Docket #0059 Date Filed: 7/6/2012

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

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.	

SUPPLEMENTAL DECLARATION OF JEFFREY A. LIPPS

I, Jeffrey A. Lipps, declare:

1. I am a partner with Carpenter Lipps & Leland LLP, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215 (the "Firm").

2. The Firm is or has been counsel of record for both Debtors and Non-Debtor Affiliates in six of the seven cases in which plaintiffs have opposed the Debtors' pending motion to extend the stay: the *FHFA*, *New Jersey Carpenters, Western & Southern* and *Union Central* lawsuits, and the two *Cambridge Place* cases. I am also familiar with the *FDIC* matter and the claims asserted in that Complaint.

3. The Firm's representation of the debtor entities, non-debtor affiliated entities, and several individual former directors and officers of debtor entities in various other litigation

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matters relating to residential mortgage-backed securities is described in the Declaration of Jeffrey A. Lipps dated May 24, 2012 ("May 24 Declaration").

4. In addition to the scope and burdens of discovery described in the May 24 Declaration, I am also aware of many of the costs incurred by the debtor entities in connection with discovery in the various residential mortgage-backed securities litigation matters. I am also aware that the burden and cost issues are not unique to the Residential Funding Company, LLC subsidiary, but also impact GMAC Mortgage, LLC, ResCap's other primary operating unit involved in residential mortgage-backed securities.

5. I submit this Declaration to provide further detail as to both the costs of discovery and the potential impact on GMAC Mortgage, LLC if the cases are permitted to go forward. In addition, this Declaration updates the procedural history of the cases discussed in the May 24 Declaration for which plaintiffs in the underlying litigation are opposing the motion to extend stay.

I. Costs of Discovery

6. The debtor entities have possession of the vast majority of the documents that are likely to be discoverable in the residential mortgage-backed securities litigation matters for which a stay is contested in this adversary proceeding. The non-debtor entities have very few such documents. For example, the debtor entities hold (and the non-debtor entities generally do not) documents including:

a. Loan files;

b. Loan tapes;

c. Underwriting guidelines;

d. Contracts with loan originators, which sometimes contain applicable underwriting standards;

e. Applications, systems, source code and documents relating to the underwriting, acquisition, pooling and servicing of the loans, and documents and correspondence about those systems;

f. Email correspondence relating to the acquisition, origination and underwriting of loans;

g. Pre-funding, post-funding, quality audit and other diligence-related files and correspondence;

h. Drafts, correspondence and other documents relating to the drafting of the offering materials and other agreements relating to the securitizations at issue, and the checking of those materials for accuracy.

7. Portions of these categories of documents have been requested of ResCap in every mortgage-backed securitization case the Firm has handled that has progressed into the discovery phase, and, even if not yet requested, are among the categories of documents potentially relevant to the defenses of the non-debtor entities in the cases.

8. Other than the Underwriting Guidelines, none of the other categories of documents listed in Paragraph 5 have been collected or produced in their entirety in any litigation to date, and would require substantial work to research, collect, review and produce for any particular case.

9. In the cases in which the Firm has represented ResCap, the cost of producing documents such as these has been substantial.

Loan Files

10. Loan file production is a core expense and burden relating to any of these cases.

11. The loan file contains many documents that may relate to the underwriting evaluation of an individual loan, including, for example, loan applications, income and

employment documentation where applicable, credit reports, and appraisals or other property value information.

12. Because each loan file pertains to a specific loan, and each securitization contains a unique set of loans, each case necessarily involves a different universe of loan files. For example, among the seven cases for which the Motion to Extend Stay has been opposed, there are no securitizations that overlap with any of the securitizations for which loan files have previously been collected and produced.

13. As detailed in the chart attached as Exhibit A, the debtors have to date produced over 170,000 loan files. As I explained in the May 24 Declaration, loan files are difficult, cumbersome and voluminous to locate and produce. The cost of producing a given loan file depends on its format and size, but in our experience has averaged approximately $25 per file.

14. With over 660,000 loans involved in the pending cases, even producing a subset of those loan files would be extremely costly. Indeed, in the *FHFA v. Ally* case alone, there are over 105,000 loan files potentially at issue. In some cases, the debtors have had to produce multiple loan files in connection with a single loan. This can occur because the borrower had both a first-lien mortgage and a second-lien home equity loan or line of credit, and either file may contain documents relating to the underwriting of the loan. It can also occur because, at times, formal legal documents relating to a loan, such as the mortgage, note, and any assignments, were stored separately from underwriting files containing documents relating to the assessment of the borrower's creditworthiness, such as appraisals, credit reports, and loan applications.

15. In addition to the expense, there is a substantial investment of time that must be made by ResCap personnel to research the locations of the loan files and put them in the pipeline to be imaged, Bates numbered and produced.

Other Documents

16. The vast majority of other discoverable documents exist in the form of documents stored on historical shared drive or network drive spaces at ResCap, or in email correspondence relating to the loans or the securitizations. Because of the many steps a loan must go through from acquisition through securitization through servicing, there are numerous email custodians and hundreds of thousands of documents involved in virtually every case. These voluminous electronic materials must be collected, filtered, reviewed for responsiveness and privilege, and housed in a database where the materials can be Bates-numbered, produced to litigation opponents, and analyzed for use in the litigation. The expenses associated with the housing of the data alone—putting aside the fees of the trial attorneys from my Firm involved with the case—are considerable.

17. By way of example, in each of the two cases brought by MBIA Insurance Corp., which are the two cases that had progressed the farthest in discovery at the time of the bankruptcy filing, the debtors have produced over 3 million pages of material.

18. The costs of processing, hosting for review, and Bates-numbering the documents in those two cases alone (not including the loan files, discussed separately above) exceeded $2.3 million.

19. In addition, the debtors still had to review the material for privilege and responsiveness. Our firm employed contract attorneys to conduct the first-level review. Even using contract attorneys at reduced rates, with no markup for law firm overhead or other costs

associated with using contract attorneys, the first-level review costs for the two MBIA cases exceeded $500,000.

20. On top of those expenses, attorneys from our firm had to check the work of the contract reviewers to ensure the accuracy of the first-level privilege and responsiveness determinations, as well as spend time coordinating the collection of data from the debtors, training the reviewers, and managing the document production process generally. Although our attorneys worked at discounted rates, those costs were also considerable.

21. Similar document productions were made in the *New Jersey Carpenters* case, although discovery in that case was somewhat targeted towards class certification issues and other discovery was deferred (and later stayed), and in the *West Virginia Investment Management Board* case, which only involved a single securitization. Despite the narrower scope of those document discovery efforts, the hosting, production, and contract review expenses in those two cases still exceeded $230,000.

22. If the litigation that is the subject of the Motion to Extend Stay is allowed to proceed, ResCap will still have to bear considerable expense and burden responding to document discovery requests. Either plaintiffs or the non-debtor defendants are anticipated to seek documents that are currently solely in ResCap's possession, custody and control. Those materials will need to be collected, processed, reviewed for privilege and responsiveness, and Bates numbered before they can be produced, just as they would have to be if ResCap remained a party to the litigation.

23. Although a number of custodians have previously had their emails restored from backup tape, those custodians and the time periods for the restoration of their data were selected based on the particular securitizations at issue in those cases. As noted above, none of the

securitizations in the seven cases for which the extension of the stay is disputed overlap with any of the securitizations for which substantial email discovery has already occurred.

24. For example, the two largest email production efforts to date took place in the two MBIA cases, both of which involved only home equity loans or lines of credit, and not first mortgages. Thus, the individuals whose emails were restored for those cases included transaction managers, product managers, underwriters, and other staff whose responsibilities were focused largely or even exclusively on home equity loans.

25. Different individuals employed by ResCap had those responsibilities with respect to first liens – and those who worked on "prime" mortgages differed from those who worked on subprime products.

26. In addition, the one disputed case that *does* involve home equity securitizations—the *Western & Southern* case—involves a different securitization issued at a different time from those for which documents were previously produced.

27. The *New Jersey Carpenters, FHFA, Union Central, Cambridge Place,* and *FDIC* cases all involve different combinations of prime first mortgage securitizations, subprime first mortgage securitizations, and "single seller" or non-conforming first mortgage securitizations. Accordingly, these cases involve a completely different mix of key custodians from those whose data was previously restored for earlier litigation matters.

28. Finally, of course, different search terms would need to be applied depending on the particular mix of securitizations and claims at issue in a given case, and the results would still need to be reviewed for privilege and responsiveness.

29. Similar considerations apply to the other categories of likely discoverable documents. For example, as was explained to FHFA in response to its email inquiry, loan tapes

and at-issuance collateral files relating to the mortgage-backed securitizations are similarly in the possession of Debtors. They have not already been collected for the bankruptcy-related data room, and would need to be researched and pulled, securitization by securitization.

30. Accordingly, there is not substantial overlap between the prior-produced documents and the documents that would need to be restored from backup tapes, collected, searched, reviewed and/or produced if the remaining cases are permitted to proceed. Indeed, there is not even substantial overlap among the seven disputed cases: among the 47 unique securitizations at issue across just these seven cases, only five of them appear in more than one of those seven complaints, so each case will present unique and formidable document discovery challenges, depending on the particular securitizations at issue.

II. Impact on GMAC Mortgage, LLC

31. In my May 24 Declaration, I provided several specific examples of individuals who have unique knowledge of ResCap's historical securitization practices, as well as the location and availability of ResCap's historical documents which may be at issue in the litigation matters relating to residential mortgage-backed securities.

32. In addition to Ms. Anderson, Mr. Blaschko, and Mr. Witten, all of whom historically had experience with mortgage-backed securitizations offered by ResCap's debtor subsidiary Residential Funding Company, LLC, I am also aware of employees of ResCap's other primary subsidiary, debtor GMAC Mortgage LLC, who are critical witness in litigation involving GMAC Mortgage, LLC loans and securitizations. These include:

a. Nora Pio was and continues to be a key employee in the Credit Policy group at GMAC Mortgage, LLC. Ms. Pio is a key resource—and one of the only remaining resources—regarding GMAC Mortgage's underwriting policies and procedures for granting exceptions to underwriting guidelines. Exceptions

practices are a central issue in all the securities-related litigation because all plaintiffs allege that excessive numbers of unsupported exceptions were granted. In addition, Ms. Pio was involved in answering questions and providing support for the external due diligence firms responsible for due diligence on the GMAC Mortgage securitizations at issue in the various cases. She is one of a very few remaining GMAC Mortgage employees who can speak from personal knowledge regarding the due diligence process that occurred for each securitization. Ms. Pio has also invested significant time and effort in assisting with the collection of documentary evidence, including helping our Firm locate historical underwriting guidelines and memoranda and helping our Firm locate documentation regarding underwriting exceptions. Accordingly, I expect her to be a key resource going forward on any case involving GMAC Mortgage securitizations or loans. At the time the bankruptcy petition was filed, for example, Ms. Pio was scheduled for two days of depositions in the *MBIA v. GMAC Mortgage, LLC* case.

b. Michele Hreshko works in the Repurchase Management group. As such, she has day-to-day responsibility for managing the process of evaluating repurchase demands made by the debtors entities' contractual counterparties, including Freddie Mac (now under the conservatorship of the Federal Housing Finance Authority or FHFA), FGIC, and Assured Guaranty, all of which have sued certain debtor entities and non-debtor affiliates in the pending litigation. Thus, Ms. Hreshko's role overlaps both the litigation and the business functions relating to the mortgage loan repurchase process, and she is a

critical resource who is regularly asked by our Firm to assist in various of the cases.

c. Laura Reichel previously worked in Capital Markets and on special projects relating to automated underwriting and other business functions for GMAC Mortgage, LLC. Today, she works in GMAC Mortgage's Capital Markets group. Ms. Reichel has signed verifications, provided testimony, and assisted with the location and collection of documents in the various mortgage-backed securities cases involving GMAC Mortgage loans and securitizations. Ms. Reichel is one of the few long-term employees of debtor GMAC Mortgage, LLC with historical knowledge of Capital Markets, automated decisioning systems, the origination and securitization of mortgage loans, and other facts relating to GMAC Mortgage, LLC's historical business operations. Ms. Reichel is a critical resource who is regularly asked by our Firm to assist in the defense of the cases, and I would expect her to continue to be a critical resource in any of the cases involving GMAC Mortgage securitizations or loans.

d. Frank Madden was and is responsible for responding to external inquiries and/or reviews conducted by rating agencies, the GSEs, bond insurers and others relating to the servicing arm of the business. He has been a key resource in any case in which servicing decisions made by GMAC Mortgage, LLC are at issue. He has been deposed previously and I would anticipate he would be deposed again. Mr. Madden has also assisted our Firm in collecting pertinent servicing-related information.

e. Sue Young had substantial responsibility for overseeing the underwriting of GMAC Mortgage home equity loans, and has extensive knowledge of the home equity loan origination process during the 2006 and 2007 time period. She has been a critical resource in helping our Firm identify and locate data and documents relevant to home equity underwriting. Ms. Young has been deposed on these subjects and we would anticipate she would be a key witness if the *Western and Southern* litigation is permitted to proceed.

f. Darsi Meyer oversees servicing operations, including the Master Servicing and other investor reporting functions described within Tim Witten's group in my May 24 Declaration. Ms. Meyer has been a key resource in helping direct our Firm to different parts of the servicing organization in connection with different requests and inquiries relating to mortgage loan servicing. I would expect she would continue to have that role with respect to the remaining cases.

33. Notably, there is virtually no overlap between the key witnesses with substantive knowledge relating to GMAC Mortgage, LLC loan originations and securitizations and those with substantive knowledge relating to Residential Funding Company, LLC loan acquisitions and securitizations.

III. Procedural Updates

34. There have been procedural developments in some of the cases since the May 24 Declaration was submitted:

a. FHFA. The FHFA filed an Amended Complaint on June 13, 2012, refining its fraud-related allegations and triggering a motion to dismiss deadline of July 13, 2012. Meanwhile, Judge Cote has ruled that discovery may proceed, and

FHFA has to date served two sets of document requests and one set of interrogatories. In addition, the parties in the FHFA litigation have been actively negotiating custodian lists and search terms. Finally, on July 2, 2012, FHFA filed a letter to Judge Cote requesting permission to file a motion to compel non-debtors Ally Financial, Inc. and GMAC Mortgage Group to produce "loan tapes" that it knows to be in the possession of the Debtors.

b. Western and Southern. On June 6, 2012, the judge in the Western and Southern litigation issued her opinion on the pending motions to dismiss. With respect to Ally Securities, only one securitization, GMACM 2007-HE2, remains in the case following her ruling. However, that one securitization involves over 23,000 mortgage loans, and has not been the subject of document discovery in any other case. Accordingly, the document discovery burdens remain significant.

c. Union Central. Ally Securities is due to file its motion to dismiss in the Union Central action on July 13, 2012. Briefing on this motion to dismiss is scheduled to continue into the fall.

d. Cambridge Place. Cambridge Place was authorized by the Court to serve discovery requests on certain defendants, including Ally Securities. On June 21, 2012, Ally Securities filed its objections and responses to the document requests. On Monday, July 2, 2012, the defendants in the Cambridge Place action filed a joint motion to dismiss. This motion is scheduled for oral argument on July 16, 2012. Full scale discovery in the Cambridge Place

action will commence if any claims survive the motion to dismiss and will likely be burdensome as it involves three separate securitizations.

35. As described in greater detail in my May 24 Declaration, the defense of these lawsuits will be time-consuming, costly, and burdensome for the limited staff at the debtor entities. Even if the litigation proceeds against only the non-debtor affiliate entities and individual defendants, the cost, burden and distraction for the debtor entities will continue, because, as noted above, the debtor entities possess the vast majority of the materials, information, and institutional memory relating to the ResCap mortgage-backed securitization business.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true to the best of my knowledge, information, and belief. Executed on July 6, 2012, at Columbus, Ohio.

Jeffrey A. Lipps