

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA**

**In Re:**

**GEORGE W HIGHSMITH  
MARY A HIGHSMITH  
Debtors**

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**Case No. 11-05171**

**RESPONSE TO MOTION FOR RELIEF FROM STAY FILED BY GMAC  
MORTGAGE**

COME NOW the Debtors in the above captioned action and in response to the Motion for Relief From Stay filed by GMAC Mortgage state as follows:

1. Debtors have attempted to have GMAC Mortgage ("Creditor) determine if the debtors are qualified for a HAMP modification to their mortgage.
2. Both before and after the petition was filed in this case Creditor has failed and refused to even consider debtors for HAMP and have not provided any reason why debtors would not be qualified for a HAMP.
3. Debtors meet all the requirements set out by Treasury in qualifying for a HAMP and their home's value and the debtors' income appear to meet the net present value test.
4. More and more bankruptcy and other courts across the country are holding that debtors/mortgagors are intended third party beneficiaries of the HAMP program and may assert a lender's failure to comply with HAMP as a defense to attempts by mortgage companies to foreclose on the principal residence of a debtor.
5. The petition in this case shows that each debtor has an income and that the mortgage was taken out prior to January 1, 2009, that the current mortgage payments exceed 31% of the gross income of debtors and that debtors are in default. These are the requirements of HAMP and Creditor is a participant in the HAMP program and is therefore REQUIRED to evaluate debtors for a HAMP.
6. Debtors assert they could pay the mortgage if the payments were equal to 31% of their collective gross income.
7. According to the rough calculations of debtors, their mortgage payment would be reduced from over 1.8k per month to about 1.1k per month, a tremendous relief for debtors that could save their home, which was the whole purpose of HAMP.
8. Cases providing private rights of action to debtors under HAMP will be provided upon request.
9. This is a chapter 7 case and the house owned by debtors is not declining in value so as to cause Creditor a lack of assurance and the house is necessary for the fresh start of debtors. There is no grounds under Section 362 which would allow Creditor to prevail on a MFRFS in a fast liquidating 7.

10. Moreover, this Court should order Creditor to evaluate debtors for a HAMP and put them in a trial period. Debtors hereby offer to reaffirm the modified mortgage so as not to have it be deemed non recourse and would ask the Court to keep this case pending to allow for permanent modification of a HAMP if debtors pass the trial period.
11. The disclosures by debtors in their petition in this cause constitute all the disclosure needed by Creditor to make the evaluation.
12. Just today the United States Government entered into a settlement with the Creditor that could greatly effect Debtors' rights under this mortgage and time should be granted to Debtors for Creditor to determine, as it must, whether debtors are entitled to relief under this new settlement. Granting a MFRFS in this case could mean the difference in debtors keeping their home versus being entitled to \$2,000 or \$3,000 for a wrongful foreclosure.

WHEREFORE, debtors respectfully request this Court to deny the MFRFS filed by Creditor and to ORDER Creditor to evaluate debtors for a HAMP modification and institute a trial period, or alternatively, determine if debtors are entitled to lower interest rate under the settlement announced today with this Creditor and 4 others. The debtors also respectfully request this Court to grant such other and different relief to which they are entitled.

/s/ Ronald F. Suber  
Ronald F. Suber Suber3612  
Attorney For Debtor  
PO Box 1297  
Fairhope, Al 36533  
251-209-3269

### **CERTIFICATE OF SERVICE**

I do hereby certify that on this 9th day of February, 2012, I have caused a copy of the foregoing to served on the Trustee, Creditor's counsel of record and other interested parties in this case by filing this pleading with the ECF system of the United States Bankruptcy Court of the Southern District of Alabama.

/s/ Ronald F. Suber  
Ronald F. Suber Suber3612