

## \$13M GMAC Force-Placed Coverage Settlement Gets Nod

By **Jonathan Randles**

Law360, New York (May 24, 2016, 2:16 PM EDT) -- A New York bankruptcy judge on Tuesday gave final approval to a \$13 million settlement resolving a racketeering class action accusing GMAC Mortgage LLC of overcharging mortgagors for force-placed hazard insurance, nearly a year after a federal appeals court nixed related bribery claims against Balboa Insurance Co.

The settlement, approved by U.S. Bankruptcy Judge Martin Glenn, is expected to net class members a 16 percent recovery on their estimated \$80 million in out-of-pocket expenses, according to court documents. The deal resolves a four-year-old lawsuit **accusing GMAC of accepting kickbacks** from insurers in exchange for requiring customers to buy force-placed coverage.

"The results, under these circumstances, are an excellent result," Judge Glenn said during a court hearing in Manhattan.

No objections were filed challenging the settlement. The deal covers a class of nearly 144,000 borrowers, court documents say. The deal comes after the Second Circuit **ruled last summer** that the plaintiffs' bribery allegations against Balboa Insurance were barred by the so-called filed rate doctrine, which holds up state-approved premiums as unassailable.

The plaintiffs asserted Racketeer Influenced and Corrupt Organizations Act claims on the basis of letters that GMAC sent to borrowers that they said concealed the free services and commissions it was reaping from Balboa Insurance. According to the suit, the lender demanded those kickbacks as a condition of designating Balboa Insurance as its exclusive force-placed insurance provider.

The suit originally named GMAC as a defendant but was complicated by GMAC parent Residential Capital LLC's May 2012 bankruptcy filing, which forced the plaintiffs to drop the company from the suit in favor of ResCap's nonbankrupt parent Ally Financial Inc. The plaintiffs then dropped Ally Financial from the case in March 2014, leaving only Balboa Insurance and affiliate Newport Management Corp. as defendants.

The Second Circuit nixed claims against Balboa Insurance last July. The appeals court said that the plaintiffs' claims would be at odds with either of two principles: the nonjusticiability principle, which states that courts shouldn't undermine agencies' rate-making authority by changing approved rates, and the nondiscrimination principle, which says that ratepayers shouldn't be able to use litigation as a means for obtaining preferential rates.

An attorney for ResCap declined to comment on Tuesday.

"This is an excellent settlement that will provide cash relief to tens of thousands of mortgage borrowers who we alleged were overcharged for lender-placed insurance. Unfortunately, lenders and mortgage servicers frequently overcharge homeowners," plaintiffs' counsel Mark Strauss of Kirby McInerney LLP said in an email. "We bring class lawsuits, but state and federal authorities should be more aggressive in investigating and prosecuting such activities, which prey on the weakest consumers."

The plaintiffs are represented by Mark A. Strauss and Thomas W. Elrod of Kirby McInerney LLP, and

Garvan F. McDaniel of Hogan McDaniel.

ResCap is represented by Morrison & Foerster LLP.

The bankruptcy case is In re: Residential Capital LLC et al, case number 12-12020, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Jeff Sistrunk. Editing by Stephen Berg.