjunction with its agreement to purchase the Debtors' legacy portfolio of mortgage loans, Ally Financial has agreed to support a proposed restructuring plan which includes the Debtors releasing their claims against Ally Financial as well as a third-party release of creditors' claims against the Non-Debtor Corporate Affiliates. (*See id.*) The Debtors have received support from creditors holding 37% of ResCap's outstanding junior secured notes. (*See id.*) The settlement with the junior secured noteholders also has the benefit of reducing the estate's interest obligations by $350 million. (*See id.*)

The Debtors also entered into written Trust Settlement Agreements, dated as of May 13, 2012, with two groups of institutional investors who hold a substantial portion of the MBS that are the subject of the PLS Investor Cases. (*See id.* ¶ 9.) These institutional investors hold more than 25% of the voting rights in one or more classes of securities in 290 of the 392 private label MBS that the Debtors issued from 2004 to 2007. (*See id.*) Those agreements provide, among other things, that the settling investors will direct the MBS trustees for each trust in which they have a 25% or more interest to settle its claims and support the proposed restructuring plan. (*See id.*) In exchange, the MBS trusts will receive a maximum aggregate allowed general unsecured claim of $8.7 billion for all representation and warranty claims, which sum would be reduced pro-rata for any trusts that do not accept the settlement offer. (*See id.*)

ARGUMENT

The automatic stay of Section 362(a) is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986); *accord E. Refractories Co. v. Forty Eight Insulations Inc.*, 157 F.3d 169, 172 (2d Cir. 1998); *In re Madoff*, 2012 WL 990829, at *7 (S.D.N.Y. Mar. 26, 2012); *In re Johns-Manville Corp.*, 26 B.R. 420, 425 (Bankr. S.D.N.Y. 1983). A primary purpose of the automatic stay is to "provide[] the debtor with 'a breathing spell from his creditors'" so that its restructuring efforts can proceed in an efficient, coordinated manner. *Teachers Ins. & Annuity Ass'n of Am. v. Butler*, 803 F.2d 61, 64 (2d Cir. 1986) (quoting S. Rep. No. 989, 95th Cong. 2d Sess. 54-55 (1978)); *accord In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990); *In re Calpine Corp.*, 354 B.R. 45, 49 (Bankr. S.D.N.Y. 2006).

Courts have extended the automatic stay pursuant to Bankruptcy Code Sections 362 and 105 in order to stay the continued prosecution of claims against non-debtors where failure to do so would have an adverse economic impact on the debtors or would frustrate or impair their restructuring efforts. *See, e.g., Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287-88 (2d Cir. 2003); *In re Calpine Corp.*, 365 B.R. 401, 410 (S.D.N.Y. 2007); *In re 1031 Tax Grp., LLC*, 397 B.R. 670, 686 (Bankr. S.D.N.Y. 2008) (Glenn, J.). Courts extend the automatic stay in such circumstances because permitting such claims to go forward would effectively eviscerate the protections that the automatic stay affords debtors. *See, e.g., In re United Health Care Org.*, 210 B.R. 228, 233 (S.D.N.Y. 1997). "In other words, 'Congressional intent to provide relief to debtors would be frustrated by permitting indirectly what is expressly prohibited in the Code.'" *In re Calpine*, 354 B.R. at 49 (quoting *In re United Health Care*, 210 B.R. at 233).

In order to effectuate the purpose of the automatic stay and provide the Debtors the protections it affords, this Court should stay or enjoin the continuation of the MBS Actions against the Non-Debtor Affiliates pursuant to Sections 362 and 105 of the Bankruptcy Code.

I. THE AUTOMATIC STAY OF SECTION 362 SHOULD BE EXTENDED TO STAY THE MBS ACTIONS AS AGAINST THE NON-DEBTOR AFFILIATES.

Section 362 automatically stays all "action[s] or proceeding[s] against the debtor" and all actions "to obtain possession … or to exercise control over property of the estate." 11 U.S.C. §§ 362(a)(1) and 362(a)(3). Pursuant to Section 362(a)(1), the Second Circuit has affirmed the extension of the automatic stay to stay actions against non-debtors where there is such an identity of interest that the action against the non-debtor would have an adverse impact on the debtor's estate or its efforts to restructure. *See Queenie*, 321 F.3d at 287-88. The Second Circuit has also affirmed the extension of the automatic stay pursuant to Section 362(a)(3) to stay actions against non-debtors that would otherwise "obtain possession … or … exercise control" of the estate's property. *See In re 48th St. Steakhouse, Inc.*, 835 F.2d 427, 430-31 (2d Cir. 1987).

This Court should extend the automatic stay to the Non-Debtor Affiliates in the MBS Actions pursuant to both 362(a)(1) and 362(a)(3). *First*, the Debtors and Non-Debtor Affiliates share an identity of interest such that judicial decisions or factual findings in the MBS Actions against the Non-Debtor Affiliates will effectively amount to decisions against the Debtors pursuant to the doctrines of collateral estoppel and *stare decisis*. *Second*, given that the claims and allegations against the Non-Debtor Affiliates are based on the Debtors' conduct, continued prosecution of the MBS Actions against the Non-Debtor Affiliates will inevitably impose a significant discovery burden on the Debtors, distract their key personnel from critical restructuring activities, and frustrate their efforts to restructure. *Third*, the Debtors' obligation to indemnify the Non-Debtor Affiliates for any defense costs and losses incurred in the MBS

Actions also warrants an extension of the stay under (a)(1). *Finally*, if the MBS Actions are allowed to continue, the Non-Debtor Affiliates may draw down insurance proceeds that the Debtors submit are property of the estate, thus the stay should be extended pursuant to (a)(3).

A. The MBS Actions Should Be Stayed Under Section 362(a)(1) Given The Non-Debtor Affiliates' Identity Of Interest With The Debtors.

The automatic stay of Section 362(a)(1) should be extended to stay actions against non-debtors "where 'there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant.'" *Queenie*, 321 F.3d at 287-88 (quoting *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)); *accord In re N. Star Contracting Corp.*, 125 B.R. 368, 370 (S.D.N.Y. 1991) ("[I]n circumstances where the debtor and the non-bankrupt party can be considered … as having a unitary interest, a section 362(a)(1) stay may suspend an action against a non-bankrupt party."); *In re Lomas Fin. Corp.*, 117 B.R. 64, 67-68 (S.D.N.Y. 1990); *In re Calpine*, 354 B.R. at 49. As the Second Circuit has made clear, the purpose of the rule is to prevent "a claim against the non-debtor [that] will have an immediate adverse economic consequence for the debtor's estate." *Queenie*, 321 F.3d at 287.

The Debtors and Non-Debtor Affiliates here have an identity of interest because the plaintiffs' claims against the Non-Debtor Affiliates are based on, and inextricably intertwined with, the Debtors' conduct. Thus, the continuation of the MBS Actions against the Non-Debtor Affiliates will adversely impact the Debtors' estate: those lawsuits will result in decisions that amount to decisions against the Debtors; they will inevitably lead to burdensome discovery from the Debtors; and they will create significant indemnification obligations for the Debtors.

1. Continuation of the MBS Actions Would Result In Decisions That Amount To Decisions Against The Debtors.

As the Fourth Circuit held in *A.H. Robins*—a decision endorsed by the Second Circuit in *Queenie*—the automatic stay should be extended to non-debtors where "there is such identity

between the debtor and the third-party defendant" that a finding or "judgment against the third-party defendant will in effect be a judgment or finding against the debtor." *A.H. Robins*, 788 F.2d at 999; *accord Queenie*, 321 F.3d at 288. This Court has confirmed that "a stay should be provided to codefendants when the claims against them and the claims against the debtor are inextricably interwoven, presenting common questions of law and fact, which can be resolved in one proceeding." *In re Ionosphere Clubs, Inc.*, 111 B.R. 423, 434 (Bankr. S.D.N.Y. 1990).

That is precisely the case here. The allegations and claims against the Non-Debtor Affiliates are "inextricably interwoven" with the allegations and claims against the Debtors. The PLS Investor and FHFA Cases rest on the allegation that the Debtors' offering materials for the securitizations at issue contained misrepresentations or omissions regarding the underlying mortgage loans. The claims and allegations against the Non-Debtor Affiliates are based on that fundamental allegation. If there is a finding of liability against the Non-Debtor Affiliates, it necessarily would rest on a finding that the Debtors' offering materials contained misrepresentations or omissions.

Similarly, the Rep & Warranty Cases rest on the allegation that the Debtors' representations and warranties in contracts with the monoline insurers similarly misrepresented the characteristics of the loans. That lynchpin allegation is the foundation for the allegations and claims against the Non-Debtor Affiliates. Again, if there is a finding of liability against the Non-Debtor Affiliates, there necessarily would be a finding that the Debtors' contractual representations and warranties were false or misleading.

Based on these interwoven allegations, the plaintiffs assert claims against the Non-Debtor Corporate Affiliates for control person, alter ego, and aiding and abetting liability. *See, e.g.*, *Fed. Home Loan Bank of Chi. v. Banc of Am. Funding Corp.*, No. 10 CH 45033, Am. Compl.

¶ 678, 693, 707 (Ex. 6 to Haims Decl.); *Fin. Guar. Ins. Co. v. Ally Fin., Inc.*, No. 12-cv-1658, Compl. ¶¶ 210-14, 222-59, 283-92, 336-340 (Ex. 23 to Decl of J. Haims). Those claims are dependent on the Debtors' alleged conduct, as the plaintiffs' complaints make clear:

- "Ally Financial, acting directly and/or indirectly through ResCap, directed ***GMACM's actions*** as set forth in this cause of action. *Fin. Guar. Ins. Co. v. Ally Fin. Inc.*, No. 12-cv-1658, Compl. ¶¶ 271, 279, 297, 305, 312, 325, 332, 337 (emphasis added) (Ex. 23 to Haims Decl.).

- "Ally Financial oversaw the actions of its subsidiaries and ***allowed them, including Defendants RALI, RAMP, RASC, and Residential Funding, to misrepresent*** the mortgage loans' characteristics in the Offering Documents." *Huntington Bancshares Inc. v. Ally Fin. Inc.*, No. 27-cv-11-20276, Am. Compl. ¶ 212 (emphasis added) (Ex. 8 to Haims Decl.).

- ***"Defendant Ally*** wholly owns [GMACM Group] and RFS and is the ultimate parent of [GMACM-Group], ResCap, GMAC-RFC, RFC, and the Depositor Defendants.... ***It oversaw the actions of its subsidiaries and allowed them to misrepresent*** the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans." *Fed. Hous. Fin. Agency v. Ally Fin. Inc.*, No. 652441/2011, Compl. ¶ 222 (emphasis added) (Ex. 27 to Haims Decl.).

The claims and allegations against the directors and officers are similarly based on the Debtors' actions:

- D&Os "***provided [Debtors] with substantial assistance in perpetrating the fraud***." *Huntington Bancshares Inc. v. Ally Fin. Inc.*, No. 27-cv-11-20276, Am. Compl. ¶ 245 (emphasis added) (Ex. 8 to Haims Decl.).

- D&Os are "jointly and severally liable to the same extent as the primary violators ***because [they were] officer[s] and/or director[s] of one or more [of the] primary violators and controlled their operations, including the securitizations at issue***." *Mass. Mutual Life Ins. Co. v. Residential Funding Co., LLC*, 11-cv-30035, Compl. ¶¶ 228-34 (emphasis added) (Ex. 9 to Haims Decl.).

- Each of the D&Os, "was, at the time of the wrongs alleged herein, a controlling person . . . . ***Each of the [D&Os] had the power to influence, and exercised that power and influence, to cause [Debtors] to engage in violations of the Securities Act***, as described above." *N.J. Carpenters Health Fund v. RALI Series 2006-QO1 Trust*, No. 08-CV-08781-HB, Second Am. Compl. ¶¶ 252-52 (emphasis added) (Ex. 10 to Haims Decl.).

Even the claims against Ally Securities and Ally Bank that are not based on a theory of derivative liability are nonetheless inextricably interwoven with the claims against the Debtors. Those claims arise almost exclusively out of the offering materials that the Debtors prepared and the alleged misrepresentations and misconduct in connection with the securitizations sponsored by the Debtors. (*See* Lipps Decl. ¶¶ 13-14, 24, 49.) Those claims could not go forward without also resolving allegations against the Debtors. (*See id.*)

Given the identity of interests between the Debtors and the Non-Debtor Affiliates, any decision against the Non-Debtor Affiliates would effectively amount to a decision against the Debtors—and that includes decisions on discovery disputes and dispositive motions, factual findings, and judgments on liability and damages. *See In re Ionosphere Clubs*, 111 B.R. at 434-35; *In re Adelphia Commc'ns Corp.*, 302 B.R. 439, 451-52 (Bankr. S.D.N.Y. 2003). In these circumstances, courts have extended the automatic stay to cover claims against non-debtors because of the risk that a decision against the non-debtors will be given collateral estoppel effect and applied against the debtors. *See, e.g.*, *In re Calpine*, 354 B.R. at 50 (extending the automatic stay to claims against non-debtor where not doing so would "expos[e] Calpine to a significant risk of collateral estoppel"); *In re Calpine*, 2007 WL 1302604, at *3 (Bankr. S.D.N.Y. Apr. 30, 2007) (same); *In re Adelphia*, 302 B.R. at 451 (extending the stay to claims against non-debtor given the "risk of imposition of collateral estoppel"); *In re Ionosphere Clubs*, 111 B.R. at 434-35 (extending stay to action against debtor's chairman); *In re Johns-Manville*, 26 B.R. at 429 (noting that debtor "could be collaterally estopped in subsequent suits from relitigating issues determined against its officers and directors"). Even if collateral estoppel arguably would not apply, the principle of *stare decisis* would nonetheless saddle the Debtors with findings and decisions rendered against the Non-Debtor Affiliates, warranting an extension of the automatic

stay. *See, e.g., In re Calpine*, 354 B.R. at 50; *In re Adelphia*, 302 B.R. at 451-52 (extending the automatic stay to non-debtors where "there is a considerable *stare decisis* risk, apart from any collateral estoppel risk").

Moreover, if the MBS Actions are allowed to proceed against the Non-Debtor Affiliates, the testimony and other evidence generated in those cases would inevitably be used later against the Debtors. That risk of evidentiary prejudice alone is sufficient to warrant extending the automatic stay to non-debtors. *See In re Johns-Manville Corp.*, 40 B.R. 219, 225 (S.D.N.Y. 1984) (noting that a "witness may be confronted with his prior testimony under oath in a future proceeding directly involving [the debtor], whether or not [the debtor] was a party to the record on which the initial testimony was taken"); *In re Lion Capital Grp.*, 44 B.R. 690, 703 (Bankr. S.D.N.Y. 1984) ("[T]he risk that testimony by employees or agents might be subsequently employed against the debtor … warranted the issuance of a stay.").

Because the Non-Debtor Affiliates' alleged liability is based on, and derivative of, the Debtors' alleged conduct, any decision or evidence gleaned against the former will be used against the latter. Given that identity of interest, the collateral estoppel, *stare decisis*, and evidentiary prejudice that the Debtors would face warrants extending the automatic stay to prohibit the continuation of the MBS Actions against the Non-Debtor Affiliates. *See Queenie*, 321 F.3d at 288 (quoting *A.H. Robins*, 788 F.2d at 999); *see also In re Quigley*, 676 F.3d at 57 (noting that "whether a suit seeks to impose derivative liability" is "a helpful way to assess whether it has the potential to affect the bankruptcy *res*").

2. Continuation of the MBS Actions Would Lead to Extensive, Burdensome Discovery From The Debtors At This Critical Juncture.

The MBS Actions should also be stayed because if they are allowed to proceed, the Debtors will face significant discovery burdens that will distract key personnel and frustrate the

Debtors' restructuring efforts. The plaintiffs' claims against the Non-Debtor Affiliates are interwoven with—and derivative of—the allegations against the Debtors. The plaintiffs cannot prove their claims against the Non-Debtor Affiliates without also establishing the underlying conduct of the Debtors. To establish the Debtors' conduct, the plaintiffs would have to pursue and obtain substantial discovery from the Debtors. And similarly, to defend against the plaintiffs' claims, the Non-Debtor Affiliates would need discovery from the Debtors.

That discovery from the Debtors will be Herculean. The plaintiffs' sweeping allegations and claims against the Non-Debtor Affiliates involve over 116 securitizations, each of which has thousands of pages of offering documents. (*See* Lipps Decl. ¶ 8.) Each securitization shelf (RALI, RAMP, RASC, RFMSI, and RFMSII) involves unique documents, processes, and personnel. (*See id.* ¶ 17.) And the securitizations include more than 660,000 mortgage loans, each of which involves hundreds of pages of documents. (*See id.* ¶ 8.)

Virtually all of the relevant documents are in the Debtors' possession and control. The Debtors have the mortgage loan files, the loan-level performance data, the underwriting guidelines and memoranda applicable to the loans, the due diligence materials, the quality audit documents and data for the loans, the transaction documents for each securitization, the documents relating to the preparation of and negotiation of the various securitization-related agreements and disclosures, and historical emails for those involved in every aspect of the business. (*See id.* ¶ 15.)

The Non-Debtor Affiliates, by contrast, possess very few documents at issue. Ally Financial and GMACM Group have no documents or information specific to any securitizations or the mortgage loan underwriting process. (*See id.* ¶ 16.) Ally Securities and Ally Bank at most would have a very limited amount of relevant documents, and those would concern discrete

issues relating to diligence practices, underwriting guidelines, and custodial functions. (*See id.*) Those documents, however, would not be sufficient to pursue claims against the Non-Debtor Affiliates—and any discovery therefore would focus almost entirely on the Debtors.

The plaintiffs' document requests in two PLS Investor Cases illustrate the burden that document discovery will likely pose on the Debtors. In one case involving seven securitizations spanning three years, the plaintiffs have requested the loan files for all 48,000 loans at issue. (*See id.* ¶¶ 33, 39.) Given that loan files often contain several hundred pages of documents, that request alone may yield more than five million pages—and possibly ten million pages. (*See id.* ¶ 39.) Those loan files are in the custody and control of Debtor entities, and the burden of responding to that request would inevitably fall on the Debtors' personnel. (*See id.*) The plaintiffs also seek virtually all internal and external communications, including emails, regarding the seven securitizations at issue. (*See id.* ¶ 40.) Those requests could generate hundreds of thousands of pages, if not millions. (*See id.* ¶ 42.) That volume is not even the most burdensome aspect of those requests. The emails for that six year period are only available on thousands of back-up tapes. (*See id.* ¶ 43.) The emails would have to be restored from the back-up tapes, then processed and searched before document review could begin. (*See id.*) In the other PLS Investor Case, the plaintiffs have served over ninety document requests covering virtually every aspect of the Debtors' loan origination, acquisition, underwriting, auditing, and securitization businesses. (*See id.* ¶ 58.) The costly, time-consuming efforts necessary to produce these documents would fall to the Debtors. (*See id.* ¶ 62.) And that is only for two of the twenty-seven MBS Actions against the Non-Debtor Affiliates.

The discovery from the Debtors' witnesses would also be significant. Although none of the MBS Actions against the Non-Debtor Affiliates have proceeded to the point of depositions,

the deposition discovery in one Rep & Warranty Case against solely Debtor entities illustrates the enormity of the task. (*See id.* ¶¶ 26-29.) That case, *MBIA Insurance Corp. v. Residential Funding Company, LLC*, involved only five securitizations sponsored by Debtor RFC from a single securitization shelf (RFMSII), of a single loan type (second liens), during a one year span—but the plaintiffs took eighty days worth of depositions from the Debtors' current and former employees. (*See id.* ¶¶ 28-29.) Similarly, the plaintiffs in one PLS Investor Case have already indicated that they intend to take eighty fact depositions of the Debtors' current and former employees. (*See id.* ¶ 54.)

In many instances, the Debtor employees who are critical to the discovery in the MBS Actions are also critical to the Debtors' efforts to preserve the value of the estate and successfully reorganize. For example, Heather Anderson, the Director of Treasury of ResCap, is a key witness and resource in the MBS Actions. (*See id.* ¶ 74(a); Decl. of A. Janiczek 7.) Ms. Anderson is one of the only remaining current employees of any ResCap entity with personal knowledge of the first-lien structured finance operations at Debtor RFC. (*See* Lipps Decl. ¶ 74(a).) As one of the Debtors' two principal operating entities, RFC's conduct is central to many of the transactions at issue in the MBS Actions against the Non-Debtor Affiliates. (*See id.*) Ms. Anderson is virtually the only current employee who can assist with the document discovery and provide testimony regarding RFC's first-lien mortgage securitizations. (*See id.*)

At the same time, Ms. Anderson is intimately involved in the Debtors' restructuring efforts. (*See* Janiczek Decl. ¶ 8.) Ms. Anderson and her team assisted in negotiating the DIP facility and reviewed and analyzed all the agreements relating to it. (*See id.*) In order to comply with the terms of the DIP agreement, Ms. Anderson and her group have worked to change all of Treasury's internal processes for reporting, and she is responsible for producing daily, weekly,

and monthly reports regarding all assets covered by the DIP facility. (*See id.*) In addition, the Debtors' other lenders—including Ally Financial, Citigroup, and Fannie Mae—have new reporting and cash management requirements as a result of the bankruptcy filing, and Ms. Anderson is responsible for creating, implementing, and managing all of the new reporting going forward. (*See id.* ¶ 9.) Ms. Anderson is also directly involved in working on negotiations and cash management issues relating to the proposed sale to Nationstar. (*See id.* ¶ 10.) These functions are critical to maintaining and preserving the value of the estate in order to maximize recovery to the Debtors' creditors. It would be difficult, if not impossible, for Ms. Anderson to perform these vital restructuring tasks if she were simultaneously dragged into the discovery efforts in the MBS Actions. (*See id.* ¶ 11.)

Like Ms. Anderson, Tim Witten, a Senior Director of Investor Reporting in the ResCap Master Servicing group, is also a key resource in the MBS Actions and in the Debtors' efforts to restructure. (*See id.* ¶ 12.) During the time period relevant to the MBS Actions, Mr. Witten was responsible for the Master Servicing function at Debtor RFC, and as such he managed all the cash flows to and through each securitization trust out to investors. (*See* Lipps Decl. ¶ 74(c).) Given his intimate knowledge of these issues, Mr. Witten has regularly been called upon to assist in the litigation of the MBS Actions: he has routinely provided documents, worked with outside counsel, and been deposed in the MBS Actions. (*See id.*) And Mr. Witten would be a necessary resource and witness if the MBS Action against the Non-Debtor Affiliates were to proceed. (*See id.*) Assisting with that litigation discovery, however, would frustrate Mr. Witten's restructuring-related objectives. (*See* Janiczek Decl. ¶ 16.) Mr. Witten is heavily involved in the consummation of the proposed sale to Nationstar, including comparison of overlapping systems, vetting of platform compatibility, and extensive exchanges of information that must take place in

connection with the sale. (*See id.* ¶ 13.) Mr. Witten also has ongoing responsibility for managing the settlement with the fifty states Attorneys General related to foreclosure practices. (*See id.* ¶ 15.) It will be virtually impossible for Mr. Witten to perform those critical tasks necessary to maximize the estate's value if he and his team are called upon to provide discovery in the MBS Actions against the Non-Debtor Affiliates. (*See id.* ¶ 16.)

Compounding the burden on Ms. Anderson, Mr. Witten, and the Debtors as a whole, the discovery will differ from case to case and little can be used over and over again. (*See* Lipps Decl. ¶ 17.) Each MBS Action against the Non-Debtor Affiliates involves different securitizations. (*See id.*) Each securitization involves a unique set of mortgage loans that were separately negotiated and structured. (*See id.*) Each securitization shelf (RALI, RAMP, RASC, RFMSI, and RFMSII) involves unique documents, processes, and personnel. (*See id.*) Different loan products—first liens, second liens, prime, Alt-A, and subprime—likewise involved different teams of employees, different automated processes, different underwriting guidelines, different diligence standards, and different audit practices. (*See id.*) As a result, the documents and witness testimony necessary for one case may not be relevant to the other cases. (*See id.*) For example, a lawsuit involving 2005 RALI securitizations of Alt-A first liens will involve entirely different documents and testimony from a lawsuit involving 2006 RFMSII home equity securitizations, which would be different still from a lawsuit involving RASC subprime securitizations of any vintage. (*See id.*) Thus, each lawsuit essentially poses a new discovery challenge and unique discovery burdens, most of which would fall on the Debtors' shoulders. (*See id.*)

In short, if the MBS Actions against the Non-Debtor Affiliates were to proceed, the Debtors would face a significant discovery burden. Substantial estate resources would be

consumed to provide that discovery—all at a time when the Debtors, their advisors, and their employees should be singularly focused on achieving the Debtors' restructuring objectives. The protections that the automatic stay was designed to provide the Debtors would be eviscerated, as the Debtors would be forced to participate in the MBS Actions as if the cases were still proceeding against them. *See, e.g.*, *In re United Health Care*, 210 B.R. at 233; *In re Calpine*, 354 B.R. at 49; *In re Am. Film Techs., Inc.*, 175 B.R. 847, 850-51 (Bankr. D. Del. 1994); *In re Loewen Grp., Inc. Sec. Litig.*, 2001 WL 530544, at *4 (E.D. Pa. May 16, 2001). The automatic stay should therefore be extended to halt the MBS Actions against the Non-Debtor Affiliates so that the Debtors' restructuring efforts are not frustrated or jeopardized.

3. Continuation of the MBS Actions Would Create Significant Indemnification Obligations for the Debtors' Estate.

Courts have also extended the automatic stay pursuant to Section 362(a)(1) "where an action against one party is essentially an action against the bankruptcy debtor, as in the case where a third-party is entitled to indemnification by the debtor for any judgment taken against it." *In re W.R. Grace & Co.*, 2004 WL 954772, at *2 (Bankr. D. Del. Apr. 29, 2004); *accord A.H. Robins*, 788 F.2d at 999 (extension of automatic stay to non-debtors appropriate where "there is such identity between the debtor and the third-party defendant" that a finding or "judgment against the third-party defendant will in effect be a judgment or finding against the debtor"); *Queenie*, 321 F.3d at 288; *see also In re Calpine*, 354 B.R. at 50; *In re United Health*, 210 B.R. at 232. Here, the automatic stay should also be extended because the Debtors are obligated to indemnify both the Non-Debtor Corporate Affiliates and the D&Os.

The Non-Debtor Corporate Affiliates are entitled to indemnification from the Debtors for certain claims pursuant to an Amended and Restated Operating Agreement between Debtor ResCap and Non-Debtor Ally Financial. (*See* Ex. B to Whitlinger Decl.) Section 3(c) of that

Operating Agreement provides that "ResCap will, to the fullest extent permitted by law, indemnify, defend and hold harmless" the Non-Debtor Affiliates "from and against any losses related to ResCap Indemnifiable Liabilities." (*See id.*) Pursuant to this provision, the Debtors agreed to indemnify the Non-Debtor Affiliates for "Liabilities that relate to, arise out of or result principally from" the "businesses and operations . . . of ResCap or its Subsidiaries." (*Id.* § 1.) The MBS Actions bring claims that "relate to, arise out of or result principally form" the Debtors' "businesses and operations." The Debtors' "businesses or operations" are the origination, acquisition, securitization, and service of mortgage loans—and that is precisely the issue in the MBS Actions. Accordingly, the Debtors are obligated to indemnify the Non-Debtor Corporate Affiliates for attorneys' fees/expenses and losses incurred in the MBS Actions.

The D&Os are entitled to indemnification from the Debtors for a broad variety of claims pursuant to the Amended and Restated Limited Liability Company Agreement of ResCap ("ResCap LLC Agreement"). (*See* Ex. A to Whitlinger Decl.) The ResCap LLC Agreement provides for the Debtors to indemnify any employee, officer, or director who is "a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative." (*Id.* § 18(a)(i).) The ResCap LLC Agreement indemnifies "expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the [officer, director, or employee or on that person's behalf] in connection with such action, suit or proceeding and any appeal therefrom." (*Id.* § 18(a)(ii).) Thus, any defense costs, judgments, or settlements that the D&Os incur in the MBS Actions are really costs and expenses to the Debtors and their estate.

The continuation of the MBS Actions against the Non-Debtor Affiliates will create indemnification claims against the estate. Pursuant to Section 362(a)(1), this Court should

extend the automatic stay to stay the MBS Actions against the Non-Debtor Affiliates. *See, e.g.*, *In re W.R. Grace*, 2004 WL 954772 at *2; *Queenie*, 321 F.3d at 287; *In re Calpine*, 354 B.R. at 50; *In re North Star Contracting*, 125 B.R. at 370.

B. The MBS Actions Should Be Stayed Under Section 362(a)(3) In Order To Preserve And Protect The Estate's Property.

Section 362(a)(3) protects the bankruptcy estate's assets by automatically staying "any act to obtain possession … or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). As this Court has recognized, Section 362(a)(3) "prohibits interference with the disposition of the assets that are under the Court's wing—*whether or not the Debtor is named as a defendant as part of the effort*." *In re Adelphia Commc'ns Corp.*, 345 B.R. 69, 76 (Bankr. S.D.N.Y. 2006) (emphasis added). Thus, Section 362(a)(3) directs the stay of any action whether against the debtor or non-debtors that would have an adverse impact on the property of the bankruptcy estate. *See In re 48th St. Steakhouse*, 835 F.2d at 431 ("If action taken against the non-bankrupt party would inevitably have an adverse impact on property of the bankrupt estate, then such action should be barred by the automatic stay."); *see also Queenie*, 321 F.3d at 287 (automatic stay applies to non-debtors when claim against non-debtor will have "adverse economic consequence for the debtor's estate"); *In re Gucci*, 126 F.3d 380, 392 (2d Cir. 1997) ("We have ruled that an action taken against a nondebtor which would inevitably have an adverse impact upon the property of the estate must be barred by the automatic stay provision.").

The MBS Actions against the Non-Debtor Affiliates could adversely impact—and deplete—property that the Debtors' submit is part of their estate, and thus should be stayed pursuant to Section 362(a)(3). The Debtors and Non-Debtor Corporate Affiliates share Errors & Omissions insurance policies and proceeds that provide coverage for the MBS Actions, and the

Debtors submit that those shared policies and proceeds are property of the estate. (*See* Whitlinger Decl. ¶ 25.)

Just last month, in *In re Quigley Co., Inc.*, 676 F.3d 45 (2d Cir. 2012), the Second Circuit confirmed that insurance policies and proceeds that cover both debtors and their non-debtor parents and affiliates are joint property of the debtors' estate and the non-debtor entities. *Id.* at 57; *see also In re Johns-Manville Corp.*, 600 F.3d 135, 152 (2d Cir. 2010) ("[T]he insurance policies that Travelers issued to Manville are the estate's most valuable asset."); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 92 (2d Cir. 1988) (agreeing with the "[n]umerous courts [that] have determined that a debtor's insurance policies are property of the estate"); *In re MF Global Holdings Ltd.*, --- B.R. ---, 2012 WL 1191892, at *9 (Bankr. S.D.N.Y. Apr. 10, 2012) ("[I]t is well-settled that a debtor's liability insurance is considered property of the estate."); *In re 1031 Tax Grp.*, 397 B.R. at 677-78 (recognizing that shared Errors & Omissions policy was property of estate). The proceeds of such shared insurance policies are "property of the estate if depletion of the proceeds would have an adverse effect on the estate to the extent the policy actually protects the estate's other assets from diminution." *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010) (quoting *In re Allied Digital Techs. Corp.*, 306 B.R. 505, 512 (Bankr. D. Del. 2004)); *accord In re Quigley*, 676 F.3d at 52; *In re MF Global*, 2012 WL 1191892 at *10; *In re First Cent. Fin. Corp.*, 238 B.R. 9, 16 (Bankr. E.D.N.Y. 1999) ("[T]he estate's property interest in the proceeds of a typical liability policy is an unstated given," particularly where "the debtor is also the beneficiary of the liability insurance coverage.").

The Second Circuit's recent decision in *Quigley* is particularly instructive. The *Quigley* decision stems from lawsuits against Quigley regarding products it manufactured that allegedly contained asbestos. 676 F.3d at 47. Pfizer, which had acquired Quigley during the time that

Quigley was allegedly producing the asbestos-contaminated products, was also named as a defendant in many of those lawsuits on a theory of derivative liability. *Id.* Ultimately, the asbestos-related lawsuits drove Quigley into bankruptcy. *Id.* In its bankruptcy proceedings, Quigley sought to extend the automatic stay to include the asbestos-related claims against Pfizer. *Id.* In support of that motion, Quigley established that it and Pfizer shared common insurance policies and a shared insurance trust, and both companies were jointly entitled to use the proceeds "to satisfy settlements, judgments and defense costs related to ... Asbestos Related Claims." *Id.* Those proceeds were to be paid out "on a first billed, first paid basis, irrespective of amounts previously billed by or paid to Pfizer or Quigley," and thus, Quigley argued, payments on behalf of Pfizer would deplete the proceeds available to Quigley. *Id.*

The bankruptcy court agreed and extended the automatic stay to prohibit the continuation of "any and all pending or future Asbestos Related Claims against Pfizer during the pendency of Quigley's chapter 11 case." *Id.* at 48. The bankruptcy court stayed the actions against Pfizer "to prevent depletion of the Shared Insurance Policies and the Insurance Trust assets, which would cause immediate and irreparable injury to Quigley's estate and impair Quigley's ability to implement its pre-negotiated chapter 11 plan and successfully reorganize." *Id.*

On appeal, the Second Circuit considered whether the bankruptcy court had jurisdiction to stay certain of the asbestos-related actions against Pfizer. *Id.* at 53-58. In concluding that the bankruptcy court had jurisdiction, the Second Circuit held that the shared insurance policies "are the joint property of Pfizer and Quigley's estate." *Id.* at 53. The Second Circuit next found that if the asbestos-related actions against Pfizer were allowed to continue, "Pfizer may submit a claim to be paid out of insurance that is this joint property." *Id.* Under these circumstances, the Second Circuit concluded that "drawing down of [the shared] insurance policies" would deplete

an asset of the bankruptcy estate and thus, the bankruptcy court had jurisdiction to stay the actions against Pfizer. *Id.* at 58.

So too here. As in *Quigley*, the plaintiffs in the MBS Actions bring claims against the Debtors on account of their conduct and against the Non-Debtor Affiliates on theories of derivative liability. (*See generally* Lipps Decl. and App'x to Lipps Decl) The Debtors and the Non-Debtor Affiliates share common Errors & Omissions insurance policies and both are entitled to use the insurance proceeds to satisfy defense costs, settlements, and judgments. (*See* Whitlinger Decl. ¶ 25; Ex. C to Whitlinger Decl..) As in *Quigley*, the shared insurance proceeds are paid on a first billed, first paid basis, such that payments on behalf of the Non-Debtor Affiliates will deplete the proceeds available to the Debtors. (*See* Ex. C to Whitlinger Decl.) As such, every insurance dollar paid on behalf of the Non-Debtor Affiliates leaves one less dollar of insurance coverage available to the Debtors' estate. If the MBS Actions are allowed to proceed, the Non-Debtor Affiliates may draw down the shared insurance proceeds to pay for their defense costs and any settlements or judgments.

Thus, as the Second Circuit found in *Quigley*, allowing the MBS Actions to continue against the Non-Debtor Affiliates will reduce the insurance proceeds available to the Debtors, thereby depleting an asset that the Debtors submit is property of the estate. *See Quigley*, 676 F.3d at 53-58; *see also In re First Cent. Fin.*, 238 B.R. at 16-17; *In re 1031 Tax Group*, 397 B.R. at 684-85. That alone warrants extending the stay pursuant to Section 362(a)(3) to stop prosecution of the MBS Actions against the Non-Debtor Affiliates. *See In re 48th St. Steakhouse*, 835 F.2d at 431 (extending automatic stay to cover action against non-debtor that sought to exercise control of the debtors' property); *see also Quigley*, 676 F.3d at 58; *A.H. Robins*, 788 F.2d at 1001-02 (indicating that proceedings against third parties "who qualify as

additional insureds under the policy" are covered by automatic stay); *Queenie*, 321 F.3d at 287 (automatic stay may apply to non-debtors when claim will adversely affect debtor's estate).

II. THE CONTINUED PROSECUTION OF THE MBS ACTIONS AS AGAINST THE NON-DEBTOR AFFILIATES SHOULD BE ENJOINED UNDER SECTION 105.

This Court should also enjoin the continued prosecution of the MBS Actions as against the Non-Debtor Affiliates pursuant to Section 105(a).

Section 105(a), which authorizes the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]," gives this Court broad powers to enjoin actions against non-debtors. *See In re Chateaugay Corp.*, 93 B.R. 26, 29 (S.D.N.Y. 1988) ("[T]he Bankruptcy Court has authority under § 105 broader than the automatic stay provisions of § 362 and may use its equitable powers to assure the orderly conduct of the reorganization proceedings."); *Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp. Inc.*, 2006 WL 3755175, at *4 (S.D.N.Y. Dec. 20, 2006) ("Section 105 may support the issuance of an injunction to parties who do not fall within the scope of section 362(a)."); *In re 1031 Tax Grp.*, 397 B.R. at 684 ("Section 105 authorizes a bankruptcy court to exercise power outside the bounds of the automatic stay."). "[T]he Second Circuit, courts in this District, and courts in other circuits have 'construed [Section 105] liberally to enjoin suits that might impede the reorganization process,'" including actions against non-debtors. *In re Adelphia Commc'ns Corp.*, 298 B.R. 49, 54 (S.D.N.Y. 2003) (quoting *MacArthur*, 837 F.2d at 93); *see also In re Calpine Corp.*, 365 B.R. at 409, 413-14; *Haw. Structural*, 2006 WL 3755175, at *6; *In re Lyondell Chem. Co.*, 402 B.R. 571, 588-89 (Bankr. S.D.N.Y. 2009); *In re 1031 Tax Grp.*, 397 B.R. at 684-86; *In re Calpine Corp.*, 354 B.R. at 50; *In re Calpine Corp.*, 2007 WL 1302604, at *4; *In re N. Star Contracting*, 125 B.R. at 370 n.1; *In re Ionosphere Clubs*, 111 B.R. at 434.

A debtor's request for an injunction pursuant to Section 105 is treated as a request for a preliminary injunction. *See In re Calpine Corp.*, 365 B.R. at 409. A debtor, however, "need not satisfy the more rigorous requirements for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure" to obtain an injunction pursuant to Section 105. *In re Chateaugay*, 201 B.R. 48, 71 (Bankr. S.D.N.Y. 1996). Instead, courts in this district apply the "traditional preliminary injunction standard as modified to fit the bankruptcy context." *In re Calpine*, 365 B.R. at 409. That standard involves evaluating four factors, none of which is determinative:

1. whether there is a an imminent irreparable harm to the debtor's estate or its ability to restructure;
2. whether there is a reasonable likelihood of a successful restructuring;
3. whether the balance of harms tips in favor of the debtor; and
4. whether the public interest weighs in favor of an injunction.

See id.; *In re United Health Care Org.*, 210 B.R. at 233; *Haw. Structural*, 2006 WL 3755175, at *4; *In re Lyondell Chem.*, 402 B.R. at 588-89.

The Debtors satisfy all four of these factors for an injunction under Section 105.

A. Continuation Of The MBS Actions Will Irreparably Harm The Debtors.

The Debtors will suffer irreparable harm to both their estate and their ability to successfully restructure if the MBS Actions against the Non-Debtor Affiliates are not stayed, because the continuation of the MBS Actions will "burden, delay or otherwise impede the reorganization proceedings." *In re Lyondell Chem.*, 402 B.R. at 590. In assessing whether an injunction is necessary to preserve the estate or protect the restructuring efforts, courts in this district have focused on three factors: (1) whether the debtors' estate would be harmed in the absence of an injunction; (2) whether the debtors face a risk of binding rulings or evidentiary prejudice if the cases proceed against the non-debtors; and (3) whether the litigation against the

non-debtors would distract the debtors' key personnel and frustrate their efforts to restructure. *See In re Calpine Corp.*, 354 B.R. at 50; *In re Calpine Corp.*, 2007 WL 1302604 at *3-4; *In re Lomas Fin.*, 117 B.R. at 66-67; *Malm v. Goldin*, 1993 WL 330489, at *2 (S.D.N.Y. Aug. 27, 1993); *see also In re 1031 Tax Grp.*, 397 B.R. at 684-85. Absent an injunction here, the Debtors would be irreparably harmed in each of these respects.

First, enjoining the MBS Actions is necessary to preserve the property of the Debtors' estate. As set forth above, the Debtors submit that the shared insurance policies, and their proceeds, are assets of the estate. *See supra* at pp. 17, 34-48; *see also In re Quigley*, 676 F.3d at 53-58. If the MBS Actions are allowed to proceed, the Non-Debtor Affiliates may draw down those insurance policies, depleting the proceeds available for the Debtors and causing irreparable harm to the estate. *See In re 1031 Tax Grp.*, 397 B.R. at 685 (finding irreparable harm because "[i]f the Colorado Lawsuits go forward, insurance proceeds recoverable by the estate from these wasting policies may be diminished by defense costs of the McCabe Group").

In addition, the Debtors would face substantial indemnification obligations for any attorneys' fees/expenses and losses that the Non-Debtor Affiliates incur in the MBS Actions. *See supra* at pp 17-18, 32-34. These potential indemnification claims also constitute irreparable harm. *See In re 1031 Tax Grp.*, 397 B.R. at 685 (finding irreparable harm where "there is a substantial risk that the Debtors face liability for indemnification if the Colorado Lawsuits are permitted to continue"); *In re Calpine*, 354 B.R. at 50; *In re United Health*, 210 B.R. at 232 ("One example of a situation where such an injunction would be permitted would be a suit against a third party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against it in the case.").

Second, the risk of collateral estoppel, *stare decisis*, and evidentiary prejudice to the Debtors also warrants an injunction. As detailed above, the plaintiffs' claims against the Non-Debtor Affiliates are premised on theories of derivative liability—including control person, aiding and abetting, and alter ego liability. *See supra* at pp. 5-14, 22-26. To establish the Non-Debtor Affiliates' liability, the plaintiffs must first establish the Debtors' liability as a predicate. Thus, any findings and rulings against the Non-Debtor Affiliates, and any evidence generated, would inevitably be used against the Debtors.

The Debtors therefore would face a Hobson's choice if the MBS Actions are allowed to proceed against the Non-Debtor Affiliates: either take advantage of the protections of the automatic stay, sit on the sidelines while the cases continue, and be saddled with the evidence generated, findings made, and decisions rendered; or participate in the defense of the cases to protect their litigation interests and lose the benefits of the automatic stay. Either option constitutes irreparable harm. *See In re Adelphia Commc'ns*, 302 B.R. at 451 ("The courts in this and other districts have repeatedly recognized that section 105 may be used to enjoin litigation against non-debtors where there is the potential threat of the debtor being collaterally estopped from asserting defenses if an adverse judgment is entered against the non-debtors."); *In re Calpine Corp.*, 354 B.R. at 50 ("In light of the identity of interest between [the debtor] and [the non-debtor], [the debtor] will suffer irreparable harm if the Nevada Litigation continues through the risk of collateral estoppel and evidentiary prejudice …."); *In re Barney's Inc.*, 200 B.R. 527, 531 (Bankr. S.D.N.Y. 1996) ("Courts apply section 105 of the Bankruptcy Code to enjoin litigation against non-debtors when an adverse judgment in that litigation will collaterally estop the debtor in subsequent litigation."); *In re Lomas Fin.*, 117 B.R. at 67 ("The threat of collateral estoppel would force [the debtor's key personnel] to participate in the [action] … thus causing

the corporation and its reorganization plan irreparable harm."); *In re Ionosphere Clubs*, 111 B.R. at 435 (same); *see also In re S.W. Bach. & Co.*, 425 B.R. 78, 102 (Bankr. S.D.N.Y. 2010) (Glenn, J.).

Finally, even if the Debtors chose not to participate actively in the litigation of the cases, they would face substantial discovery burdens that would irreparably harm their efforts to restructure. As set forth above, the plaintiffs' claims against the Non-Debtor Affiliates are dependent on proving the Debtors' underlying conduct. Thus, the plaintiffs would have to obtain discovery from the Debtors to prove their claims against the Non-Debtor Affiliates, and in turn the Non-Debtor Affiliates would have to obtain discovery from the Debtors to defend against these claims. As the discovery to date has shown, the document and deposition discovery that would be sought from the Debtors is massive, particularly because the Debtors have possession and control of virtually all of the relevant documents. *See supra* at pp. 14-16, 26-32. The Debtors' personnel who would be critical to responding to that discovery are also instrumental in the Debtors' restructuring efforts. *See supra* at 29-31. That discovery would constitute an enormous burden, distract key personnel, and ultimately frustrate or jeopardize the Debtors' efforts to restructure.

Courts have found that debtors would suffer irreparable harm where the failure to stay an action against a non-debtor would result in significant discovery obligations on the debtors that would frustrate their efforts to restructure successfully. *See In re Johns-Manville*, 26 B.R. at 426 (finding litigation demands "could frustrate" the debtors' "vital efforts at formulating a fair and equitable plan of reorganization"); *id.* at 429-30; *In re Calpine Corp.*, 365 B.R. at 412 (finding that the debtors "would suffer irreparable harm if [a key restructuring employee] were distracted from his responsibilities in order to participate in the Nevada Power litigation"); *Haw.*

Structural, 2006 WL 3755175, at *5 (affirming extension of stay to halt claims against non-debtors where "the logistical stress on Calpine from attempting to simultaneously undertake a massive reorganization while monitoring and producing documents in the State Court Action threatened to irreparably impair the company's reorganization process"); *In re Lomas Fin. Corp.*, 117 B.R. at 67 (upholding extension of automatic stay where "key personnel would be distracted from participating in the reorganization process").

B. There Is A Reasonable Likelihood The Debtors Will Successfully Restructure.

This Court has held that there is a reasonable likelihood of a successful reorganization where "the Debtors are proceeding on track, and there is no reason to believe or suspect that their reorganization will fail—unless, of course, the acts sought to be enjoined cause it to fail." *In re Lyondell Chem*., 402 B.R. at 590. In evaluating this factor "in the earliest weeks" of the complex reorganization of Lyondell Chemical Company, this Court found that "the Debtors have so far been successful in doing everything they've needed to do to date," and because they "have met the challenges they have faced so far, that is sufficient." *Id.*

The Debtors here are similarly "proceeding on track" toward a successful restructuring. Despite the challenges and complexities of restructuring one of the largest mortgage servicers in the country, the Debtors already have made considerable progress. They have reached an agreement to sell their mortgage origination and servicing businesses to Nationstar Mortgage LLC. (*See* Whitlinger Decl. ¶ 7.) They have reached a separate agreement to sell their legacy portfolio, consisting mainly of mortgage loans and other residual financial assets, to Ally Financial. (*See id.*) And they have secured debtor-in-possession financing, and other interim relief from this Court. (*See id.* ¶¶ 8-10.)

Further, the Debtors have reached a number of valuable agreements with constituents to support the Debtors' restructuring plan. (*See id.* ¶¶ 8-9.) Holders of 37% the Debtors' junior secured notes have agreed to support the Debtors' restructuring plan, as has Non-Debtor Affiliate Ally Financial. (*See id.* ¶ 8.) The Debtors have also entered into a settlement agreement with numerous institutional investors to resolve certain claims against the Debtors, including representation and warranty claims, and to support confirmation of the Debtors' restructuring plan that includes releases of claims against the Non-Debtor Corporate Affiliates. (*See id.* ¶ 9.) Those investors hold more than 25% of at least one class in 293 securitizations with an aggregate original principal balance of approximately $164 billion. (*See id.*)

In light of this support and relief obtained from the Court, the Debtors are "proceeding on track and have met the challenges they have faced" thus far, so there is a reasonable likelihood they will successfully restructure. *See In re Lyondell Chem.*, 402 B.R. at 590.

C. The Balance Of Harms Favors An Injunction.

The balance of harms weighs in favor of issuing an injunction. As set forth above, the harm to the Debtors would be irreparable if this Court does not enjoin the MBS Actions against the Non-Debtor Affiliates. The Debtors would face a significant risk of rulings that would be used against them; the estate's resources would be depleted; and the Debtors efforts to restructure would be frustrated or thwarted.

By contrast, there would be only *de minimis* harm to the plaintiffs if the MBS Actions are enjoined. The MBS Actions are in the early stages of litigation. Motions to dismiss either have not been filed or are still pending in twenty-two of the lawsuits, and discovery has only commenced in a few lawsuits. And even if an injunction were to delay a final decision on the merits in any of the MBS Actions, mere delay is insufficient to overcome the potential harm to the Debtors: "The inability of [the defendant] to obtain a hypothetical recovery sooner … is not a

harm—and is certainly not an irreparable harm sufficient to outweigh the irreparable harm that [the debtors] will suffer if the … litigation were permitted to proceed." *In re Calpine Corp.*, 365 B.R. at 413; *accord In re Am. Film Techs.*, 175 B.R. at 849 (same); *In re Johns-Manville Corp.*, 26 B.R. at 430-31. The risk of irreparable injury to the Debtors weighs in favor of an injunction.

D. An Injunction Serves The Public Interest.

The public interest is served by issuing an injunction. As this Court has recognized, "in the context of bankruptcy proceedings, the 'public interest' element means the promotion of a successful reorganization." *In re OMC, Inc.*, 2010 WL 4026097, at *5 (Bankr. S.D.N.Y. Oct. 13, 2010) (quoting *In re Am. Film Techs.*, 175 B.R. at 849); *accord In re Calpine Corp.*, 365 B.R. at 413; *Haw. Structural*, 2006 WL 3755175, at *6.

Enjoining the MBS Actions against the Non-Debtor Affiliates to avoid irreparable harm to the Debtors and allow them to restructure successfully is a far greater public interest than allowing the plaintiffs to continue pursuing claims—based on theories of derivative liability—against the Non-Debtor Affiliates that are indisputably in the earliest stages of litigation. *See Haw. Structural*, 2006 WL 3755175, at *4 ("If an action against a non-debtor would frustrate the goal of debtor reorganization, section 105(a) provides the statutory authority for an injunction staying the action against the non-debtor."); *In re Adelphia Commc'ns*, 298 B.R. at 54 ("It is well settled that bankruptcy courts, under [Section 105], may extend the automatic stay to enjoin suits by third parties against third parties if they threaten to thwart or frustrate the debtor's reorganization efforts.").

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order extending the automatic stay to stay the continued prosecution of the MBS Actions (as set forth on Appendix A to this Motion) as against the Non-Debtor Affiliates pursuant to Section 362, or

in the alternative issuing an injunction to enjoin the continuation of those lawsuits as against the Non-Debtor Affiliates pursuant to Section 105, until the effective date of a restructuring plan in these Chapter 11 cases, and grant such other and further relief as this Court deems just and proper.

Dated: May 25, 2012
New York, New York

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APPENDIX A

The pages that follow list all MBS cases in which Non-Debtor Affiliates are named as defendants and provide the following information for each case:

- Caption
- Description of Case
- Debtor Defendants
- Non-Debtor Affiliate Defendants
- "Relevant Non-Party" Debtor Entities (so-called in complaints)
- Case Status

All corporate entities are referred to by their current names. The following abbreviations are used in the pages that follow:

Abbreviation	Full Name
AFI	Ally Financial Inc.
GMACM Group	GMAC Mortgage Group, Inc.
Ally Securities	Ally Securities, LLC f/k/a Residential Funding Securities, LLC
ResCap	Residential Capital, LLC
RASC	Residential Asset Securities Corp.
GMAC-RFC Holding	GMAC-RFC Holding Co., LLC
GMACM	GMAC Mortgage LLC
RFC	Residential Funding Co., LLC
RALI	Residential Accredit Loans, Inc.
RAMP	Residential Asset Mortgage Products, Inc.
RFMSI	Residential Funding Mortgage Securities I, Inc.
RFMSII	Residential Funding Mortgage Securities II, Inc.
HomeComings	Homecomings Financial, LLC

PART I: REP & WARRANTY CASES

Assured Guar. Mun. Corp. v. GMAC Mortg., LLC et al., No. 12-cv-3776 (S.D.N.Y. filed May 11, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with Insurance and Indemnity Agreement with Debtor
Debtor Defendants:	ResCap, GMACM, RFC, RAMP, RFMSII
Non-Debtor Affiliate Defendants:	AFI, Ally Bank
Case Status:	No substantive motions filed; discovery has not begun

FGIC v. GMAC Mortg., LLC et al.,
No. 11-cv-9729 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 653302/2011), filed Mar. 30, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, GMACM
Non-Debtor Affiliate Defendants:	AFI, Ally Bank
Relevant Non-Party Debtor Entities:	RAMP
Case Status:	Removed to federal court; no substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-00341 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 653493/2011), filed Dec. 15, 2011)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RASC
Case Status:	Removed to federal court; no substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-00340 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 653621/2011), filed Dec. 27, 2011)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RFMSII, HomeComings
Case Status:	Removed to federal court; no substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-00339 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 653622/2011), filed Dec. 27, 2011)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RAMP, HomeComings
Case Status:	Removed to federal court; no substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-00338 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 653623/2011), filed Dec. 27, 2011)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RAMP, HomeComings
Case Status:	Removed to federal court; no substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-0780 (S.D.N.Y. filed Jan. 31, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, GMACM
Non-Debtor Affiliate Defendants:	AFI, Ally Bank
Relevant Non-Party Debtor Entities:	RAMP
Case Status:	No substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-1601 (S.D.N.Y. filed Mar. 5, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RASC, HomeComings
Case Status:	No substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-1658 (S.D.N.Y. filed Mar. 6, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, GMACM
Non-Debtor Affiliate Defendants:	AFI, Ally Bank
Relevant Non-Party Debtor Entities:	RAMP
Case Status:	No substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-1818 (S.D.N.Y. filed Mar. 12, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, GMACM
Non-Debtor Affiliate Defendants:	AFI, Ally Bank
Relevant Non-Party Debtor Entities:	RAMP
Case Status:	No substantive motions filed; discovery has not begun

FGIC v. Ally Fin. Inc. et al.,
No. 12-cv-1860 (S.D.N.Y. filed Mar. 13, 2012)

Description:	Monoline insurance company filed complaint seeking recovery for alleged breaches of representations and warranties in connection with, and fraudulent inducement of, Insurance and Indemnity Agreement with Debtors
Debtor Defendants:	ResCap, RFC
Non-Debtor Affiliate Defendants:	AFI
Relevant Non-Party Debtor Entities:	GMACM, RFMSII, HomeComings
Case Status:	No substantive motions filed; discovery has not begun

PART II: PLS INVESTOR CASES

Allstate Ins. Co. et al. v. GMAC Mortg., LLC et al., No. 27-CV-11-3480 (Minn. Dist. Ct., Hennepin Cnty. filed Apr. 15, 2011)

Description:	Investors in private label securities filed complaint asserting common law and state statutory claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, GMACM, RALI, RAMP, RFMSI, RFMSII, RASC
Non-Debtor Affiliate Defendants:	Ally Securities
Relevant Non-Party Debtor Entities:	ResCap, HomeComings
Case Status:	Discovery in progress

Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co. et al., No. 10-2741-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed July 9, 2010)

Description:	Investor in private label securities filed complaint asserting state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RALI, RAMP, RASC were named as defendants until the plaintiff voluntarily dismissed these Debtor entities without prejudice on May 15, 2012.
Non-Debtor Affiliate Defendants:	Ally Securities
Case Status:	Motion for interlocutory relief from denial of motion to dismiss pending; discovery has just begun

Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co. et al., No. 11-0555-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed Feb. 11, 2011)

Description:	Investor in private label securities filed complaint asserting state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RAMP, RASC were named as defendants until the plaintiff voluntarily dismissed these Debtor entities without prejudice on May 15, 2012.
Non-Debtor Affiliate Defendants:	Ally Securities
Case Status:	Motion for interlocutory relief from denial of motion to dismiss pending; discovery has just begun

Federal Deposit Insurance Corp. As Receiver for Citizens National Bank and Strategic Capital Bank v. Bear Stearns Asset Backed Securities I LLC et al.,
No. 12-cv-4000 (S.D.N.Y. filed May 18, 2012)

Description:	FDIC, as receiver for investors in private label securities, filed complaint asserting federal securities law claim arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	None
Non-Debtor Affiliate Defendants:	Ally Securities
Case Status:	Complaint filed; motions to dismiss not yet filed; discovery has not begun

Fed. Home Loan Bank of Bos. v. Ally Fin. Inc. et al., No. 1:11-cv-10952-GAO (D. Mass.) (removed from Mass. Super. Ct. (No. 11-1533-BLS1), filed Apr. 20, 2011)

Description:	Investor in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, RALI
Non-Debtor Affiliate Defendants:	AFI, GMACM Group
Case Status:	Motion to remand denied; no substantive motions filed; discovery has not begun

Fed. Home Loan Bank of Chi. v. Ally Fin. Inc. et al., No. 10 CH 45033 (Ill. Cir. Ct., Cook Cnty. filed Apr. 8, 2011)

Description:	Investor in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, RAMP, RASC, RFMSI
Non-Debtor Affiliate Defendants:	AFI, GMACM Group, Ally Securities
Case Status:	Hearing on motions to dismiss scheduled; discovery stayed

Fed. Home Loan Bank of Indianapolis v. Ally Fin. Inc. et al., No. 49D05 10 10 PL 045071 (Ind. Super. Ct., Marion Cnty. filed July 14, 2011)

Description:	Investor in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFMSI
Non-Debtor Affiliate Defendants:	AFI, GMACM Group, Ally Securities
Case Status:	Decision on motions to dismiss pending

Huntington Bancshares Inc. v. Ally Fin. Inc. et al., No. 27-CV-11-20276 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 19, 2011)

Description:	Investor in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	ResCap, GMACM-RFC Holding, RALI, RFMSI, RFC, HomeComings
Non-Debtor Affiliate Defendants:	AFI, Ally Securities, Kenneth M. Duncan, Ralph T. Flees, Jack R. Katzmark, Lisa R. Lundsten, Davee L. Olson, Bruce J. Paradis, Julie Steinhagen, David C. Walker
Case Status:	Decision on motions to dismiss pending; discovery has not begun

Mass. Mutual Life Ins. Co. v. Residential Funding Co., LLC et al., **No. 11-cv-30035-MAP (D. Mass. filed May 17, 2012)**

Description:	Investor in private label securities filed complaint asserting common state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, RALI, RAMP, RASC
Non-Debtor Affiliate Defendants:	Ally Securities, Bruce J. Paradis, Davee L. Olson, David C. Walker, Kenneth M. Duncan, Ralph T. Flees, James G. Jones, David M. Bricker
Case Status:	Ally Securities' Amended Answer filed; discovery has not begun

N.J. Carpenters Health Fund et al. v. Residential Capital, LLC et al., No. 08-cv-8781-HB (S.D.N.Y. filed Jan. 3, 2011)

Description:	Investors in private label securities filed complaint asserting federal securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	ResCap, RFC, RALI
Non-Debtor Affiliate Defendants:	Ally Securities, Bruce J. Paradis, Kenneth M. Duncan, Davee L. Olson, Ralph T. Flees, Lisa R. Lundsten, James G. Jones, David M. Bricker, and James N. Young
Case Status:	Motion to dismiss granted in part; motion for class certification denied; denial of class certification affirmed on interlocutory appeal; discovery stayed except renewed class discovery for sixty days

SeaLink Funding Ltd. v. Royal Bank of Scotland Grp. PLC et al., No. 650484/2012 (N.Y. Sup. Ct., N.Y. Cnty., summons filed Feb. 21, 2012)

Description:	Investor in private label securities filed summons filed providing notice of causes of action for fraud, misrepresentation, and breach of contract arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	ResCap, GMAC-RFC Holding, RFC, RAMP
Non-Debtor Affiliate Defendants:	AFI, GMACM Group
Case Status:	Only a summons has been filed; no complaint has been filed

Stichting Pensioenfonds ABP v. Ally Fin. Inc. et al., No. 27-CV-11-20426 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 11, 2011)

Description:	Investor in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	ResCap, GMAC-RFC Holding, RALI, RAMP, RASC, RFC, HomeComings
Non-Debtor Affiliate Defendants:	AFI, Ally Securities, David M. Bricker, Kenneth M. Duncan, Ralph T. Flees, James G. Jones, Lisa R. Lundsten, Davee L. Olson, Bruce J. Paradis, David C. Walker, Diane S. Wold, James N. Young
Case Status:	Decision on motions to dismiss pending; discovery has not begun

Thrivent Fin. for Lutherans et al. v. Residential Funding Co., LLC et al., No. 27-CV-11-5830 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 24, 2011)

Description:	Investor in private label securities filed complaint asserting common law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, RALI, GMACM, RAMP
Non-Debtor Affiliate Defendants:	Ally Bank, Ally Securities
Case Status:	Motion to dismiss granted in part; discovery in progress; parties attempting to settle

Union Cent. Life Ins. Co. et al. v. Credit Suisse First Bos. Mortg. Sec. Corp. et al., No. 11-cv-2890-GBD (S.D.N.Y. filed May 4, 2012)

Description:	Investors in private label securities filed complaint asserting common law and federal securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RALI, ResCap, RFC
Non-Debtor Affiliate Defendants:	Ally Securities, AFI, Bruce J. Paradis
Case Status:	Amended Complaint filed; motions to dismiss not yet filed; discovery has not begun

Western & Southern Life Ins. Co. v. Residential Funding Co., LLC et al.,
No. A1105042 (Ohio Ct. of Comm. P., Hamilton Cnty. filed Sept. 9, 2011)

Description:	Investors in private label securities filed complaint asserting common law and state securities law claims arising from and in connection with alleged fraudulent sale of securities
Debtor Defendants:	RFC, GMACM, RALI, RAMP, RFMSI
Non-Debtor Affiliate Defendants:	Ally Securities, Bruce J. Paradis, Davee L. Olson, David C. Walker, Kenneth M. Duncan, Ralph T. Flees, James G. Jones, David M. Bricker
Case Status:	Motion to dismiss briefed; motion to stay discovery granted except as to readily available information

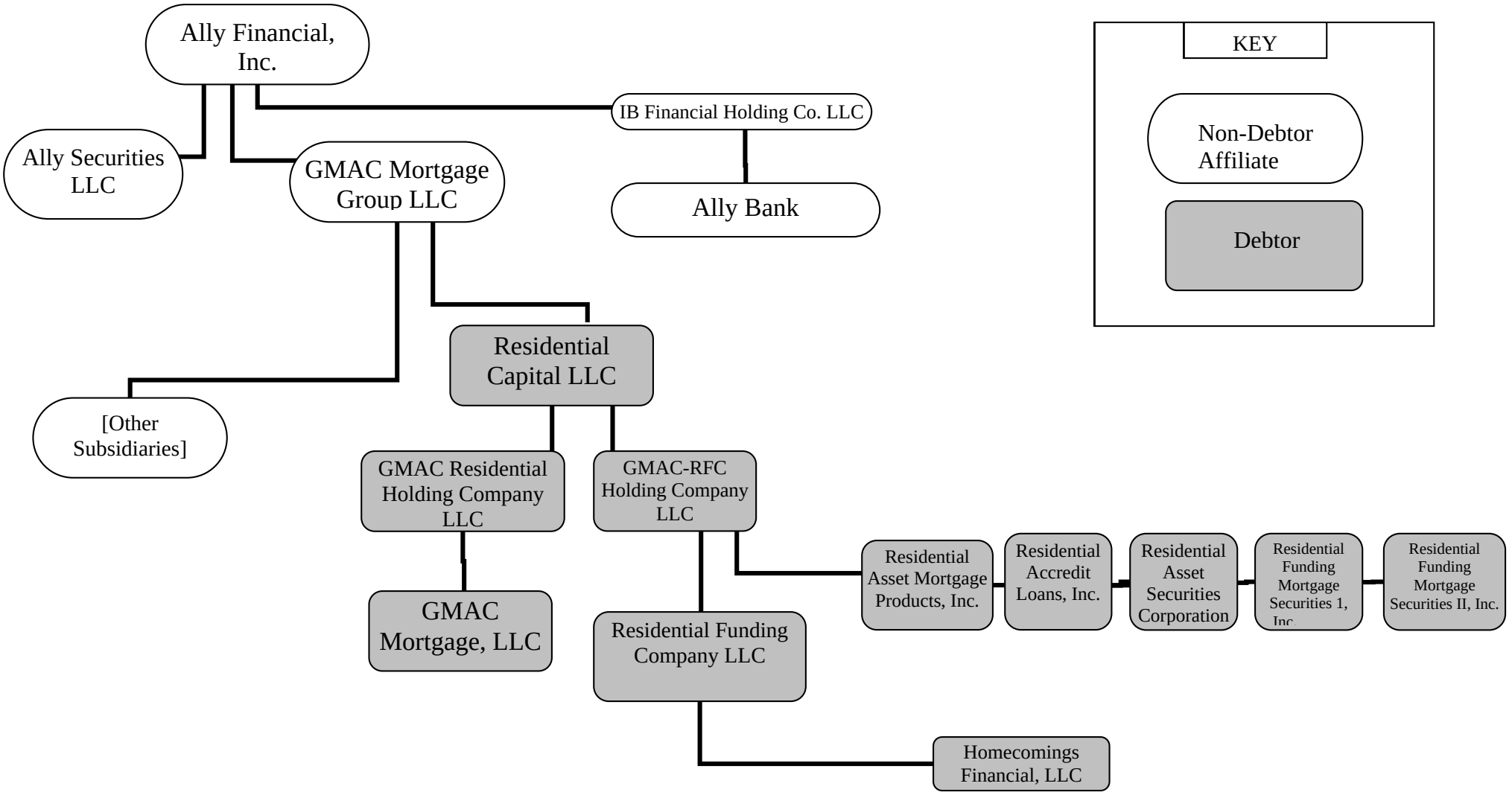
PART III: FHFA CASE

Fed. Hous. Fin. Agency v. Ally Fin., Inc.,
No. 11-cv-07010 (S.D.N.Y.)
(removed from N.Y. Sup. Ct. (No. 652441/2011), filed Sept. 2, 2011)

Description:	FHFA, as conservator of Fannie Mae and Freddie Mac, filed complaint asserting common law and federal securities law claims arising from and in connection with purchase of residential mortgage-backed securities
Debtor Defendants:	ResCap, GMAC-RFC Holding, RFC, RAMP, RASC, RALI
Non-Debtor Affiliate Defendants:	AFI, GMACM Group, Ally Securities
Case Status:	Removal consented to; discovery to begin shortly

Appendix B

ORGANIZATIONAL CHART[1]



[1] This is a partial organizational chart for illustrative purposes only. There are many entities not represented on this chart, and those identified are meant only to demonstrate the relationship between several of the Non-Debtor Corporate Affiliates and the Debtors.