

UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

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ADMINISTRATIVE PROCEEDING )  
File No. 2014-CFPB-0002 )

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' NOTICE OF CLARIFICATION**

On March 5, 2014, the Honorable Cameron Elliot convened a hearing on the Motion to Dismiss or, in the Alternative, for Summary Disposition, filed by Respondents PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively "Respondents"). Upon review of the transcript of the hearing, and notwithstanding the Order issued March 13, 2014, Respondents are called upon to make the following correction of the record:

At the motions hearing, during argument on judicial estoppel, Judge Elliot asked Respondents to "suppose that [the CFPB] knew that there were no agreements that were actually in effect and ceding payments being made under the agreements," such that the provision in the non-UGI Florida Consent Orders that allowed ceding payments to continue was putatively "put in there out of an abundance of caution in case that there's something out there that they don't know what's going on." Transcript ("Tr.") at 30-31 (presenting a hypothetical).

Apparently following up on that line of inquiry, Enforcement Counsel represented that the provisions of the Florida Consent Orders permitting the continuation of ceding payments

from the private mortgage insurers to the captive reinsurers were merely “carving out this highly limited conduct for agreements that were in run-off *for a matter of weeks*.” Tr. at 56 (emphasis added). A short time later, Enforcement Counsel stated that she was “not sure how many were even alive still at that time,” but that she “believe[d] some [reinsurance agreements] had already been wound down,” and that the CFPB’s “understanding is that the amount of conduct that was still out there was limited.” Tr. at 58-59.

At the motions hearing, Respondents stated that they did not “know what the status of” the “hundreds of agreements” with other captive reinsurers was, but noted the continued ceding payments under UGI’s agreement with Atrium. Tr. at 81.

On March 7, 2014, two days after the hearing, the CFPB produced additional documents to Respondents.

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On March 12, 2013, Enforcement Counsel produced to Respondents for the first time the required reports of MGIC and Genworth. Those filings with the CFPB

*See*

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<sup>1</sup> Because the Consent Order Reports for each of the private mortgage insurance companies have been marked “Confidential,” Respondents are filing the Exhibits to this Notice under seal.

Exhibit B hereto (Excerpts from the MGIC Report, CFPB-PHH-01372349-60); Exhibit C hereto (Excerpts from the Genworth Report CFPB-PHH-01372445-46).

Finally, on March 13, 2014, Enforcement Counsel produced the required report for United Guaranty Corporation (“UGI”). See Exhibit D hereto (Excerpts from the United Guaranty Report, CFPB-PHH-01372465-530). That report further demonstrates the widespread nature of the continued ceding of payments by these four mortgage insurers *after* the entry of the Consent Orders. Indeed, based on the information provided by these four entities, there were more than **160 arrangements** in place as of the date of the entry of the Florida Consent Orders and where there were ceding payments subsequent to the entry of those Orders.

This late-produced document demonstrates, contrary to Enforcement Counsel’s representations, that the provisions of the Florida Consent Orders permitting the ceding payments to continue were not restricted to “highly limited conduct for agreements that were in run-off for a matter of weeks,” as stated by Enforcement Counsel. In fact, ceding payments to reinsurers other than Atrium continued throughout 2013 and appear to be expected to continue in 2014 as well.

In the Administrative Law Judge’s Order, summary disposition on the issue of judicial estoppel was denied based upon the record as of the date of the hearing. Now that these relevant documents have been produced to Respondents, these issues will arise again.

Dated: March 13, 2014

Respectfully submitted,

WEINER BRODSKY KIDER PC

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**CERTIFICATION OF SERVICE**

I hereby certify that on the 13th day of March, 2014, I caused a copy of the foregoing Respondents' Notice of Clarification be filed with the Office of Administrative Adjudication and served by electronic mail on the following parties:

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/s/ Michael Kieval  
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