

## Residential Capital, LLC

### [Judge Magnuson Reserves Decision on EquiFirst MTD in Minnesota](#)

Judge Paul Magnuson of the District of Minnesota took under advisement defendant [EquiFirst's motion to dismiss](#) ResCap's [complaint](#) at today's brief hearing. According to the complaint, ResCap bought more than 83,000 mortgage loans from the defendants with original principal balance of more than \$12.3 billion. All of the \$12.3 billion in OPB relates to loans that were securitized in residential mortgage-backed security trusts, including single-name RMBS, according to the complaint.

EquiFirst represents the largest pool of securitized OPB thus far in the RESCU correspondent bank litigations, with the next largest being PNC Bank, which allegedly sold RFC \$7.6 billion in securitized OPB.

At today's hearing, Jeffrey Scott of Sullivan & Cromwell appeared on behalf of defendant EquiFirst and stressed that the EquiFirst action was different from other cases filed in the RMBS actions for several reasons, including that it is the largest case the ResCap plaintiffs have filed in Minnesota.

Scott relied on two arguments: (1) that the plaintiff's contract claims are time-barred under the applicable statute of limitations and not salvaged by the continuing obligations doctrine; and (2) the complaint does not adequately plead the indemnification claim. Specifically, as to the indemnification claim, EquiFirst's reply argued that the complaint contains conclusory allegations indicating a causal connection between RFC's losses in bankruptcy and specific breaches of the reps and warranties made by EquiFirst. Scott urged the court to dismiss both the contract and indemnification claims.

Turning to the statute of limitations argument, Scott said "the plaintiff's argument as it develops is getting bolder and bolder about the continuing obligation provision." Turning to provision A201 of the Client Guide, Scott said that under plaintiff's theory, if EquiFirst knew of the breach and failed to disclose it to RFC, it would have breached not only the loan warranty but also the continuing obligation every day by failing to disclose the breach, which is inconsistent with Minnesota law and law throughout the entire country. Scott described this argument as "absurd." In EquiFirst's motion to dismiss, it stressed that once it sold the loans to RFC it "retained no interest whatsoever in the loans" and as a result did not have any "reason to believe that the loans suffered from material defects." Scott argued that for the breach of contract claim to be timely, ResCap had to sue by 2013, but instead it sued in 2015.

Additionally, David Elsberg of Quinn Emanuel appeared on behalf of the ResCap Liquidating Trust and said that all of the trust's arguments had been made

The next ResCap hearing is scheduled for Wednesday, Aug. 26, at 9:30 a.m. CDT before Judge Nelson.

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## Residential Capital, LLC

### [ResCap Accuses Defendants of Discovery Delays, 'Broken' Meet and Confer Process](#)

#### [Relevant Documents:](#)

[Consolidated Case Agenda](#)

[EquiFirst Agenda](#)

District Court Judge Susan Richard Nelson and Magistrate Judges Jeffrey Keyes and Hildy Bowbeer from the District of Minnesota presided over a status conference in the ResCap consolidated case today. Judge Bowbeer also presided over a separate conference that included defendant EquiFirst. Both conferences focused on the status of document discovery and the status of depositions. At the *EquiFirst* conference, Judge Bowbeer directed the parties to provide an update on discovery before the next hearing on Sept. 21.

At the consolidated ResCap status conference, Isaac Nesser of Quinn Emanuel on behalf of the ResCap plaintiffs said they have produced 2.7 million documents, including documents from 76 custodians. He also noted that the plaintiffs have identified 302 loans that have hard copy files, and that the plaintiffs are pulling the files from storage and plan to produce them as quickly as possible.

Nesser also stated that for eight defendants, he has not received a single electronic document. Nesser stressed that “I think that a sense on our side of the table is that the meet and confer process is broken.” Judge Nelson directed the parties to have a court representative on the phone during the next meet and confer. Nelson also asked the parties to articulate discovery deficiencies as part of the next hearing agenda, so that each side has to time to review the allegations.

Counsel on behalf of certain defendants also appeared to give a status update on their document production, and they generally said that production was taking longer than expected but would be completed soon. Some defendants also accused ResCap of blindsiding them with new allegations that were not raised previously. Additionally, depositions in the *Impac* adversary will begin tomorrow.

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