

UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

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ADMINISTRATIVE PROCEEDING	)
File No. 2014-CFPB- <u>0002</u>	)
	)
In the matter of:	)
	)
PHH CORPORATION, PHH MORTGAGE	)
CORPORATION, PHH HOME LOANS,	)
LLC, ATRIUM INSURANCE	)
CORPORATION, AND ATRIUM	)
REINSURANCE CORPORATION	)
	)

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**RESPONDENTS’ STATEMENT OF UNDISPUTED FACTS  
IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION**

Pursuant to 12 C.F.R. § 1081.212(d)(2), Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively, “Respondents” or the “PHH Entities”) hereby submit the following separate statement of undisputed material facts in support of their motion for summary disposition. The following material facts are not in dispute:

1. Atrium Insurance Corporation (“Atrium”) is a New York corporation and a wholly-owned subsidiary of PHH Corporation. Atrium’s business is to provide reinsurance on private mortgage insurance (“pmi”) issued in connection with loans originated by respondents PHH Mortgage Corporation and PHH Home Loans, LLC. Declaration of Michael Bogansky in Support of PHH Corporation’s NORA Submission to the CFPB, dated September 5, 2013 (“Bogansky Decl.”), ¶ 3.

2. Atrium has had reinsurance agreements with the following four pmi providers: CMG Mortgage Insurance Company (“CMG”), Genworth Mortgage Insurance Company (“Genworth”), Radian Guaranty, Inc. (“Radian”), and AIG United Guaranty Mortgage Insurance Company (“UGI”). Bogansky Decl. ¶ 4.

3. All of the reinsurance agreements with these entities were excess-of-loss

arrangements whereby Atrium agreed to provide reinsurance on books or pools of loans once losses exceeded a certain percentage (typically 4% -- the attachment point), and only up to a certain percentage of losses (typically 14% -- the detachment point), although these entry and exit points vary for some years and for some providers. Supplemental Declaration of Michael Bogansky in Support of PHH Corporation's Motion for Summary Disposition, dated January 31, 2014 ("Bogansky Supplemental Decl."), ¶ 4.

4. In connection with the establishment and maintenance of the four reinsurance agreements, PHH made capital contributions totaling \$53,172,832. Bogansky Decl. ¶ 14.

5. On November 12, 2009, PHH Corporation formed Atrium Reinsurance Corporation ("Atrium Re"), a Vermont corporation that is a wholly-owned subsidiary of PHH Corporation. Bogansky Decl. ¶ 6.

6. On January 25, 2010, the New York Insurance Department issued its non-disapproval of the reinsurance assumption agreements between Atrium and Atrium Re, thereby allowing Atrium Re to assume the existing reinsurance agreements with Genworth and UGI. Bogansky Decl. ¶ 7.

7. At various times Atrium utilized the services of Milliman, Inc. ("Milliman"), a third-party actuarial firm, to provide opinions for specific book years related to the reinsurance agreements, which state that the reinsurance agreements have a reasonable probability of loss to the reinsurer and the net ceded premium is reasonable related to the ceded risk. Bogansky Decl. ¶ 5.

8. Atrium's reinsurance agreements with Radian and CMG were placed in run-off prior to January 1, 2009. Run-off means that no additional loans are part of the reinsurance agreement. Bogansky Supplemental Decl. ¶ 7.

9. The reinsurance agreement between Radian and Atrium was commuted on July 22, 2009. As part of the commutation, Atrium forfeited to Radian capital contributions in the amount of \$452,349, in addition to all premiums previously ceded as well as any earnings. Bogansky Decl. ¶ 8.

10. As of the last quarter before the Radian agreement was commuted, June 30, 2009, Radian had reported losses on loans in the 2007 Book totaling \$139,204. Prior to the commutation of the agreement with Atrium, Milliman projected that the losses suffered by Radian on loans in the 2007 Book would have penetrated the entry point for Atrium's reinsurance. Bogansky Supplemental Decl. ¶ 6.

11. Atrium's reinsurance agreement with CMG commenced on December 1, 2006. Effective August 31, 2009, by mutual decision and pursuant to the terms of their agreement, Atrium and CMG commuted the agreement. As part of the commutation, Atrium forfeited to CMG capital contributions in the amount of \$440,634, in addition to all premiums previously ceded as well as any earnings. Bogansky Decl. ¶ 9.

12. Atrium's reinsurance agreement with Genworth commenced on October 9, 2000. Since January 1, 2009, this agreement had been in "run-off," which means that no new business is reinsured, but that all obligations continue for both parties on existing books of business. Bogansky Decl. ¶ 10.

13. Effective April 1, 2012, by mutual decision and pursuant to the terms of their agreement, Atrium and Genworth terminated the agreement. As a result of the termination, Atrium paid Genworth \$37,149,869 and Genworth agreed to assume all future risks in connection with loans for which it provided mortgage insurance. As a result of the termination, \$24,100,000 of restricted funds was released to Atrium from the trust account. Bogansky Decl. ¶ 10.

14. Atrium's reinsurance agreement with UGI commenced on January 1, 1997. This agreement has been in run-off since January 1, 2010. Effective May 31, 2013, by mutual decision and pursuant to the terms of their Commutation Agreement and Mutual Release, Atrium and UGI terminated the agreement. Bogansky Decl. ¶ 11.

15. As a result of the commutation, Atrium paid UGI \$48,592,201 and UGI agreed to assume all future risks in connection with loans for which it provided mortgage insurance. Also in connection with the commutation, \$69,169,499 of restricted funds was released to Atrium

from the trust account. Bogansky Decl. ¶ 11.

16. Atrium always met its contractual funding obligations with respect to the four trusts that were created in connection with its reinsurance arrangements. Bogansky Decl. ¶ 12.

17. Atrium paid a total of \$156,307,798 in reinsurance claims:

- \$127,731,812 in claims paid to UGI;
- \$28,571,236 in claims paid to Genworth; and
- \$4,750 in claims paid to Radian.

Bogansky Decl. ¶ 13.

18. As described in the chart below, for certain book years, Atrium paid claims to UGI that consumed the entire risk band and in fact exceeded the amount of reinsurance premiums that Atrium would collect over the entire life of the reinsurance agreement for those particular book years. Bogansky Decl. ¶ 13.

Book Year	Atrium payments to UGI/% of Risk Band	Atrium payments to Genworth/% of Risk Band
2004	\$19,431,000 / 23%	\$0.00 / 0%
2005	\$37,279,038 / 81%	\$6,190,694 / 41%
2006	\$21,902,380 / 100%	\$9,334,550 / 81%
2007	\$37,351,659 / 100%	\$6,966,585 / 60%
2008 (UGI)	\$11,767,735 / 49%	N/A
2008A (Genworth)	N/A	\$6,079,407 / 27%
2008 B (Genworth)	N/A	\$0.00 / 0%
2009	\$0.00 / 0%	N/A

19. In 2008, the NYID conducted an audit of Atrium which covered the six-year period from January 1, 2002, through December 31, 2007. The NYID conducted the examination in accordance with “the guidelines and procedures established in the Financial

Condition Examiners Handbook of the National Association of Insurance Commissioners” and found Atrium in compliance with all substantive provisions of New York Insurance Law, including that “the [reinsurance] contracts contained the required clauses, including the insolvency clauses, meeting the requirements of Section 1308 of the New York Insurance Law.” 2008 Report of Examination, available at: [http://www.dfs.ny.gov/insurance/exam\\_rpt/10362f07.pdf](http://www.dfs.ny.gov/insurance/exam_rpt/10362f07.pdf) (last visited Aug. 28, 2013), at 2, 6.

20. On April 4, 2013, the CFPB announced that it had filed, and settled, suits against four pmi companies—Genworth, Mortgage Guaranty Insurance Corporation (“MGIC”), Radian and UGI—alleging that the mortgage reinsurance structures utilized by those companies, the same structure that is the subject of the Notice in this Action, violated Section 8 of RESPA. *See* Complaint, *CFPB v. Genworth Mortg. Ins. Corp.*, No. 1:13-cv-21183-JLK, Dkt. No. 1 (S.D. Fla., Apr. 4, 2013); Complaint, *CFPB v. Mortg. Guaranty Ins. Corp.*, No. 1:13-cv-21187-DLG, Dkt. No. 1 (S.D. Fla., Apr. 4, 2013); Complaint, *CFPB v. Radian Guaranty, Inc.*, No. 1:13-cv-21188-JAL, Dkt. No. 1 (S.D. Fla., Apr. 4, 2013); Complaint, *CFPB v. United Guaranty Corp.*, No. 1:13-cv-21189-KMW, Dkt. No. 1 (S.D. Fla., Apr. 4, 2013).

21. Along with those Complaints, the CFPB filed a motion in each case, asking the court to approve and enter the Consent Order in that case. *See* Unopposed Motion to Approve Consent Judgment and Order, *CFPB v. Genworth Mortg. Ins. Corp.*, No. 1:13-cv-21183-JLK, Dkt. No. 4 (S.D. Fla., Apr. 4, 2013); Unopposed Motion to Approve Consent Judgment and Order, *CFPB v. Mortg. Guaranty Ins. Corp.*, No. 1:13-cv-21187-DLG, Dkt. No. 4 (S.D. Fla., Apr. 4, 2013); Unopposed Motion to Approve Consent Judgment and Order, *CFPB v. Radian Guaranty, Inc.*, No. 1:13-cv-21188-JAL, Dkt. No. 4 (S.D. Fla., Apr. 4, 2013); Unopposed Motion to Approve Consent Judgment and Order, *CFPB v. United Guaranty Corp.*, No. 1:13-cv-

21189-KMW, Dkt. No. 4 (S.D. Fla., Apr. 4, 2013). The proposed Consent Orders, which the court in each case entered (hereinafter, the “PMI Consent Orders”), specifically permit “the ceding of premiums on policies originated as of, and subject to Arrangements already in existence as of, the date of entry of this Order.” *See, e.g.*, UGI Final Consent Judgment and Order, *CFPB v. United Guaranty Corp.*, No. 1:13-cv-21189-KMW, Dkt. No. 5 (S.D. Fla., Apr. 8, 2013) at 5.

22. Neither Atrium, nor Atrium Re, ever entered into reinsurance agreements with MGIC, The PMI Group (“PMI”), Republic Mortgage Insurance Company (“RMIC”) or Triad Guaranty Insurance Corporation (“Triad”). Bogansky Supplemental Decl. ¶ 8.

23. On December 11, 2012, the Illinois Department of Insurance placed Triad in rehabilitation. Under the terms of the Plan of Rehabilitation, insured parties receive only a portion of the claim payment. Specifically, “claims for loss, unearned premium and return of premium will be paid at the rate of 75% of the amount determined to be due, and a deferred payment obligation will be recorded for the remaining 25% of the amount due.” *See* Home Page for Triad Guaranty Insurance Corporation, in Rehabilitation, available at: <http://www.tgic.com/> (last visited January 30, 2014).

24. On October 20, 2011, the Director of the Arizona Department of Insurance (“Director”), sought and obtained an Order Directing Full and Exclusive Possession and Control of Insurer pursuant to A.R.S. § 20-172 from the Arizona Superior Court, Maricopa County, granting the Director full and exclusive possession and control of PMI. Pursuant to the Director’s authority, PMI instituted a partial claim payment plan under which claim payments by PMI would be made at 50%, with remaining amounts deferred for potential future payment or

partial payment depending on PMI's ability to pay such claims. *See* PMI Home Page, available at <http://www.pmi-us.com/> (last visited January 30, 2014).

25. On January 19, 2012, the North Carolina Commissioner of Insurance placed RMIC under regulatory supervision "because the Commissioner has reasonable cause to believe that RMIC is in such a condition as to render the continuation of its business hazardous to the public or to holders of its policies or certificates of insurance." Commissioner's Summary Order dated January 19, 2012, available at: <http://www.rmic.com/ratesguides/releasenotes/Documents/NCDOI-Summary-Order.pdf> (last visited January 30, 2014). Pursuant to its Corrective Plan, RMIC is paying 50% of claim payments, which amount was subsequently increased to 60% retroactive to January 19, 2012. *See* Final Order Approving Corrective Plan, dated November 28, 2012, available at: <http://www.rmic.com/ratesguides/releasenotes/Documents/Final%20Order.pdf> (last visited January 30, 2014).

26. The OCC has issued a number of interpretive letters stating that it is permissible under the National Bank Act for a bank to establish an operating subsidiary to reinsure a portion of the mortgage insurance on loans originated or purchased by the parent bank or one of its affiliates. *See* Letter dated November 2, 1998, from Carolyn J. Buck, Chief Counsel, Office of Thrift Supervision, Department of Treasury, available at: <http://www.occ.gov/static/news-issuances/ots/legal-opinions/ots-lo-11-02-1998.pdf> (last visited January 30, 2014); *see also* In Interpretive Letter #743, dated October 17, 1996, to United Guaranty Residential Insurance Company (The OCC confirmed that "a national bank may establish an operating subsidiary . . . to reinsure a portion of the mortgage insurance on loans originated or purchased by the parent bank or one of its affiliates."), available at: <http://www.occ.gov/static/interpretations-and-precedents/oct/int743.pdf> (last visited January 30, 2014).

Dated: January 31, 2014

Respectfully submitted,

WEINER BRODSKY KIDER PC

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**CERTIFICATION OF SERVICE**

I hereby certify that on the 31st day of January, 2014, I caused a copy of the foregoing Statement of Undisputed Facts, to be filed with the Office of Administrative Adjudication and served by electronic mail on the following parties who have consented to electronic service:

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