

**RESCAP**

LIQUIDATING TRUST

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**Q4 2025 Beneficiary Letter**

February 23, 2025

**Dear Beneficiaries:**

On February 3, 2026, the U.S. Court of Appeals for the Second Circuit issued a summary order affirming Judge Oetken's decision that Exclusion C9 of the Policy (the "Fees Exclusion") bars coverage for RFC's liability relating to the Mitchell, Kessler, and related Missouri actions. See *In re Residential Capital, LLC*, No. 25-118(L), slip op. at 4 (2d Cir. Feb. 3, 2026).

As brief background, the case that led to this appeal originated in the U.S. Bankruptcy Court for the Southern District of New York in connection with Residential Capital's Chapter 11 proceeding. In February 2015, the Trust (along with the Kessler and Mitchell settlement classes) sued the Insurers in an adversary proceeding connected to the bankruptcy.

In 2019, the Bankruptcy Court ruled in the Trust's favor that neither the Fees Exclusion nor Exclusion C10 of the Policy (the "Mortgage Fees Exclusion") barred coverage. These were the Insurers' primary bases for denying RFC's claims. In late 2022, after the close of discovery, the Bankruptcy Court ruled on additional motions for summary judgment in the Trust's favor regarding the trigger of coverage and the availability of consequential damages, prejudgment interest, and bad-faith attorneys' fees (from Lloyd's, the primary insurer). At this time the Trust's claims for indemnity, defense and bond costs, and consequential damages and attorneys' fees were valued at approximately \$81M (not including interest).

The U.S. District Court for the Southern District of New York later withdrew the reference from the Bankruptcy Court so the case could proceed to trial. The parties filed cross-objections to the summary-judgment rulings and the Plaintiffs pressed for a trial date.

In October 2024—five years after the Trust prevailed on these issues at the Bankruptcy Court—Judge Oetken reversed the Bankruptcy Court's ruling on the Fees Exclusion and ruled for the Insurers. Although the decision was not favorable, it did not fully resolve the Trust's claims because the Fees Exclusion has an exception for, and therefore does not apply to, defense and bond costs if the Trust's claims could be considered "Mortgage Fee Claims." In other words, after the Fees Exclusion decision, the Trust had potentially \$57M in claims for defense and bond costs, consequential damages, and attorneys' fees remaining (plus interest).

Faced with the possibility of an interlocutory appeal on the Fees Exclusion and a limited trial on the Trust's remaining defense-costs claims, Judge Oetken later ruled on the Mortgage Fees Exclusion and found that the Plaintiffs' claims were not Mortgage Fee Claims. As noted in the Trust's historical financial statements, due to the result of these two orders, Plaintiff's claims in the Third Amended Adversarial Complaint dated February 4, 2020 were dismissed with prejudice. Accordingly, the District Court entered final judgment terminating Plaintiffs' claims on December 16, 2024.

The Trust and the settlement classes appealed Judge Oetken's Fees Exclusion ruling, while Swiss Re cross-appealed the ruling on the Mortgage Fees Exclusion.

The Second Circuit's summary order affirms Judge Oetken's ruling on the Fees Exclusion across the board. Specifically, the Second Circuit held that:

- RFC's liability in the Missouri actions arose from claims for "fees," *id.* at 10–12;
- RFC was "legally responsible" for the wrongful acts of the originating banks due to its derivative liability for the banks' actions, *id.* at 13–16;
- RFC's rendering of Professional Services triggered the Deemer Clause, *id.* at 17–20; and
- The Fees Exclusion's use of "the Assured" did not limit the exclusion only to conduct of the Assured seeking coverage but rather both that Assured and, per the Deemer Clause, entities for whose conduct the Assured was legally responsible, *id.* at 20–21.

"Because [the Second Circuit] affirm[ed] the district court's judgment for Insurers based on the Fee Exclusion, [it] dismiss[ed] Swiss Re[']s cross-appeal as moot" and did not disturb that ruling. *Id.* at 6 n.3.

As a consequence of the Second Circuit's affirmance, the Trust cannot obtain coverage for its indemnity claims relating to the Mitchell judgment and the related Missouri settlements. Moreover, because the Second Circuit did not reverse Judge Oetken's ruling on the Mortgage Fees Exclusion's inapplicability, the Trust is also barred from pursuing its defense costs and bond collateral claims under the Fees Exclusion's exception for Mortgage Fee claims. Lastly, because the Trust did not prevail on any of its claims, it is foreclosed from collecting consequential damages and bad-faith attorneys' fees.

On February 17, 2026, the Trust filed a petition for panel rehearing and rehearing en banc.

The Trust's quarter end Q4 2025 financial report has been filed with the bankruptcy court. The financial report along with certain tax information have been posted to the Verita Global website at <https://www.veritaglobal.net/Rescap>.

Sincerely,

ResCap Liquidating Trust Board