

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER      CASE NO: 09-07047-3F1  
MORTGAGE CORP.,

Debtor.

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TRANSCRIPT OF PROCEEDINGS

Hearing re: Motion to Compel Freddie Mac to Provide and Execute Confidentiality Agreement, before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 10:00 a.m., on Friday, July 16, 2010, at the United States Courthouse, Room 4D, 300 North Hogan Street, Jacksonville, Florida, as reported by Cindy Danese, Notary Public in and for the State of Florida at Large.

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Attorney for BNP Paribas Bank.

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T A B L E O F C O N T E N T S

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Motion to Compel Freddie Mac to Provide and  
Execute Confidentiality Agreement

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P R O C E E D I N G S1  
2 July 16, 2010

10:00 a.m.

3 \* \* \* \* \*

4 MR. BLAIN: Your Honor, that takes us up to  
5 the last two categories on the calendar. The way  
6 that we have broken these down for agenda purposes,  
7 the first one are two motions that are what we have  
8 called the contested document production matters.  
9 These are issues based upon motions that have been  
10 filed by Bank of America and by BNP Paribas. And  
11 with respect to those, the debtor does not have a  
12 position on either of those, and I would defer to  
13 Mr. Tessitore, who filed the first motion which is  
14 docket number 1631.

15 MR. TESSITORE: Morning, Your Honor. Mike  
16 Tessitore on behalf of Bank of America as  
17 indentured trustee, collateral agent and custodian.

18 I have one document, Judge, that I'm going to  
19 refer to during my argument, if I could approach  
20 and pass it up to the Court.

21 THE COURT: You may.

22 MR. TESSITORE: Your Honor, the motion that  
23 we're here on is the latest chapter in the saga of  
24 Bank of America and the joining parties' efforts to  
25 obtain access to documents that are being produced

1 by Freddie Mac to the debtor.

2 This motion, which is our motion to compel  
3 Freddie Mac to enter into a confidentiality  
4 agreement or to produce a confidentiality agreement  
5 that's consistent with the same agreement that was  
6 signed between the debtor and the committee, this  
7 motion, if we get the relief we're seeking here,  
8 will have the effect, I believe, of causing Mr.  
9 Weiss and BNP to withdraw the subsequent motion on  
10 the calendar today; that is, I don't think there  
11 will be a need for an in camera inspection of  
12 documents if we can get this issue regarding the  
13 confidentiality agreement resolved and get that  
14 executed and begin this process of producing  
15 documents that we've all been waiting on for so  
16 long.

17 Obviously Mr. Weiss can speak to that, but I  
18 believe that is his position.

19 It's really a bad news/good news situation,  
20 Judge.

21 The bad news is that beginning back in  
22 February, Bank of America and the joining parties  
23 began their efforts to obtain access to these  
24 documents. I believe it was in March that the  
25 Court entered an order that authorized Bank of

1 America and the joining parties to participate in  
2 the process, and just not to rehash everything,  
3 Judge, but the process was that Freddie Mac would  
4 produce documents to the debtor, the debtor would  
5 then have those documents available to be passed  
6 along to the joining parties who were permitted to  
7 see those documents pursuant to that March order.

8 The exception was that, if Freddie Mac  
9 designated any of those documents as confidential,  
10 then the debtor was not authorized to pass those  
11 documents along.

12 We haven't seen any of those documents still  
13 to this day, so here we are mid July, process began  
14 in February, and we've yet to have access to any of  
15 the documents that were produced by Freddie Mac to  
16 the debtor because they all have been designated as  
17 confidential.

18 There's one minor exception, and that is there  
19 was a document or two that the debtor had already  
20 in its records and therefore it was authorized to  
21 give us those two or three documents. Other than  
22 that, we've seen nothing. And I actually confirmed  
23 with Mr. Dantzler yesterday that at this point he's  
24 not authorized to share any documents with Bank of  
25 America or the joining parties unless there is a

1 confidentiality agreement that's been executed.

2 The joining parties sought to deal with this  
3 situation given the fact that the reconciliation  
4 report was coming out, given the fact that I think  
5 everybody agrees that the findings and the  
6 conclusions and that report need to be analyzed and  
7 tested by the stakeholders, including Bank of  
8 America.

9 Given that situation, it seems that a fallback  
10 position that made sense and that the Court has  
11 discussed at various hearings and that the  
12 committee has already -- relief that the committee  
13 has already received, and that's attorneys-eyes-  
14 only access to the documents. And so we filed a  
15 motion, Bank of America did, to allow  
16 attorney-eyes-only access to the documents so that  
17 at least the lawyers for Bank of America could  
18 start having access to the information that was  
19 needed to test the conclusions of the  
20 reconciliation report.

21 On June 18th, the Court ruled and granted that  
22 motion for attorneys-eyes-only access. The hearing  
23 was on June 18th. The order was actually entered  
24 on July 7th, and that order provides, Your Honor,  
25 that the documents that are identified as

1 confidential may share, produce or transmit such  
2 confidential documents to the lawyers of Bank of  
3 America provided that BOA's counsel has signed a  
4 confidentiality agreement.

5 So, just to be clear, Your Honor has already  
6 ruled that the lawyers for Bank of America can have  
7 access to those documents that are designated as  
8 confidential as long as those lawyers execute a  
9 confidentiality agreement.

10 There was already a confidentiality agreement  
11 done. It was done between the committee and  
12 Freddie Mac. The language of this order tracks the  
13 very relief that was granted to the committee in  
14 terms of attorneys-eyes access, and so it seems  
15 like it would be a very simple proposition to  
16 obtain an executed nondisclosure agreement,  
17 confidentiality agreement with Freddie Mac. But,  
18 as we've learned in this process, nothing is easy,  
19 and we've been fighting tooth and nail with Freddie  
20 Mac to get that document signed.

21 So that's the bad news, Judge.

22 The good news is we've narrowed our dispute  
23 down to two issues in the confidentiality  
24 agreement, and it's those issues that we'd ask the  
25 Court to resolve today and, as I said, let us get



1 on with the process of Bank of America lawyers and  
2 the lawyers for the joining parties doing the work  
3 that needs to be done.

4 Issue one, Your Honor, with regard to the  
5 terms of the nondisclosure agreement can be found  
6 on pages 6, 7 and 8. And what I'm referring to,  
7 Judge, is the document that I handed you. This is  
8 the latest draft of the nondisclosure agreement.

9 This document is agreeable to the parties  
10 except for the two issues which I am going to be  
11 addressing. And on pages 6, 7 and 8, you'll see  
12 the revisions to the document that were made by  
13 Freddie Mac which really constitutes the first  
14 issue.

15 What is this issue? This is an issue by  
16 Freddie to attempt to dictate which Bank of  
17 America's lawyers have access to the documents.

18 MR. JOHNSON: Your Honor, are we arguing his  
19 motion to compel the production of this document  
20 right now, or are we just -- I mean, am I going to  
21 get a chance to -- it seems to me that the motion  
22 is moot. This is the remaining issue, Your Honor.

23 THE COURT: It's my understanding it's  
24 basically he's modifying the motion that y'all have  
25 agreed. Let me decide this one issue right here

1           today so that you can go on. You want him to wait  
2           and file another motion?

3           MR. JOHNSON: No. I agree, Your Honor, and  
4           that's why we've allowed Mr. Tessitore to hand over  
5           to the Court what I think would otherwise likely  
6           constitute settlement discussions. This is the  
7           sole remaining issue, but I was just pointing out  
8           that we've gone well beyond the scope of what his  
9           actual motion was, which was to compel us to  
10          produce this document that he just handed over.

11          THE COURT: You've furnished it, but not one  
12          acceptable to him.

13          MR. TESSITORE: Not one consistent with what  
14          the committee signed, which is what we asked for in  
15          our motion, Judge, a reasonable NDA consistent with  
16          what the committee executed.

17          THE COURT: Well, that's argument. Anyway,  
18          just tell me what the issues are and then let's  
19          argue those issues.

20          MR. TESSITORE: The first issue, Judge, as I  
21          mentioned, is found on page 6, 7 and 8 of the  
22          agreement, and that is Freddie has inserted a  
23          provision that says that if a lawyer for Bank of  
24          America or one of the joinder parties represents  
25          Bank of America in any matter, current or

1 anticipated, that relates in any way to TBW other  
2 than this bankruptcy case, that lawyer cannot have  
3 access to the documents. So, I repeat, if a lawyer  
4 represents Bank of America or a joinder party in  
5 any matter that's related in any way or anticipated  
6 matter connected to TBW other than this bankruptcy  
7 case, it's denied access to the documents.

8 THE COURT: Where is that?

9 MR. TESSITORE: That is the effect of the  
10 language that you see on page 6, bottom of page 6,  
11 top of page 7 --

12 THE COURT: The blue?

13 MR. TESSITORE: The blue, yes, Judge -- and on  
14 page 8. And it would apply to lawyers and their  
15 outside consultants. The agreement allows for  
16 outside consultants to have access to the  
17 information, it just puts them in the same camp as  
18 these types of lawyers and denies access to the  
19 information.

20 This provision, I think, is completely  
21 inappropriate for a number of reasons.

22 One, it would deny Bank of America its right  
23 to counsel in this case.

24 Two, it was not part of the Court's ruling on  
25 June 18th. It is not part of the order that was

1 entered on July 7th. The order very clearly states  
2 that the lawyers for Bank of America, period, can  
3 have attorneys-eyes-only access if they sign a  
4 confidentiality agreement. It's not in the  
5 committee's confidentiality agreement.

6 And so for a number of reasons, just based on  
7 the history of this case and Your Honor's rulings,  
8 it makes no sense and it's inappropriate.

9 It also makes no practical sense. The effect  
10 of this language, Judge, would be that the law  
11 firms that are currently representing Bank of  
12 America in this bankruptcy case, including my firm  
13 and the Munger Tolles firm, would be precluded from  
14 reviewing the documents and seeing the information  
15 necessary to test the findings and the conclusions  
16 of the debtor's final reconciliation report, which  
17 would be, as I said, a ridiculous result.

18 THE COURT: Wait a minute. If I allow you to  
19 see it, you get to see it.

20 MR. TESSITORE: Right. The effect of these  
21 changes, these revisions in blue that you're  
22 seeing, Your Honor, would preclude my firm and the  
23 Munger Tolles firm, which are two of the main  
24 counsel of record, from seeing --

25 THE COURT: Is that what you mean?

1 MR. JOHNSON: Your Honor, the intent of this  
2 -- and I don't know how Mr. Tessitore says that it  
3 would preclude his firm, but Freddie Mac is -- I'm  
4 sorry. For the record, Jason Johnson for Freddie  
5 Mac.

6 Freddie Mac has taken the position since this  
7 issue first came up, Your Honor, that we don't want  
8 parties litigating -- we don't want counsel  
9 representing these parties in the New York  
10 litigation to be able to gain access to this  
11 information. They're not entitled to it. They  
12 wouldn't be entitled to see it up in New York, they  
13 haven't sought it in that proceeding, and they've  
14 been trying to use the Rule 2004 process to gain  
15 access to this information.

16 We've heard Bank of America and BNPP stand up  
17 and say: That's not what this is about. We need  
18 to see this information to test the debtor's  
19 conclusions.

20 They both have counsel in this proceeding,  
21 Your Honor, Mr. Tessitore and Mr. Weiss, who we all  
22 agree could be signatories to this document. I  
23 don't believe Mr. Tessitore is representing Bank of  
24 America in the Southern District of New York  
25 litigation. If he is, then we of course have a

1           problem with that.

2           It is our understanding that Mr. Tessitore is  
3           counsel for Bank of America in this bankruptcy  
4           proceeding. We're ready, willing and able to turn  
5           over the information to the counsel who have stood  
6           up and argued these positions for Bank of America  
7           and BNPP in this bankruptcy proceeding, but we are  
8           not willing --

9           THE COURT: What about associates that help  
10          them prepare these papers and paralegals that maybe  
11          they would want to use to --

12          MR. JOHNSON: If they're at his --

13          THE COURT: -- organize this information in  
14          some fashion? I mean, how far, you know --

15          MR. JOHNSON: Your Honor, I believe the  
16          language of the document says that if they're at  
17          his law firm, they're entitled to view it. But we  
18          don't want them sharing it with counsel in the New  
19          York litigation. And we've tried to restrict this  
20          to people who are representing Bank of America and  
21          the other joinder parties in actions related to  
22          TBW.

23          Your Honor, under his proposed language, under  
24          his argument, counsel that represent Bank of  
25          America in a \$1,000 collection action in Boise,

1 Idaho could demand from us to execute an NDA and  
2 see this confidential information. Any counsel  
3 representing Bank of America is his argument. If  
4 you take that to its logical conclusion, then every  
5 single lawyer in the world who represents Bank of  
6 America on anything could demand that they execute  
7 an NDA with Freddie Mac and see all this  
8 information. That is absurd, Your Honor.

9 I think it was the Court's intention that the  
10 counsel representing these joinder parties in this  
11 bankruptcy proceeding be able to see the  
12 confidential information that Freddie Mac is  
13 producing related to the debtor's final  
14 reconciliation report so they can test that theory.

15 Your Honor, we would like to restrict it to  
16 those counsel representing the joinder parties in  
17 this litigation or in this proceeding that are not  
18 representing those same parties in other TBW-  
19 related activities, including that New York  
20 litigation. That's the sum and substance of this.

21 THE COURT: What's the second issue?

22 MR. TESSITORE: Your Honor, could I briefly  
23 respond to that?

24 THE COURT: Let me hear the second issue  
25 first.

1 MR. TESSITORE: The second issue is minor by  
2 comparison, and that is on page 10 of the  
3 agreement, Your Honor. The July 7th order provides  
4 that Bank of America will not share, produce, copy,  
5 transmit such confidential documents, and that's  
6 the --

7 THE COURT: What page?

8 MR. TESSITORE: I'm sorry. I'm letting Your  
9 Honor know what the order says. This is the order  
10 that governs the terms of confidentiality, and it  
11 says that Bank of America shall not share, produce,  
12 copy, transmit or otherwise disclose such  
13 confidential information to anyone without the  
14 agreement of Freddie Mac or an order of the Court.  
15 That's the language from the order that says once  
16 we get attorneys eyes only, we won't disclose it to  
17 a third party.

18 The language of the confidentiality proposed  
19 by Freddie is different. It says it will not  
20 disclose, give, show, make available, discuss,  
21 communicate the contents or substance of.

22 So, in our view, the language should be the  
23 same, because if you change the language it's going  
24 to create an ambiguity or confusion as to why the  
25 language is different. And so we would prefer that



1 the language of the agreement simply track the  
2 language of the order which obviously provides that  
3 the confidential information will not be disclosed  
4 to a third party without the consent of Freddie Mac  
5 or an order of the Court.

6 So that's the second issue. That's merely us  
7 saying let's have the agreement track the language  
8 of the order.

9 THE COURT: Problem?

10 MR. JOHNSON: Your Honor, this is really a non  
11 issue. I don't think that the language of the  
12 NDA --

13 THE COURT: Track the order. That part's  
14 over. Now talk about the main thing.

15 MR. TESSITORE: Judge, what this is really  
16 about is a repeat of the argument that's been made  
17 at prior hearings by Mr. Johnson that they're  
18 concerned that the lawyers involved in the New York  
19 litigation will have access to the documents. I  
20 stated --

21 THE COURT: Will they have access to the  
22 documents?

23 MR. TESSITORE: They will, but the --

24 THE COURT: That's what he doesn't want.

25 MR. TESSITORE: I understand that, Judge, he

1 doesn't want that. Those law firms are main  
2 counsel in this bankruptcy case and the ones that  
3 are capable of reviewing the documents and testing  
4 its conclusions.

5 The agreement says that the information  
6 disclosed will be used only for the purposes of  
7 this bankruptcy case, so this concern about it  
8 being used for some other purpose is not  
9 legitimate. The lawyers are going to follow the  
10 terms of the confidentiality agreement.

11 Mr. Weiss has stated on the record, I have  
12 stated on the record, that that is our intent.  
13 This is not a disguised effort to get information  
14 to use for the New York litigation.

15 But the main law firms who have the ability,  
16 who have the consultants and who are going to be  
17 the ones to review the findings and test the  
18 findings in the reconciliation report would be  
19 precluded, and so, Judge, we need those firms to  
20 have access to this information for the purposes of  
21 this bankruptcy case for purposes of doing what I  
22 believe has been the intent all along, and that is  
23 to let the stakeholders review the information that  
24 the debtor relied on and to test its findings. And  
25 I believe the debtor would even agree that that is

1           necessary so that each party can have input or at  
2           least have a set of eyes go over that report and  
3           reach a conclusion whether the report is accurate  
4           or whether there's errors that need to be  
5           addressed. And that process has not even begun  
6           because --

7           THE COURT: So, if they look at it, that means  
8           they cannot subpoena it now they know the name of  
9           the document in that litigation, and it can't be  
10          introduced in that litigation for any purpose  
11          whatsoever, and it's excluded no matter relevancy  
12          or not.

13          MR. TESSITORE: That's correct, it's not to be  
14          used in that litigation.

15          THE COURT: It can never be used in that  
16          litigation.

17          MR. TESSITORE: Not if it's obtained through  
18          this process. The information obtained through  
19          this process is for use in this bankruptcy case and  
20          all of the assets and liabilities and financial  
21          affairs of the debtor issues that we've been  
22          working on in this bankruptcy case.

23          THE COURT: And any fruit that may grow from  
24          that tree can't be used; is that correct?

25          MR. TESSITORE: I believe --

1 THE COURT: I just want to understand what  
2 we're trying to do here so I can craft an order  
3 that will get this thing moving.

4 MR. JOHNSON: Your Honor, I don't hear Mr.  
5 Tessitore making the representation to the Court  
6 the Court's asking for.

7 MR. TESSITORE: I'm trying to understand the  
8 phrase "the fruit that grows from the tree."

9 THE COURT: It's not the poisonous tree.

10 MR. JOHNSON: Your Honor, the fact --

11 MR. TESSITORE: Your Honor, if I could, we  
12 have a confidentiality agreement where the parties  
13 have agreed already on how the information can be  
14 used. They've already put the limitations on how  
15 that information can be used.

16 THE COURT: And it cannot be used --

17 MR. TESSITORE: We can go through and read  
18 their language, Judge, on what they proposed how  
19 the information can be used.

20 THE COURT: And you have no problem with that.

21 MR. TESSITORE: We have no problem with that.

22 MR. JOHNSON: Can't unring the bell once they  
23 see it, Your Honor. Counsel for the New York  
24 litigation, once they see it, you can't unring that  
25 bell. That's been our argument since day one. All

1 the joinder parties have counsel that represent  
2 them only in this bankruptcy proceeding. They've  
3 said over and over it's for them to be able to test  
4 the debtor's conclusions. They can hire their own  
5 consultants and do that, paid for by the client,  
6 they don't have to pay for it.

7 But, Your Honor, there's no reason that the  
8 counsel in the New York litigation should be able  
9 to see it.

10 They claim Munger, Tolles & Olson is the main  
11 counsel for Bank of America in this bankruptcy  
12 case. I don't think I've ever seen a Munger,  
13 Tolles & Olson lawyer in this courtroom in one of  
14 these hearings. I could definitely not identify  
15 one by sight, and I would be surprised if the Court  
16 could. I don't think anybody has argued on behalf  
17 of Bank of America in this proceeding related to  
18 Freddie Mac other than Mr. Tessitore.

19 There's no reason for them to see it, Your  
20 Honor, and it's clear that when their name was  
21 included at the bottom of that revised NDA, that  
22 all of Freddie Mac's fears and claims were just  
23 shown for what they really were, true, and that is  
24 that this has been a ruse to be able to get the  
25 information into the hands of the lawyers

1 representing those joint parties in the New York  
2 litigation.

3 MR. TESSITORE: There are no legitimate fears,  
4 Judge. Their own agreement prescribes how the  
5 information is going to be used. They're okay with  
6 it being used in that fashion. The lawyers who are  
7 going to do the work and who need to have access  
8 are the Munger Tolles lawyers in this case,  
9 otherwise we're not going to move forward.

10 This argument was made already, Judge. It was  
11 made in the context of your initial ruling and you  
12 rejected it, and I would ask that you do so again.

13 THE COURT: Mr. Weiss, you're on your feet.

14 MR. WEISS: Yes, Your Honor.

15 First, I just wanted to confirm Mr.  
16 Tessitore's representation that to the extent the  
17 Court will fashion an acceptable confidentiality  
18 provision, we are prepared to withdraw our motion  
19 for in camera inspection. We don't wish to burden  
20 the Court with having to do that.

21 I also want to make it perfectly clear that  
22 the intent for my client is for counsel in the New  
23 York litigation, the Boies Schiller firm and their  
24 professionals, to review the information that  
25 Freddie has given to the debtor.

1           The Boies Schiller firm has been involved in  
2 this analysis long before I got to this case. Your  
3 Honor has known me long enough, and it's certainly  
4 not going out on a limb to say I could not begin to  
5 do the analysis necessary to determine whether or  
6 not Mr. Dantzler's and Navigant's analysis is  
7 correct or incorrect. Those lawyers in New York  
8 have the expertise necessary to do this work.

9           What Freddie is basically saying would have  
10 been the same for Freddie to have said: Troutman  
11 Sanders cannot look at the records, Russ Blain has  
12 to. Let's let the bankruptcy lawyer look at the  
13 transactional documents, not the experts.

14           That's absurd, Your Honor. The whole purpose  
15 of this exercise was transparency. If there's  
16 going to be transparency, the people who know and  
17 understand the nature of these transactions, the  
18 lawyers and the professionals who have the ability  
19 to do the analysis, to look at the work that  
20 Navigant has done, look at the work Troutman  
21 Sanders has done, come to conclusions.

22           The debtor would be able to tell Your Honor  
23 they welcome that review. For this case to go to  
24 the next step, there has to be the stakeholders'  
25 ability to review the information and, as Mr.

1 Dantzler said, the enormous amount of data that has  
2 been compiled and reviewed and analyzed.

3 The debtor would tell you that the lawyers  
4 from Boies Schiller have been at almost every  
5 meeting when the asset reconciliation was being  
6 discussed. They're the ones that have retained the  
7 professionals that understand these Form 996s. I  
8 have no clue what it even means.

9 For Freddie to say that for those lawyers to  
10 review the documents that Freddie has given in  
11 order to test the validity, the conclusions and the  
12 theories that the debtor has put in the  
13 reconciliation report is absurd.

14 Those lawyers are going to be governed by the  
15 confidentiality agreement. It provides that  
16 everything that is confidential is to remain  
17 confidential. They may not disclose it to BNP  
18 Paribas. They may not disclose it to any third  
19 parties. But they've got to review it in order to  
20 tell BNP Paribas, to be able to tell Bank of  
21 America: Dantzler was right, Dantzler was wrong,  
22 either way, but they're not going to disclose  
23 what's in those documents. But they're critical to  
24 do the analysis to determine whether the analysis  
25 is correct or not.



1           And if we can't get an agreement from Freddie  
2           to allow that to happen, we're going to have to  
3           have the Court go through 5,000 documents produced  
4           thus far, determine whether or not they are  
5           confidential initially, and, second, cull through  
6           those documents and determine which of those  
7           documents are going to be necessary to be reviewed  
8           by competent counsel, competent experts, in order  
9           to test the theories and conclusions of the debtor.  
10          And that's just patently absurd.

11           We're talking about lawyers who will sign  
12          documents agreeing to do what they're supposed to  
13          do, and that's the way this should happen. There  
14          shouldn't be this squabble that says: Because  
15          they're involved in the New York litigation, they  
16          shouldn't get to see it.

17           To begin with, Your Honor, Freddie's not even  
18          in that litigation. That lawsuit was brought my  
19          client against Mr. Tessitore's client saying Mr.  
20          Tessitore's client didn't do something right.  
21          That's what that litigation is about. It has  
22          nothing to do with the debtor's reconciliation.

23           That's all I have to say, Your Honor.

24           THE COURT: Mr. Johnson.

25           MR. JOHNSON: Your Honor, the money at issue

1 in the New York litigation is completely related to  
2 Ocala Funding and Bank of America's activities or  
3 what it did or didn't do there. It's completely  
4 related to the debtor's final reconciliation report  
5 and what that report says. To claim otherwise is  
6 just hogwash.

7 Your Honor, it's not the lawyers up in New  
8 York who are going to do this analysis of the  
9 documents to see if the debtor's reconciliation  
10 report was correct, it's going to be outside  
11 consultants. And Holland & Knight in Jacksonville  
12 and the Tessitore Law Firm in Orlando are perfectly  
13 capable of hiring consultants to do that work and  
14 presenting the lawyers with a report that the  
15 lawyers can say: Okay, they either did or didn't  
16 do it correctly.

17 Alternatively, Your Honor, the whole point of  
18 the in camera inspection was that, if Freddie Mac  
19 turned over documents -- and we're only talking  
20 about confidential documents here. That if Freddie  
21 Mac turned over documents marked confidential that  
22 they thought probably shouldn't be marked  
23 confidential, they could have the Court review  
24 that.

25 An alternative relief here, Your Honor, is to

1 grant access to Mr. Tessitore and Mr. Weiss to  
2 review those documents to make a determination on  
3 their own whether they think we have marked  
4 something properly or improperly as confidential.

5 If it's confidential, nobody gets to see it,  
6 Your Honor. If they think it's not confidential  
7 and it shouldn't be and their clients should be  
8 able to see it, then they can petition the Court  
9 and the Court can decide whether we were correct or  
10 incorrect in our marking of the document.

11 But to say that all lawyers for the joinder  
12 parties should be able to get access to this  
13 confidential information is absurd, because it  
14 allows anybody in the world who has ever  
15 represented these joinder parties to demand from  
16 Freddie Mac that it execute an NDA and turn over  
17 this information.

18 I don't think that's what Rule 2004 was  
19 intended to do, I don't think that's what the  
20 Court's thought process was when it said: Let's  
21 give attorneys the ability to review this on an  
22 attorney-eyes-only basis.

23 We have argued from the beginning that New  
24 York counsel shouldn't be allowed to do it because  
25 they haven't been able to do it in New York and

1           they shouldn't be able to misuse the Rule 2004  
2           process to get that information here, Your Honor.

3           THE COURT: Mr. Tessitore.

4           MR. TESSITORE: Your Honor, just to clarify a  
5           point I think that Your Honor inquired on, the  
6           agreement provides -- and this is Freddie Mac's  
7           proposed language -- persons gaining access to the  
8           information can use it only for the purposes of  
9           examination under Rule 2004 and for the purpose of  
10          counsel's representation of its clients in the  
11          proceeding, just defined as this bankruptcy case,  
12          and shall not be given, shown, made available,  
13          discussed or otherwise communicated in any form  
14          except as authorized herein. Any lawyer who signs  
15          this will be bound by those use restrictions.

16          MR. WEISS: One last comment, Your Honor.

17          The Boies Schiller firm, again, has the  
18          knowledge to do what needs to be done. For Freddie  
19          to try to impose upon a party in litigation their  
20          choice of counsel in order to perform work for  
21          another party is so far beyond the scope of  
22          anything I have ever seen, I can't even begin to  
23          say how absurd it is.

24          Any party that signs the confidentiality  
25          agreement is bound by it. In essence, what Freddie

1 is saying is: We don't believe the lawyers are  
2 going to be bound by their code of ethics.

3 The lawyers are going to keep the information  
4 confidential, plain and simple. If you sign that  
5 document, you should be able to review what's been  
6 produced, and if we're going to move this thing  
7 along at anything other than a snail's pace, people  
8 most able to digest, review and analyze that which  
9 has been done have to be the lawyers and the  
10 professionals that sign the NDA and move forward.

11 The NDA as Freddie has it drafted would also  
12 preclude the very same professionals that the Boies  
13 Schiller firm has engaged since the beginning of  
14 this case that have been doing the analysis of the  
15 records that they have access to from Ocala  
16 Funding. Because those same professionals would be  
17 the professionals in the New York litigation,  
18 they're going to be precluded, so now we've got to  
19 start with a whole new set of professionals.

20 This case needs to move forward. The debtor  
21 recognizes it, the stakeholders recognize it.  
22 Freddie shouldn't impede it.

23 THE COURT: Is that it?

24 MR. JOHNSON: Mr. Kobert?

25 Sorry. Just trying to add a little levity,

1 Your Honor.

2 THE COURT: That's okay. I figured he was  
3 going to jump up. People talk too long, he gets  
4 antsy and has to say things.

5 (General laughter.)

6 THE COURT: I'm ruling on behalf of the moving  
7 parties. I think they will be limited by the  
8 confidentiality agreement.

9 If they try to show it to some attorney that  
10 wants it, sends over an agreement and he's  
11 obviously not related -- anybody that seeks to be  
12 signed on has to notify you. If it's beyond the  
13 scope of what's even reasonable, then you can come  
14 in here and object or file something.

15 In other words, I assume you'll get copies of  
16 whoever requests to look at it and a copy of the  
17 agreement at the same time, and you'll be able to  
18 deal with it.

19 But I think they've got to be able to do it.  
20 The reconciliation is public record and the  
21 documents that help -- at least public record as to  
22 this case and parties involved, and the people have  
23 to see the backup information as that comes to it.

24 So I think we need to put this matter to bed,  
25 and I trust the attorneys that sign the

1 confidentiality agreement, and you've got plenty of  
2 recourse if they violate that agreement.

3 Yes.

4 MR. JOHNSON: Your Honor, can I ask for a  
5 point of clarification?

6 THE COURT: Yes.

7 MR. JOHNSON: You're really, it seems to me,  
8 clarifying the order that you entered on Bank of  
9 America's original joinder motion, the committee's  
10 clarification motion.

11 The reason I'm asking is there may be an  
12 appeal of that order, and I'm wondering if we're  
13 going to have to appeal that one or the order on  
14 the --

15 THE COURT: Whatever I said in that order --

16 MR. JOHNSON: -- motion today.

17 THE COURT: -- that's what I figure the  
18 language is supposed to be in this confidentiality  
19 -- it said the attorneys for the debtor. Isn't  
20 that what it said?

21 MR. TESSITORE: It said the lawyers for Bank  
22 of America --

23 THE COURT: Lawyers for Bank of America --

24 MR. TESSITORE: -- and the joining parties.

25 THE COURT: -- and the joining parties.

1 That's what the confidentiality agreement should  
2 say. And you have the limitation that's already in  
3 the agreement, and that's satisfactory to me. That  
4 covers what Mr. Johnson is concerned about.

5 MR. TESSITORE: I think we have the direction  
6 from the Court. We need to get this signed today  
7 or tomorrow, Judge.

8 THE COURT: That's up to you. Sign it as soon  
9 as possible.

10 MR. TESSITORE: Exactly. Could we ask the  
11 Court to leave this on as a status matter for the  
12 next omnibus hearing just in case --

13 THE COURT: I'll leave it on. I hope I don't  
14 have to deal with it again. The next step is to  
15 tell you to draw up an agreement you're satisfied  
16 with, you sign it -- you're the parties to be bound  
17 -- and you sign one.

18 MR. TESSITORE: Thank you, Your Honor.

19 THE COURT: I don't want that to happen.

20 MR. TESSITORE: I don't think it will happen,  
21 but I just want to move it along, Judge.

22 \* \* \* \* \*

23 THE COURT: Going back, Mr. Tessitore, your  
24 motion as modified in open court was granted,  
25 modified for clarification. Do an order, pass the



1 form of the order by Mr. Johnson. If you can't  
2 agree on it, each of you send me what you think I'm  
3 supposed to have ruled, and I'll take the two and  
4 make an order, clear and understandable. I can  
5 write better than I can articulate sometimes.

6 MR. JOHNSON: I can do it clear and  
7 understandable, Your Honor.

8 THE COURT: I know, and he can too.

9 Mr. Weiss, I assume once that order is signed,  
10 you'll withdraw your motion?

11 MR. WEISS: Correct, Your Honor.

12 THE COURT: Very well.

13 (Thereupon, at 11:20 a.m., the hearing was  
14 concluded.)

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STATE OF FLORIDA )  
COUNTY OF DUVAL )

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the attached represents an excerpt of the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Jerry A. Funk, Bankruptcy Judge, in the matter of In Re: Taylor, Bean & Whitaker; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on July 17, 2010.

STATEWIDE REPORTING SERVICE

\_\_\_\_\_  
Cindy Danese