UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

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**	**ENFORCEMENT COUNSEL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY**

Pursuant to 12 C.F.R. § 1081.212(d)(2), in support of its Motion for Summary Disposition as to Liability (Motion), the Office of Enforcement hereby submits the following statement of material facts as to which no genuine dispute exists.

1. Respondents PHH Corporation, PHH Mortgage Corporation, and PHH Home Loans LLC (collectively PHH) offer and provide residential mortgages. **Enforcement Counsel Exhibit** (**ECX**) **0653** (PHH Corporation's NORA Submission to the CFPB, Sept. 6, 2013) (PHH NORA) at 4.

2. PHH Mortgage Corporation sells all of the loans it originates or purchases on the secondary market. Government-sponsored enterprises such as Fannie Mae and Freddie Mac are among its major buyers. **ECX 0653** (PHH NORA) at Ex. F (Decl. of Mark Danahy in Support of Defs.' Opposition to Plfs.' Mot. for Class Cert., *Munoz v. PHH Corp.*, Jun. 21, 2010), ¶¶ 11, 32.

3. Atrium Insurance Corporation and its successor, Atrium Reinsurance Corporation (collectively Atrium), are wholly-owned subsidiaries of PHH Corporation that have offered or provided purported reinsurance to mortgage insurance companies. Order Denying Motion to Dismiss the Notice of Charges, or, in the Alternative, for Summary Disposition, No. 67, March 13, 2014 (March 13 Order), at 17.

4. Mortgage insurance is ordinarily required when a prospective borrower seeks a residential mortgage loan in excess of eighty percent of the value of the home. **ECX 0653** (PHH NORA), at 4.

5. Private mortgage insurance policies cover losses incurred by mortgage lenders in case of borrower default, and in such a case, the mortgage insurer pays to the lender a specified percentage of loss faced by the lender. **ECX 0653** (PHH NORA), at 4-5.

6. Although private mortgage insurance premiums are paid by borrowers, the lender, not the borrower, typically selects the mortgage insurance provider. **ECX 0153** (Deposition Pursuant to Fed. R. Civ. P. 30(b)(6) of Mark R. Danahy, *Munoz v. PHH Corp.*, Oct. 22, 2009) (Danahy Dep.) Tr. 84:25-85:8 ("Typically a borrower doesn't choose where to select the PMI insurance; the lender does."); Mar. 24, 2014 Hearing Transcript (3/24/14 Hearing Tr.) 115:7-12 (Samuel Rosenthal); ECX 0773 (email 6/4/08 Rosenthal/PHH-Kennedy/RMIC) ("We completely control our retail via our dialer…."); *see* 3/25/14 Hearing Tr. 334:24-335:22 (Curt Culver) (MGIC does not market to borrowers and never has).

7. Prior to the 2008 financial crisis, mortgage insurance was profitable enough that private mortgage insurance companies (MIs) highly valued referrals by lenders, and lenders sought to participate in the MIs' high profits. **ECX 0035** (MGIC Bd. of Dirs. Minutes, 3/6/96), 3/25/14 Hearing Tr. 356:14-17 (Culver); **ECX 0811** (MGIC Bd. of Dirs. Minutes, 5/2/96), 3/25/14 Hearing Tr. 357:23-358:1 (Culver); **ECX 0814** (MGIC Bd. of Dirs. Minutes, 10/22/98) ("Mr. Case

emphasized the continuing and increasing importance of risk sharing transactions to business acquisition."), 3/25/14 Hearing Tr. 359:20-360:10 (Culver) ("risk sharing transactions" means "captive arrangements," and "business acquisition" means "receiving business from mortgage lenders."); **ECX 0682** (undated Milliman web page, "Using a Bank Captive Subsidiary to Reinsure Mortgage Insurance") ("In the past year a number of banks and other mortgage lenders have set up captive reinsurance companies .... Why the recent activity? Mortgage insurance has been profitable for the past several years. Lenders, who essentially produce the business for the mortgage insurers, have been seeking ways to share in these profits.").

8. PHH Corporation established Atrium in 1994 as a wholly-owned reinsurer, to provide purported reinsurance to the MIs, who provided mortgage insurance for loans originated by PHH. **ECX 0511** (New York Dep't. of Ins. Report of Examination, for Atrium Ins. Corp., Feb. 1, 2003) at CFPB-PHH-00084843, 84846; **ECX 0153** (Danahy Dep.) Tr. 73:14-24.

9. In a typical reinsurance arrangement, a reinsurer agrees to assume a certain percentage of the primary insurer's risk, in return for the primary insurer "ceding" a portion of the premiums it receives to the reinsurer. **ECX 0653** (PHH NORA), at 5 ("a reinsurer … assumes … transferred risk in return for a share of the premiums collected.").

10. Atrium first entered into a mortgage reinsurance arrangement, or so-called "captive arrangement," with United Guaranty Corporation (UGI) in 1995. PHH's captive reinsurance arrangement with United Guaranty was the first one in the mortgage industry. Created in 1995, the Atrium/United Guaranty arrangement purported to cover loans reaching back to 1993. March 13 Order, at 17; **ECX 0708** (UGI/Atrium agreement 3-38, Nov. 9, 1995); **ECX 733** (2006 United Guaranty Proposal to PHH) at CFPB-PHH-1368936 ("Together with PHH Mortgage, AIG United Guaranty created the first captive reinsurer for the mortgage industry – PHH's Atrium."); **ECX 586** (January 4, 2005 Memorandum of Dan Walker to United Guaranty personnel) at CFPB-PHH-

00352309 ("The first captive formed exclusively to insure mortgage guaranty risk on loans originated by an affiliate was domiciled as a fully regulated insurer in New York. United Guaranty began ceding mortgage guaranty premium to this captive on its 1993 book using a calendar year, excess loss ratio type treaty.").

11. Atrium entered into a captive arrangement with General Electric Mortgage Insurance Corporation (later, Genworth Mortgage Insurance Corporation) (Genworth) in 2000. March 13 Order, at 17; **ECX 0503** (GEMICO/Atrium agreement, Oct. 9, 2000).

12. Under their captive arrangements, UGI and Genworth paid Atrium a percentage of the borrowers' premiums (ceded premiums). The payments were purportedly in exchange for reinsurance coverage by Atrium. 3/24/14 Hearing Tr. 124:21-125:7 (Rosenthal); **ECX 0503** (GEMICO/Atrium Reinsurance Agreement, 10/9 2000); **ECX 0708** (UGI/Atrium Reinsurance Agreement 3-38, Nov. 9, 1995); **ECX 0584** (UGI-Atrium Reinsurance Agreement 3-44, with amendments).

13. Atrium issued policies exclusively for loans originated or purchased by PHH. 3/24/14 Hearing Tr. 124:14-20 (Rosenthal); *see* **ECX 0153** (Danahy Dep.) Tr. 201:23-25 (Atrium never considered reinsuring loans other than PHH loans).

14. Atrium had no employees. Atrium had a relatively small office space in New York City but there was no person who occupied that space. **ECX 0153** (Danahy Dep.) Tr. 24:17-25-25:14.

15. All of Atrium's business was conducted by employees either of PHH Mortgage or PHH Corporation. **ECX 0153** (Danahy Dep.) Tr. 68:16-69:5. The "captive work" was performed by PHH executives Sam Rosenthal, Rich Bradfield, and Mark Danahy. **ECX 0051** (May/June 2008 email thread, PHH/MGIC). Sam Rosenthal was never an employee of Atrium. 3/24 Hearing Tr.

125:12-18 (Rosenthal). All of the PHH employees who conducted Atrium's business also had other responsibilities unrelated to Atrium. **ECX 0153** (Danahy Dep.) Tr. 70:3-7.

16. Atrium did no underwriting to price any reinsurance risks it purportedly assumed. **ECX 0731** (Investigational Hearing of Samuel Rosenthal, Aug. 13, 2013) (Rosenthal IH) Tr. 40:16-24; *see also id.* at 37:5-38:1.

17. Atrium was the only captive reinsurer in the industry until about 1995 when a new MI market entrant, Amerin Guaranty, began ceding premiums to another lender's captive affiliate. Much of the widespread use of mortgage guaranty captives in the United States resulted from the industry competitively responding to a new market entrant. Beginning in the late 1990s, MIs competed with one another to offer increasingly generous deals to lenders, including PHH, known as "deep cede" captive reinsurance arrangements. **ECX 586** at CFPB-PHH-00352309 (January 4, 2005 Memorandum of Dan Walker to United Guaranty personnel); 3/25/14 Hearing Tr. 357:23-358:1 (Culver); **ECX 0814** (MGIC Bd. of Dirs. Minutes, 10/22/98); *see* **ECX 0793** (Bear Stearns Equity Research, "The Trouble with Captive Reinsurance," March, 2003), at 5 ("Initially, the MIs ceded 15% of the premiums …. But, recently, lenders have been asking for more. The largest originators are increasingly seeking 'deep-cede' excess of loss arrangements, some of which require that the primary insurance provider part with as much as 40% of a policy's written premium.").

18. For example, by 2000, more than four years after the first agreement was signed, UGI was ceding forty percent of premiums it received to Atrium. **ECX 0584** (Amendments #1 and #2 to UGI-Atrium Reinsurance Agreement), at CFPB-PHH-00116621, CFPB-PHH-00116625. No claims accrued or were paid under the captive reinsurance contract during those preceding four years. **ECX 0198**(UGI cession statement) ("Paid Losses Ceded Inception to Date to Reinsurer" column of "Risk" worksheet shows that Atrium had paid no claims on book years 1994 through

2003); **ECX 0839** (Milliman report, 1st Quarter 2013) (table on p. 24 shows no projected Atrium claims for book years 1994 through 2002).

19. The trade association for MIs privately expressed alarm to state insurance regulators in 1998 about captive arrangements, requesting limits on such arrangements, including a limit on ceded premiums of twenty-five percent. **ECX 0035** (MICA presentation attached to MGIC Bd. Of Dirs. Meeting Minutes, 1/22/98), at CFPB-PHH-00609404-09.

20. The MIs' trade association also warned that deep cede arrangements would be financially detrimental to the mortgage finance industry, and that as deep cede arrangements became more favorable to lenders, they might ultimately amount to nothing more than revenue sharing arrangements, with no transferred risk. *Id.*; *see also* **ECX 0793** (Bear Stearns Equity Research, "The Trouble with Captive Reinsurance," March, 2003), at 5 ("While most MIs would prefer not to cede premiums to lenders' captive reinsurance operations, the MIs are not well positioned to fight this trend. Lenders act as referral sources for borrowers that require mortgage insurance, so they have considerable control over the allocation of insurance among providers.")

21. By 2000, when Genworth entered into a captive reinsurance arrangement with Atrium, it agreed to cede forty percent of its premiums, as well. **ECX 0503** (GEMICO-Atrium Reinsurance Agreement, 10/9/2000) at CFPB-PHH-00116621; *see* 3/24/14 Hearing Tr. 144:5145:1(Rosenthal), **ECX 0153** (Danahy Dep.) Tr. 197:7-199:7 ("We went with Genworth in 2000 … and the idea was, okay, so we partnered with UGI, but we don't feel like we have the leverage. So we can't really tell them if you're not doing this stuff, we're going to go somewhere else, because we didn't really have anybody else that we really signed up. So we created two."). In agreeing to cede premiums as part of captive arrangements, Genworth sought to remain competitive with other MIs and to improve, retain, or regain market share position. **ECX 0622** Protective Order [redacted]

Protective Order [redacted] *see also* 3/25/14 Hearing Tr. 341:17-342:10 (Culver) ("We made a decision not to do them, and we lost a lot of business because of it ...."), **ECX 0733** (UGI Response to PHH RFP, Oct. 18, 2006), at CFPB-PHH-1368934 ("It is the intent of our response to maintain our current share position ....").

22. From 1995 to 2001, UGI served as the predominant mortgage insurance provider to PHH. During this period, PHH referred borrowers of loans it originated almost exclusively to UGI. 3/24/14 Hearing Tr. 111: 1-12 (Rosenthal) ("a very heavy market share ... went to United Guaranty before 2001 .... probably in the 80% range."); **ECX 0653** (PHH NORA) at 3 ("the facts demonstrate that PHH dealt primarily with UGI prior to 2001").

23. UGI had the only captive arrangement with PHH until late 2000. 3/24/14 Hearing Tr. 142:12-15 (Rosenthal) (UGI deal ran from 1995-2013), 144:5-145:1; ECX 0503 (GEMICO/Atrium agreement, Oct. 9, 2000); ECX 0708 (UGI/Atrium agreement 3-38); ECX 0584 (UGI/Atrium agreement 3-44).

24. PHH completely controlled referrals of borrowers to MIs on its retail mortgage loans using an automated "dialer" system. **ECX 0773**, at 1 (PHH email to RMIC 6/4/08). The dialer selects which MI will receive the referral of mortgage insurance business on a given loan. It is set at various times for specified percentages corresponding to specified MIs. It is not possible to send any significant volume of business to an MI that is not programmed into the dialer. 3/24/14 Hearing Tr. 107:12-108:17 (through "correct"), 113:25-115:12 (Rosenthal); Mr. Rosenthal referred to it as the "captive dialer." **ECX 0743** (Feb. 2009 PHH internal email).

25. Genworth was added to the dialer in August 2001, ten months after it entered into a captive arrangement with PHH. **ECX 0654** (PHH Corporation Supplemental NORA to CFPB, Sept. 23, 2013) (PHH Suppl. NORA), at Ex. M; **ECX 0503** (GEMICO/Atrium agreement).

26. From 2001 to November 2008, UGI and Genworth were the only two MIs on PHH's dialer. **ECX 0654** (PHH Suppl. NORA), at Ex. M; 3/24/14 Hearing Tr. 111:13-112:5, 113:16-24 (Rosenthal). During this same period, UGI and Genworth were the only two preferred mortgage insurance providers for PHH, until Radian was added after entering into its own captive reinsurance arrangement in 2004. **ECX 0495** (PHH/Genworth memorandum); **ECX 0132** (4/3/06 Preferred Provider Policy).

27. The overwhelming majority of PHH loans with private mortgage insurance during this eight-year period, and all the PHH loans on which PHH completely controlled the allocation of MI business, were steered by PHH to UGI and Genworth, while four other MIs lacking captive arrangements with PHH received virtually no PHH business. **ECX 0654** (PHH Suppl. NORA), at Ex. M (from 2001 until November 2008, Genworth and UGI are the only MIs listed on the dialer); **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement) (in 2006, 99.6% of PHH MI business went to captive "partner" MIs, including 89.2% to Genworth and UGI; in 2007, 99.7% of PHH MI business went to captive "partners," including 94% to Genworth and UGI; in 2008, 96.8% of PHH MI business went to captive "partners," including 93.7% to Genworth and UGI), *see* **ECX 0126** (1/3/12 Enforcement letter to PHH), **ECX 0158** (3/2/12 PHH letter to Enforcement); **ECX 0153** (Danahy Dep.) Tr. 86:4-18 ("Q. So then with regard to loans that PHH Mortgage Corporation originates itself, these loans would go to one of the four cedents that Atrium has reinsurance agreements with? A. Typically, yes."); *see also* 3/25/14 Hearing Tr. 377:25-378:4 (Culver) ("Q. How many PHH loans did MGIC insure from 1995 through 2007? A. Not sure, but there couldn't have

been very many given that, you know, they weren't choosing to do business with us, so....”), **ECX 0034** (3/31/13 spreadsheet submitted by MGIC to Enforcement) at Tab “Lender Profile.”

28. For example, during the six years from 2006 to 2011, Triad never received a referral from PHH. During the same period, PMI received only one referral from PHH. **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement).

29. From 2001 until 2008, MGIC insured only eight PHH loans over those seven years. **ECX 0034** (chart of MGIC-insured loans owned by PHH). For several of those years, effective in 2003, MGIC publicly declared that it would not enter into deep-cede captive reinsurance arrangements. **ECX 0816** (MGIC Bd. of Dirs. Minutes 10/24/02) at 2 (“Mr. Culver discussed the Corporation’s recent decision not to participate in excess of loss captive reinsurance arrangements with premium cessions in excess of 25% ….”); **ECX 0817** (MGIC Bd. of Dirs. Mtg. Minutes 5/8/03) at 3 (“Mr. MacLeod then discussed MGIC’s relationships with large lenders as a result of the April 1 effective date of MGIC’s policy regarding deep cede captives”); *see also* **ECX 0794** (Bear Stearns Equity Research report on MGIC, Sept. 19, 2003) (“GE Following MGIC and Limiting Deep Cede Captives”).

30. RMIC insured only two mortgages originated by PHH in 2008, notwithstanding RMIC’s explicit appeal for referrals. **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement); **ECX 0768** (Kennedy/RMIC email to Rosenthal/PHH 12/12/07) (“Is there anything we can do to break into your account? …. [T]here has to be more value added that an MI partner can add than just a good captive execution.”). During 2006 and 2007, RMIC had insured only 16 PHH mortgages. **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement). On June 4, 2008, Sam Rosenthal of PHH wrote to Chris Kennedy of RMIC that “[o]ur ability to negotiate a suitable arrangement with you will enable you to b[e]come a preferred provider.” **ECX 0773** (6/4/08 email). The next day, an internal PHH email indicated that “we are setting up the

RMIC captive…." **ECX 0262** (email 6/5/08, C. Dodds to J. Levine); *see* 3/26/14 Hearing Tr. 531:25-532:12 (Rosenthal) (Dodds worked in correspondent lending), **ECX 0731** (Rosenthal IH) Tr. 46:14-47:38 (Levine is head of pricing).

31. Another MI, Radian Guaranty Inc. (Radian), established a captive arrangement with Atrium in 2004, and was able to obtain a small portion of PHH's business in exchange for ceding forty percent of its premiums. **ECX 0200** (Radian reinsurance agreement with Atrium), at Exh. A; **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement) (Radian received 3.3% of PHH MI business in 2006, 1.9% in 2007, and 0.8% in 2008). Radian also became a preferred provider eligible to receive some PHH business. **ECX 0132** at CFPB-PHH-00093167 (PHH PMI Preferred Provider Policy, rev. 4/6/06). [redacted]

32. Another MI, CMGMI, which specialized in insuring credit union loans, established a captive arrangement with Atrium in 2006. **ECX 0202** (CMGMI-Atrium Reinsurance Agreement, Dec. 1, 2006); 3/24/14 Hearing Tr. 141:19-142:7 (Rosenthal). This arrangement coincided with a License Agreement which provided that PHH "(i) designate CMGMI as a preferred mortgage insurance provider in its correspondent channel, and (ii) use its commercially reasonable efforts to obtain primary mortgage insurance from CMGMI for loans closed by or for the benefit of credit

unions doing business" with PHH. **ECX 0747** (internal PHH email) at 1 (describing relationship with CMG).

33. UGI, Genworth, Radian, and CMGMI were the only MIs ever to have captive arrangements with Atrium. 3/24/14 Hearing Tr. 141:19-142:7 (Rosenthal).

34. For PHH mortgage loans originated by correspondent lenders, PHH maintained a list of preferred mortgage insurance providers. If a correspondent lender referred a borrower to an MI not on the preferred MI list, PHH charged an additional seventy-five basis points on the loan until August of 2008, and forty basis points thereafter. 3/26/14 Hearing Tr. 521:24-522:6, 523:3-19 (Rosenthal); **ECX 0132** (4/3/06 Preferred Provider Policy) at CFPB-PHH-00093167 (the only preferred providers are Genworth, UGI, Radian, and CMG); **ECX 0654** (PHH Suppl. NORA) at Ex. O. To eliminate the charge and become a preferred provider, an MI needed to set up a captive arrangement with Atrium. **ECX 0206** (internal PHH email thread, 10/11/07), at 1 (Bradfield writes to Danahy, "We charge 75 bps to the correspondent if they don't use one of our preferred providers. That would go away if we had a captive with them ...."); **ECX 0262** (internal PHH email 6/5/08) at 1 (Dodds writes, "Can we waive the MI hit (75 bps) since we are setting up the RMIC captive or is it too early?" and Levine responds, "Unfortunately no…..not captive eligible yet."). By PHH policy until approximately 2008, a correspondent lender could opt to allow PHH to choose an MI provider for the loan using its dialer. 3/26/14 Hearing Tr. 520:24-521:14 (Rosenthal). In June 2007, a correspondent lender conveyed to PHH that it could not use the MI of its choice because of PHH's policies. **ECX 0288** ("AZ Fed CU wants to use RMIC as their sole MI company. They are a client of PHH. . . . PHH has told them they will not order MI from RMIC. . .")

35. The existence of a captive arrangement was a prerequisite to accessing PHH's allocation of mortgage insurance business through the dialer and the preferred provider list. **ECX 0206** (PHH internal email thread, 10/11/07) at 1-3 (In the 5:33 PM email, with subject "Additional

MI Vendors to Dialer," Bradfield raises the issue of "adding a couple of MI vendors and setting up captives with them" and notes that "[w]e have an opportunity to get some $ from a few MI providers to open up our dialer and set up a captive with them;" Bradfield noted that doing so would "[a]llow more Net 3 [i.e., correspondent] MI provider choices" and "[i]mprove Variable Captive available through new captive relationships," reflecting the close connection between the dialer, the preferred provider list (dictating Net 3 selections), and captive participation; in the 6:09 PM email, Danahy responds with a discussion about creating a captive arrangement with MGIC, and possibly other MIs, and volumes of MI business; in the 6:15 PM email, Bradfield notes that Radian, which had a captive arrangement with Atrium at the time, "get[s] Net 3 business" and could be added to the dialer; in the 7:03 PM email, Danahy expresses concern that PHH needs to ensure that if it creates two new captive arrangements then enough mortgage insurance business needs to be referred to those two MIs "to make sure we get critical volume to new trusts"); **ECX 0220** (internal PHH email thread, 11/19/08) (Subject: "Dialer"; Bradfield designates MI allocations (UGI: 40%; MGIC: 10%; Genworth: 50%) and specifies that "[t]his is subject to change, possibly soon, pending the outcome of Genworth's captive decision.").

36. In 2006, PHH issued a Request for Proposal (RFP) to allow MIs to compete for PHH business, which was intended to provoke MIs to compete over the terms of captive arrangements. 3/24/14 Hearing Tr. 168:3-170:7(Rosenthal); **ECX 0737** ("Captive Thoughts" document) ("Use leverage to renegotiate captives with MIs"); 3/25/14 Hearing Tr. 270:6-272:11 (Rosenthal) ("the leverage would be, we'll send you mortgage insurance, and you give us as good of a deal as is possible."). PHH sent identical letters announcing the RFP to multiple MIs, requesting "creative structuring" of captive reinsurance by the MIs, and sought, among other things, offers of "any unique opportunities [the MIs] can provide" to PHH and specific discussion of a number of captive features, including "Deep Cede XOL," adjusted risk layers, bases for taking dividends, and

basing capital requirements on "risk in force" rather than the larger "originated" risk. *E.g.*, **ECX 0024** (10/9/06 letter to MGIC, **ECX 0028** (10/9/06 letter to Triad), **ECX 0732** (10/9/06 letter to UGI). Sam Rosenthal was the PHH executive chiefly responsible for the 2006 RFP. **ECX 0731** (Rosenthal IH) Tr. 61:1-3; 3/24/14 Hearing Tr. 168:9-13 (Rosenthal). Mr. Rosenthal described the RFP to one MI as an "RFP for our Captive Mortgage Insurance business." **ECX 0535** (10/6/06 email to PMI). In the RFP, PHH indicated it was considering shifting a large volume of self-insured business to private mortgage insurance. *E.g.,* **ECX 0024** (RFP letter to MGIC), at CFPB-PHH-00132681. PHH would be allocating these loans to mortgage insurers through the dialer—effectively doubling the amount of PHH volume that could be referred to mortgage insurers. 3/24/14 Hearing Tr. 176:2-177:21(Rosenthal) ("…instead of trying to fight that uphill battle … we were going to move all of that loan over 80 [loan-to-value] to place it with mortgage insurance…."). In fact, in the years following the RFP, the volume was eventually all transferred to MI providers. *Id.*

37. The MIs responded to the RFP with captive reinsurance proposals to PHH including a variety of highly favorable features. **ECX 0030** (Oct. 2006 RFP response by RMIC) at 12-13 ("RMIC is prepared to offer PHH Mortgage . . . three . . . captive reinsurance structures," including a 4/10/40 XOL arrangement "offered only to a select group of qualified lenders;" RMIC was "willing to accept a letter of credit in lieu of cash or securities" in light of "the capital burden to capitalize a new structure;" RMIC offered "an option to allow for the early termination of a reinsured book of business" which would "accomplish[]" the "accelerat[ion] [of] the distribution of trust assets to the reinsurer" and RMIC helpfully "recommend[ed] that Atrium approach its existing captive reinsurance partners to seek a similarly structured termination option"); **ECX 0032** (Oct. 18, 2006 RFP response by UGI at 11-14 (UGI was "pleased to observe the results of a simple idea in 1993 accumulating into a significantly capitalized reinsurance entity for PHH;" UGI noted that "the

net retained value to AIG United Guaranty of the PHH business since 1993" – i.e., the referrals from PHH during that period – "has surely been of comparable magnitude as that recorded on the books of Atrium;" UGI offered several captive structures and noted that although commutation "can reduce risk transfer below required levels," it nevertheless stated that "[t]here are alternatives to commutation to free up cash from Atrium, such as substituting an LOC for trust fund requirements"); **ECX 0531** (Oct. 2006 RFP response by MGIC) at 18-24 (offering to make "the following risk-sharing options [] available to PHH," including various "Deep Cede Excess Layer" structures, a "calendar year loss ratio structure" which "allows for the potential of capital reduction … over time," a "modified excess layer" structure with a one-way-ratchet reduction of Atrium's layer of coverage because "[b]ased on a book's loss performance, the Reinsurer's 4-10% risk layer may be reduced as the book seasons . . . . *If the risk layer is reduced in a given year, it will not be increased in a subsequent year*" (emphasis added), and a quota share structure that "would allow for potential reduction in reinsurer capital requirements as insurance is cancelled on original insured volume;" MGIC also offered a number of "Capital and Risk Alternatives," including the "substitution" of a letter of credit "for up to 25% of the assets required to be held in the trust account," to "work with PHH along with an outside actuary . . . to allow releases when excess capital exists subject to compliance with regulatory and legal requirements," and to "develop alternatives in which PHH could be partially or completely relieved of capital requirements or future loss exposure on their reinsured books of business" through commutation or sale provisions); **ECX 0536** (RFP response by Radian) at 38-43 (detailing "Radian's maximum excess of loss structure," including a "42.5% net premium cede," and "Radian's maximum quota share structure," including a "50% share;" a "Coverage Matrix" showing that the "Capital to Premium Ratio" – the ratio of capital maintained in the trust to the premium received from MGIC – would fall from 95.07% under a 4/10/40 structure to 75.08% under the proposed structure; offering a "Paid Loss Ratio" structure where "[s]lower prepays [sic] speeds or lower defaults reduces the ratio [and] keeps it below the attached range;" and offering to "consider amending PHH's agreement to refresh the risk in force of each book year to reflect current rather than original risk in force," which would lead to the "possibility of declaring dividends earlier"); **ECX 0519** (Oct. 20, 2006 RFP response by PMI) at 15-19 (asserting that PMI had "develop[ed]" a "'best-in-class' captive reinsurance capability" which would enable "PHH [to] benefit[] from PMI's knowledge of structures, creativity, reporting analytics and operational capabilities" and "offer[ing] a comprehensive array of captive reinsurance programs, including both excess of loss and quota share;" noting that "[t]he reinsurance programs outlined herein represent one component of a broader business relationship whose "key drivers" "include the anticipated mix of business," and requiring "clearly defined agreement with regard to those variables [as] necessary prior to finalizing our proposal;" offering a XOL structure with a 39.95% premium cede and a quota share structure with a 42.5% net premium cede; setting loan eligibility so as to "enable[] lender-captives to maximize their captive portfolio"); **ECX 0529** Protective Order [redacted] **ECX 0542** (Oct. 23, 2006 RFP response by Triad) at 9-11 (offering to "discuss" "Deep Cede XOL and/or Max Quota Share" captive arrangements; explaining that "Triad works with lender partners to develop *opportunities for additional income*" (emphasis added) and that "[c]aptive structures" are one of "the ways Triad seeks to *help its lender partners*" (emphasis added); offering to "customize captive structures around your needs;" noting that Triad had pioneered XOL arrangements "in excess of 35 percent" and that "[t]he balance of the industry at the time generally tried to maintain cede levels at 25 percent or lower;" noting that "Triad's long-term strategy is to develop strong partnerships with the industry's top lenders through the delivery of flexible premium cede reinsurance agreements" such that "[t]he result is a book of business, managed most profitably, to the benefit of PHH Mortgage and Triad;" and offering a "Dynamic Captive Structure" that would provide the benefits of, among other things, "[i]mprov[ing] potential internal rates of return" and "[a]lign[ing] potential dividend releases").

38. PHH pushed the MIs to make their captive reinsurance proposals even more favorable to PHH than they already were. **ECX 0322** (Dec. 2006 PHH/Radian email thread) (Rosenthal tells Steve Young of Radian "This is going the wrong way – it is getting less aggressive, not more. We are seeing better away. You might want to have your team re-look at this"); 3/24/14 Hearing Tr. 197:5-13 (Rosenthal) ("Q. And you were telling Mr. Young the captive structure he was offering was not competitive, correct? A. I was telling Mr. Young – yes, that's correct. Q. So it was – strike that. You were urging Mr. Young to try and send you a better deal. A. I was telling him it wasn't competitive."); **ECX 0751** (Dec. 2006 – Jan. 2007 PHH/UGI email thread) (Rosenthal asks UGI to "add 50 bps to every number [attachment point] if you can. That would make you competitive against some of the other levels I am seeing.")

39. PHH engaged Milliman to analyze and rank the captive reinsurance proposals made by the MIs in response to the RFP. **ECX 0014** (1/29/07 Milliman presentation to PHH); **ECX 0745** (11/6/06 PHH-Milliman email thread); **ECX 0742** (12/20/06 PHH-Milliman email thread); ECX 0346 (1/2/07 Rosenthal email to Milliman) (comparing UGI captive proposal to those from Triad and MGIC, and asking "What are your thoughts?").

40. PHH used its ability to steer borrower referrals to MIs as leverage to extract more favorable deep cede arrangements. **ECX 0737** (document labeled "Captive Thoughts") (bullet "Use leverage to renegotiate captives with MIs"); **ECX 0731** (Rosenthal IH) Tr. 80:10-12 ("The leverage would be we'll send you mortgage insurance and you give us as good of a deal as is possible."); 3/25/14 Hearing Tr. 270:17-272:11(Rosenthal) ("Q. The leverage that you're referring to there is you saying to the MIs, we'll send you mortgage insurance and you give us as good of a deal as is possible. A. We wanted the best economic deal possible. Q. Is that a yes to my question? A. Yes, I wanted the best economic deal possible."); **ECX 0153** (Danahy Dep.) at 197:7-199:7 ("If we started out of the chute with all seven [MIs], you really have no business leverage and you don't really have a business relationship with any one of them because they're all getting a relatively small share …. We went with Genworth in 2000 … and the idea was, okay, so we partnered with UGI, but we don't feel like we have the leverage. So we can't really tell them if you're not doing this stuff, we're going to go somewhere else, because we didn't really have anybody else that we really signed up. So we created two."); *see* **ECX 0760** (Investigational Hearing of Christopher Kennedy, Dec. 17, 2013) (Kennedy IH) Tr. 47:20-23 ("Q. Did you view captive reinsurance as a factor in RMIC's relationship with PHH? A. It was one of the products and services we had to offer to break into the account."); **ECX 0747** (PHH internal email 11/28/07) ("MGIC and Radian are on the list to add [to the dialer] (because we are going to get an attractive captive from them (MGIC and Radian) or they are willing to foot a significant part of the bill (Radian)).").

41. The housing market and the mortgage insurance industry were collapsing by 2008. 3/26/14 Hearing Tr. 446:24-447:16 (Rosenthal); **ECX 0378** (2/14/08 email, UGI/PHH).

42. Freddie Mac prohibited the use of deep cede captive arrangements in February 2008, effective June 1, 2008. 3/26/14 Hearing Tr. 444:25-446:12 (Rosenthal); **ECX 0378** (UGI/PHH email 2/14/08); **ECX 0031**, at 3 (Freddie Mac press release, 2/14/08).

43. PHH nonetheless continued to use its existing captive arrangements to dictate its mortgage insurance referrals through 2008 and into 2009. **ECX 0361** (12/07-1/08 PHH internal email) (proposing telling Radian that it would receive allotted referrals "assuming that they continue to match / remain competitive whatever MI captive structure we develop / negotiate with the others (in case we are able to increase the attachment point due to the MI re-pricing or go to a variable structure)."); **ECX 0485** (June 2008 email thread with MGIC in which Rosenthal writes "relatively low rates & captive eligible are likely required to play (and we want to play!)."); 488:5-18 ("Q. When you say to play, you mean to receive business from you? A. That's what I would have been suggesting there."); **ECX 0522** (PHH spreadsheet) at tab "decision matrix" (column "captive goal"), 3/26/14 Hearing Tr. 471:7-472:5 (Rosenthal) ("…we were discussing at that time … how we wanted to approach negotiating a captive arrangement with these entities."); **ECX 0269** (UGI/PHH email thread, 11/12/08) (Nicholes/UGI writes: "I can't express how excited I am that we are insuring for you again. I'd like to talk with you about re-establishing Atrium and how soon we can begin receiving business."); **ECX 0409** (11/17/08 UGI/PHH email) (transmitting proposed captive agreements); **ECX 0407** (11/19/08 PHH internal email thread) at 1 (Rosenthal: "I just received Captive XoL contracts from UGI …. I am fine with turning up the dialer."), at *id.* (Bradfield: "Under normal circumstances, I would start out with less [than 30%] going to UGI, but since a captive with Genworth is still TBD, I am willing to go higher."); **ECX 0220** (Bradfield to Rudolph email, 11/19/08, Subject: Dialer) ("UGI: 40% … MGIC: 10% … Genworth: 50% …. This is subject to change, possibly soon, pending the outcome of Genworth's captive decision."); **ECX 0437** (PHH internal email, Feb. 2009); **ECX 0437** (PHH internal email, Feb. 2009) (UGI is "drafting up a re-insurance agreement for us right now"), **ECX 0520** (Amendment #9 to UGI/Atrium reinsurance agreement, effective 3/1/09), **ECX 0654** (PHH Suppl. NORA), at Ex. M (dialer setting for UGI increases from 40% on 1/28/09 to 100% on 4/6/09).

44. As late as May 2009, PHH executives directed that MI referrals should be maximally steered toward UGI because of PHH's profitable captive arrangement with UGI, and that PHH should avoid sending business to MIs without captive arrangements. **ECX 0744** (PHH internal email thread) (Bradfield: "Would prefer to max ugi b/c of captive …."); 3/26/14 Hearing Tr. 553:25-555:5 (Rosenthal) ("Q. Now, when Mr. Bradfield says, Max UGI B/C of captive, you understand him to be saying he wants the most possible MI being sent to UGI because of the captive arrangement; is that right? A. That is how I interpret his sentence."). By April of 2009, UGI was the only MI still placing more than a token number loans in its captive with Atrium. **ECX 0159** (3/2/12 PHH spreadsheet submitted to Enforcement).

45. PHH expanded its referrals to additional MIs with whom it lacked a captive arrangement only after it virtually stopped placing captive reinsurance on new mortgages. **ECX 0654** (PHH Suppl. NORA) at Ex M (MGIC was the first MI without a captive arrangement added to the dialer, in November 2008); 3/25/14 Hearing Tr. 381:17-20 (Culver) ("[I]t wasn't until 2008 when captives were no longer important that we started doing business [with PHH]."); **ECX 0159** (3/2/12 PHH spreadsheet to Enforcement) (from Nov. 2007 through Oct. 2008, inclusive, PHH placed 21,478 mortgages into Atrium; from Nov. 2008 through the end of 2009, PHH placed only 3,190 mortgages into Atrium, and none thereafter).

46. As a result of the mortgage crisis, UGI, Genworth, and other MIs began to tighten their standards, raising the prospect that some PHH-originated loans could not be insured unless other MIs were added to the dialer. Nonetheless, throughout 2008 and into 2009, PHH negotiated with each potentially new MI partner to shape plans to enter into captive reinsurance agreements. *See, e.g.,* **ECX 0053** (email thread, PHH-MGIC), *id.* at 1 (6/10/08, Krauter/MGIC to Rosenthal/PHH) ("…did you want to give me some dates and times in which John and I could get on a call with you regarding setting up the new captive agreement."), *id.* (6/10/08, Rosenthal to

Krauter) ("This week looks crazy – perhaps next for the captive conversation?"), ¶¶ 39, 40, *supra*, ¶ 43, *infra*.

47. From June until at least October of 2008, MGIC and PHH negotiated terms for a captive arrangement. **ECX 0053** (*see* ¶ 42, supra); **ECX 0073** (email thread, 7/7/08, MGIC/PHH); **ECX 0057** (email thread, Aug.-Sept. 2008, MGIC/PHH); **ECX 0013** (MGIC, "PHH Product Discussion," Oct. 2008), *see* 3/26/14 Hearing Tr. 501:6-22 (Rosenthal) (ECX 0013 is a pitch document). MGIC was added to the dialer in late November 2008**. ECX 0654** (PHH Suppl. NORA), at Ex. M.

48. Republic Mortgage Insurance Company (RMIC) was added to the dialer in June 2009. *Id.*

49. Previously, in 2006 and 2007, MGIC and RMIC together received no more than half of one percent of all MI business from PHH. **ECX 0159** (3/2/12 PHH spreadsheet to Enforcement).

50. Cession statements prepared by each of the MIs record the regular payments made to Atrium. *See, e.g.*, **ECX 0198** (UGI), **ECX 0257**, **0258** (Genworth); **ECX 0618** (CMG); **ECX 0650** (Radian).

51. From 1997 to the end of its captive arrangements in 2013, Atrium accepted approximately $304,729,028 in total net ceded premiums from UGI, $121,882,937 in total net ceded premiums from Genworth, $3,534,924 in total premiums from Radian, and $2,726,736 in total premiums from CMG, for a total of approximately $432 million in net ceded premiums from these four MIs. **ECX 0653** (PHH NORA), at Ex. C; **ECX 0257** (Atrium-Genworth Statement, Mar. 31, 2012); **ECX 0828** (Atrium "MI Remittance Summary"). Atrium continued to receive premium payments continuously until the end of its captive arrangements in 2013. **ECX 0198** (UGI cession statement); **ECX 0653** (PHH NORA), at Ex. C, ¶ 11, Ex. A.

52. Over the life of its captive arrangements, Atrium received a total of approximately $432 million in net ceded premiums, of which it withdrew at least $212,143,153 in gross dividends from its captive trusts. **ECX 0653** (PHH NORA), at Ex. C; **ECX 0257** (Genworth Cession Statement, Mar. 31, 2012); **ECX 0828** (Atrium "MI Remittance Summary"); **ECX 0198** (UGI Cession Statement, Sept. 30, 2012). These amounts included approximately $93 million in commutation payments from those trusts, and an additional $84,697,182 for purported tax and expense payments. **ECX 0653** (PHH NORA) at Ex. C; **ECX 0198** (UGI Cession Statement, Sept. 30, 2012); **ECX 0258** (Genworth Cession Statement, Mar. 31, 2012).

53. On August 6, 1997, the Department of Housing and Urban Development sent a letter to Countrywide Finance Corporation concerning captive arrangements and compliance with RESPA. **ECX 0193**, at Attachment A (CFPB-PHH-00112651-2658). The letter did not refer to PHH or Atrium. *Id.* The letter stated that captive arrangements would be subject to "particular scrutiny" when the "lender restricts its mortgage insurance business in whole or to a large extent to a primary mortgage insurer that has a reinsurance agreement with the lender's captive reinsurer." *Id.* at CFPB-PHH-00112654. The letter also stated that HUD would permit the arrangement "so long as payments for reinsurance under captive reinsurance arrangements are *solely* 'payments for goods or facilities actually furnished or for services actually performed.'" *Id.* at CFPB-PHH-00112651 (emphasis added) (quoting RESPA Section 8(c)(2)).

54. In late 2006 and early 2007, as part of PHH's 2006 RFP, PHH and UGI executives communicated extensively about a proposed new captive structure. 3/25/14 Hearing Tr. 233:21-247:25 (Rosenthal); **ECX 0326**, **ECX 0751**, **ECX 0346**, **ECX 0325**, **ECX 0717**, **ECX 0716**, **ECX 0718** (PHH emails with UGI and Milliman discussing proposed captive structures).

55. From at least December 2006 to February 2007, the same PHH and UGI executives also frequently discussed the possibility of a payment to Atrium out of the UGI captive trust of as

much as $52 million. 3/25/14 Hearing Tr. 248:1-265:18 (Rosenthal); **ECX 0740**, **ECX 0305**, **ECX 0750**, **ECX 0475**, **ECX 0342**, **ECX 0331**, **ECX 0753** (PHH/UGI and PHH internal emails). In March, 2007, a "dividend" payment of $52,563,805 was made to Atrium out of the UGI trust. **ECX 0198** (UGI Cession Statement, Sept. 30, 2012) ("Trust Deposits" worksheet, cell L120); **ECX 0753** (PHH/UGI and PHH internal email thread, 3/2/07); 3/25/14 Hearing Tr. 264:23-265:18 (Rosenthal). In order to authorize the $52 million payment, both parties had to execute an amendment to their captive agreement. **ECX 0475** (PHH/UGI email, 1/10/07); 3/25/14 Hearing Tr. 258:4-10 (Rosenthal) (UGI agreed to amend captive agreement to make dividend possible); **ECX 0584** at CFPB-PHH-00116640-42 (Amendment #7 to UGI/Atrium Reinsurance Agreement). UGI received nothing under the terms of the amendment. **ECX 0706** (Investigational Hearing of Daniel Walker (UGI), Aug. 5, 2013) Tr. 299:15-24 ("Q. And UGI got nothing in exchange from the amendment, did it? A. No. We got nothing. I don't think we got anything.").