

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' INITIAL RESPONSE  
TO ENFORCEMENT COUNSEL'S SUBPOENA REQUIRING PRODUCTION OF  
ALL COMMUNICATIONS BETWEEN RESPONDENTS AND THE MI COMPANIES**

Over Respondents' objections, the Tribunal granted Enforcement Counsel's request for a subpoena to Respondents seeking all communications between Respondents, as well as their "respective officers, employees, representatives, agents, and counsel," regarding anything to do with this administrative proceeding, the Bureau's investigation, and/or the "underlying investigations, discussions with the CFPB, and any settlement terms" in connection with the five Consent Orders entered in the Southern District of Florida. *See* Subpoena dated May 15, 2014.

In its Order, the Tribunal agreed to issue the subpoena in spite of Respondents' objections on the basis of Enforcement Counsel's alleged claim for injunctive relief, specifically, their contention "that the requested documents 'are necessary to test the veracity of Respondents' . . . willingness, if any, to entertain the possibility of entering into a captive arrangement in the future.'" Order dated May 15, 2014, at 2. As Respondents have repeatedly stated, there is no allegation in the Notice of Charges that Respondents have expressed any "willingness . . . to entertain the possibility of entering into a captive arrangement in the future." *See, e.g.,*

Respondents' Renewed Motion to Dismiss at 11-15 (filed April 18, 2014); Respondents' Reply in Support of Renewed Motion to Dismiss at 4, 8-11 (filed May 12, 2014); Respondents' Prehearing Brief at 5-7 (filed March 19, 2014).

The Bureau concedes that to demonstrate the appropriateness of injunctive relief, it must demonstrate a "reasonable likelihood of future violations." *See* Enforcement Counsel's Opposition to Respondents' Renewed Motion to Dismiss (filed May 2, 2014) at 22-23 (citing cases). The lack of any allegation of a "reasonable likelihood of future violations" in the Notice of Charges is undisputed. Indeed, not once has the Bureau identified any basis for this assertion in the Notice of Charges. While Respondents are disappointed in the Bureau's refusal to provide notice of such a claim given its purported belief in "transparency," the fact of the matter is that there is no evidence to even support such a claim. Indeed, Respondents believe that the present scramble by Enforcement Counsel to seek information on this issue is simply a ruse to avoid an adverse decision on the pending dispositive motions by implying that such evidence might exist. In fact, there is no such evidence. Specifically, attached hereto are the declarations of Sam Rosenthal, PHH's Vice President of Capital Markets, and David M. Souders, counsel for Respondents. Those individuals are in the best position to determine whether there are any communications relating to the issue of the possibility of Atrium/Atrium Re either resuming and/or entering into new captive mortgage reinsurance arrangements either now, or in the future, and both of those individuals state that they are not aware of any such communications occurring since July 21, 2011. Further, Mr. Rosenthal states that he is not aware of anyone at PHH having such discussions with any MI at any time since July 21, 2011.

In the course of the Bureau's entire investigation of this matter, Respondents are not aware of any effort by the Bureau to elicit testimony from any individual regarding whether there

was a “reasonable likelihood” that Atrium/Atrium Re would enter into a new captive reinsurance arrangement after July 21, 2011. Indeed, the Bureau can point to no exhibit that supports such a claim, nor does it assert in the Notice of Charges that the possibility even exists.

Respondents will respond to the remaining categories in the Subpoena as appropriate under Rule 208 and within the time allowed by the Rules. However, because of the pending dispositive motions, Respondents want the record to be clear that for the period from July 21, 2011, to the present, Respondents are not aware of any communications with any MI, including but not limited to CMG, Genworth, Radian, and UGI, about the possibility of Atrium/Atrium Re either resuming and/or entering into new captive mortgage reinsurance arrangements either now or in the future. Stated otherwise, Respondents will not be producing any documents relating to any discussions with any MI after July 21, 2011, about the possibility of Atrium/Atrium Re either resuming and/or entering into new captive mortgage reinsurance arrangements either now or in the future because no such documents exist. Accordingly, any assertion by the Bureau that injunctive relief is appropriate based on purported communications between Respondents and the MIs occurring after July 21, 2011, is sheer conjecture on the part of Enforcement Counsel.

Dated: May 16, 2014

Respectfully submitted,

WEINER BRODSKY KIDER PC

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**CERTIFICATION OF SERVICE**

I hereby certify that on the 16th day of May, 2014, I caused a copy of the foregoing Respondents' Initial Response to Enforcement Counsel's Subpoena to Respondents, 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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