

brought in this proceeding. For example, in their Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, Respondents assert that Atrium and UGI together acted “in reliance” on the Consent Order entered in the action *CFPB. v. United Guaranty Corp.*, No. 13-cv-21189 (S.D. Fla. Feb. 14, 2014), by continuing to give or accept ceded premiums. *See* Brief in Support of Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, at 38. The Supreme Court has held that to establish reliance in support of an equitable claim, the moving party must show that it “relied on its adversary’s conduct in such a manner as to *change his position for the worse.*” *Horan v. Reliance Standard Life Ins. Co.*, 467 U.S. 51, 59 (1984) (emphasis added). Communications between Respondents and UGI on the subjects identified above are necessary to test whether they changed their conduct as a result of the Consent Order, and if so, how. Communications that are potentially relevant to that issue include those dated both before and after the Consent Order was entered. Enforcement Counsel is entitled to know how they viewed the conduct that is the subject of this proceeding before the Consent Order was entered, and how they viewed that conduct after the Consent Order was entered. And because Respondents similarly invoke the Consent Orders entered by the Southern District of Florida in the Bureau’s actions against various other MIs, communications between Respondents and those other MIs on the subjects identified above are equally relevant to Respondents’ judicial estoppel defense. *See* Brief in Support of Renewed Motion to Dismiss or, in the Alternative, to Narrow the Notice of Charges, at 41.

The aforementioned communications are also relevant to Respondents’ claim that the Bureau’s “outspoken detestation of [captive] arrangements, and its aggressive prosecution of them” forecloses any possibility of Respondents and an MI entering into a captive arrangement in the future. *Id.* at 13 n.11. Communications between Respondents and the MIs relating to this proceeding and the underlying investigation are necessary to test the veracity of Respondents’ assertion about

the purported impact of the Bureau's investigation and this proceeding on their relationship and their willingness, if any, to entertain the possibility of entering into a captive arrangement in the future. As just one illustrative example, if Respondents and MIs discussed whether it may be worthwhile to enter into a future captive arrangement if the financial benefits of such an arrangement (*i.e.*, massive profits to PHH and market share gains for the MI) are sufficiently substantial as to outweigh the deterrent effect of a damages award, Enforcement Counsel would be entitled to such communications.

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Respectfully submitted,

Lucy Morris
Deputy Enforcement Director for Litigation

Sarah J. Auchterlonie
Assistant Deputy Enforcement Director for Litigation

s/Donald R. Gordon
Donald R. Gordon
Kimberly J. Ravener
Navid Vazire
Thomas Kim
Enforcement Attorneys
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Telephone: (202) 435-7357
Facsimile: (202) 435-7722
e-mail: donald.gordon@cfpb.gov

Enforcement Counsel

Certificate of Service

I certify that on this 1st day of May 2014, I caused the **Request for Issuance of Subpoena Requiring Production of Documents** to be filed and to be served upon the following parties by electronic service:

Mitch Kider
kider@thewbkfirm.com

David Souders
souders@thewbkfirm.com

Sandra Vipond
vipond@thewbkfirm.com

Roseanne Rust
rust@thewbkfirm.com

Michael Trabon
trabon@thewbkfirm.com

Leslie Sowers
sowers@thewbkfirm.com

s/Donald R. Gordon
Donald R. Gordon
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Telephone: (202) 435-7357
Facsimile: (202) 435-7722
e-mail: donald.gordon@cfpb.gov