UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

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

Debtor.
_____/

TRANSCRIPT OF PROCEEDINGS

Motion to Approve Settlement Agreement By and Between Taylor, Bean & Whitaker, FDIC as Receiver, and the Official Committee of Unsecured Creditors, before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 10:00 a.m., on Thursday, September 2, 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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STATEWIDE REPORTING SERVICE
233 East Bay Street, Suite 606
Jacksonville, Florida 32202
(904) 353-7706

A P P E A R A N C E S

RUSS BLAIN, ESQUIRE
DAVID DANTZLER, ESQUIRE

Attorneys for the Debtor.

PHILLIP CALIFANO, ESQUIRE

Attorney for FDIC.

ROBERT SORIANO, ESQUIRE (via telephone)

Attorney for Sovereign Bank.

PAUL MOAK, ESQUIRE

Attorney for Freddie Mac.

JOHN A. CRAIN, pro se.

KEN MATHER, ESQUIRE

Attorney for U.S. Bank.

PAUL SINGERMAN, ESQUIRE

Attorney for Creditors Committee.

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THE COURT: Good morning. Here today on the case of Taylor, Bean & Whitaker Mortgage Corporation, motion to approve a settlement between Taylor Bean and the FDIC.

The Court's not going to take appearances this morning. If anybody wants to speak, when they come up they'll identify themselves for the record.

Mr. Blain, you can act as master of ceremonies and introduce the initial speakers.

MR. BLAIN: Thank you, Your Honor. Russ Blain on behalf of the debtor.

This is pretty much today another chapter in Mr. Dantzler's series, and I will hand it over to him.

MR. DANTZLER: Morning, Your Honor.

THE COURT: Good morning. Identify yourself for the record, please, sir.

MR. DANTZLER: I'm David Dantzler. I'm with Troutman Sanders, special counsel to the debtor.

Judge, a year ago, when this case was in its earliest days, it was inconceivable that we'd be here today asking you to approve a settlement and a

compromise that could create as much as $200 million in value for this estate.

As the Court may recall, a year ago this case was running on fumes in what could be charitably described as an atmosphere of controlled chaos. Federal law enforcement agents had executed a search warrant at TBW's headquarters in Ocala, which was followed quickly by more than 40 state enforcement actions being filed against the company.

Taylor Bean's accounts at its primary bank, Colonial Bank, had been frozen as a result of an administrative hold. Mortgage investors were aggressively attempting to terminate Taylor Bean as their mortgage servicer and taking efforts to take control of their mortgage portfolios, sometimes through self-help.

Literally overnight Taylor Bean's business had collapsed. 512,000 individual borrowers were left in a lurch.

As you know, restructuring professionals were put in charge of the business, but the company had had no meaningful banking relationship, had virtually no cash on hand, and those in charge had no clear sense of the company's assets.

A year ago, the debtor was preparing budgets a week or two at the time which were the exclusive focus of the hearings in front of this Court. As you may recall, some stakeholders were questioning at that time whether this case should proceed as a Chapter 11.

To complicate matters further, Colonial Bank had failed and was under the control of FDIC as its receiver. Early in the case the FDIC-Receiver filed a motion for relief from stay, seeking in effect to take control of whatever assets remained at Taylor Bean. And as the debtor, we countered with a turnover action, seeking to take control of hundreds of million of dollars on deposit at Colonial Bank.

In bankruptcy terms, which I'm continuing to become conversant in, we were at war with the FDIC-Receiver. Yet here we are one year later asking this Court to approve an agreement that will resolve all issues between Taylor Bean and the FDIC-Receiver, which is by far and away the most complex relationship in the case and the estate's largest creditor.

This agreement will create substantial value for the estate and sets the course and foundation

for the confirmation of a plan.

Judge, there have been a few limited objections filed. I know we have a pro se creditor here today who would also like to be heard. He grabbed me just before the proceedings started. Those objections will be addressed specifically by Mr. Califano or Mr. Singerman. But I think it's fair to say that most objections are limited and are directed regarding reserving rights that some believe they have or may have with respect to individual loans.

Other objections relate to issues that should be decided in the context of confirmation, and then some are simply unfounded. I think by the end of the day you will have concluded that these objections are not sufficient to delay the approval of this settlement.

As we go forward now and lay the factual foundation for the case, I have Neil Luria, the CRO, in the courtroom today, as well as Rob Hutchins, who led the efforts on the asset reconciliation. Consistent with past practices and for efficiency, I would propose that I proffer their testimony and they be available for cross-examination should that be necessary.

THE COURT: That's fine.

MR. DANTZLER: Your Honor, by way of background, and I'm not going to stand up here today and run you through everything that you know, but by way of context, the relationship really between the debtor and the FDIC-Receiver was in some ways melded as a result of the stipulation dated September 10th, 2009, which this Court approved in two orders, which are at docket numbers 348 and 468.

As the Court is aware, that stipulation provided in part for the performance of the servicing reconciliation and an asset reconciliation which resulted in a final report being filed on July 1st of this year and a presentation of that report to the Court on July 7th.

Judge, as we got into that asset reconciliation, which was focused on loans and cash, as you may recall, even in the very early days last fall, the debtor began to identify issues regarding the relationship between Taylor Bean and Colonial and their various financing arrangements that required attention and likely resolution with the FDIC-Receiver. So very early on we identified

some basic issues.

There was that COLB, roughly $1.6-, $1.7-billion financing facility, that on its face was called a participation agreement or a sale of loans or participation interest, but it became clear to us that we needed to look at whether it was actually a true sale of loans, mortgage loans, or whether that acted more like a line of credit.

There was also an equally large in rough terms, $1.6-, $1.7-billion, assignment of trade line where the same questions were evident. The facts regarding the two were very different, but the questions were the same: Is this a true sale to Colonial, or is this more like a line of credit, a financing arrangement?

You know as well as I, the answers to those two questions have significant consequences with respect to the underlying collateral assigned to those facilities.

And with respect to the AOT in particular -- and this will take on importance as we walk through the agreement -- there was a substantial amount of REO, real estate assets, foreclosed homes, assigned to the AOT. As a practical matter, we didn't really have that issue with the COLB.

There was yet another, clearly a line of credit, a $16-million line of credit, called the Overline. There were questions and issues about the scope of the security interests granted by Taylor Bean to Colonial Bank. There were questions about what collateral was actually available to satisfy the amount owed. At the time the bankruptcy was filed, the Overline was about maxed out at $16 million, but there were hundreds of millions of dollars in loans assigned as collateral to secure that repayment of $16 million.

However, many, the vast majority of those loans that were assigned to the Overline, had a zero balance, which meant that no money had been advanced on the Overline against those loans. So there were questions about whether those loans should actually be collateral securing the $16-million repayment.

Then we believed, even early on, that there were some loans that Taylor Bean actually owned that were unencumbered. However, that was a very difficult issue to deal with.

I think you've heard me say before that certain records of the company were not usable or just nonexistence, and this was one of those places

where the company's records were really difficult, because on a paper basis there was no way to distinguish between Taylor Bean-owned loans and loans that had been assigned to Colonial Bank.

All of those loans, because they were serviced and managed by Taylor Bean, were titled in the name of Taylor Bean. With respect to the servicing investor code, how borrower payments were treated and allocated, there was no distinction between Taylor Bean and Colonial Bank. And the course of conduct between the parties, as best we could divine it from the documents available to us, really did create some confusion about how that issue might be resolved.

It was also obvious early, clearly, that Colonial had sustained an enormous loss as a result of its business relationship with Taylor Bean and the collapse of the company. The losses looked at the time to be in excess of $3 billion.

Early in the case and throughout, we had questions about the conduct of some Colonial employees in their dealing with Taylor Bean, which we thought might affect or be an issue we needed to address with the FDIC.

And then, finally, the debtor had filed a

claim in the Colonial receivership.

So the way that this began, Judge, is in the context of this asset reconciliation, we began to see issues and, as I've said earlier, we began to work very closely with the FDIC regarding information that was necessary for the reconciliation. And as that work progressed, we began to identify for the FDIC, and the FDIC for us, issues that we thought would ultimately require resolution, either through a negotiation or litigation of some sort.

And I think throughout, as we continued to work together, there was a mutual acknowledgement that ultimately we would need to take a break or, in addition to the reconciliation, begin to sit down and wrestle with these issues and others arising out of the relationship between the bank and the company.

And so by the spring, we were ready to do that. In late April and early May, we exchanged position papers with each other, and these were substantial documents where we laid out our position, they laid out their position, and at this time the debtor was consulting with counsel for the committee regarding the positions that we'd be

taking in the negotiations with the FDIC.

And so, at the very beginning, our opening position last spring with the FDIC was that the COLB was a line of credit and the debtor owned the loans, and they may or may not have a security interest in them.

Same with the AOT, that it operated as a line of credit. Didn't matter what the contract said. Parties mutually parted and that the debtor owned the loans and those REO assets, problems with perfection.

With the Overline, our position was that those zero-balance loans, those that had not been advanced against on that line of credit, were not collateral. And then it was absolutely essential that the FDIC work with us to clear title, for lack of a better word, on the loans that were titled in Taylor Bean's name against which they had no lien, on those TB-owned loans.

Not surprisingly, the FDIC-Receiver didn't bite on that, and they came back and said that in fact in their view the COLB was a true sale, that the bank had acquired a 99-percent participation interest in the loans financed on the COLB. And, by the way, because Taylor Bean is in default, we

have the right to foreclose on your one-percent interest. And failing all else, there's a grant in the document of a backstop security interest, and that security interest has been perfected in the loans on the COLB.

With respect to the AOT, their position was much the same. It got really important here, the true sale and the participation interest that they asserted that they had acquired would have given them, even if it was found to be a loan, a security interest both in the loans and the -- or had given them ownership interest -- excuse me -- in the loans and the REO, the real estate owned.

Again, they took the position that because of defaults they were entitled to foreclose on our one-percent interest and they had a perfected backstop security interest in the assets assigned to the AOT should it be found to be a loan.

With the Overline, they took the position that everything assigned, all several hundred million dollars in collateral, had been assigned to that loan and therefore was collateral securing the $16-million repayment.

And then, as they had done since the beginning of the case, they continued to assert and educate

and in some ways pound us with those Superman powers and the issues that Congress has bestowed upon the FDIC as receiver of failed banks under FIRREA and those jurisdictional issues.

So they continued to make clear that, from their perspective, these issues had to be resolved in the receivership. And, by the way, debtor, given that case, we think there are all kinds of problems with your claim that you did file in the receivership, you didn't touch on all these issues, so, you know, tough.

And they continued to remind us, as they had throughout, that we had to overcome the D'Oenche Duhme doctrine, that the FDIC-Receiver had the right to set off cash and assets that might otherwise be available to Taylor Bean against losses sustained by the bank. And this business about the bad acts of management, regardless, we were not able to impute those to Colonial's conduct with respect to how we might adjust rights under these lines.

And then they also made clear that, in effect, the burden was on the debtor to establish its ownership in anything, in any of those loans, because on the face of it, as I said, it was

credible to say that everything belonged to the bank.

So after getting those papers, we had to undertake some analysis. And our initial view -- and this is the part of this that always makes me uncomfortable, Judge, and that is telling you how bad our case is. But I think it's only fair that you have to understand this in order to approve this settlement.

We did concluded that the receiver's position with respect to the COLB being a true sale, they had the better argument there. And that, regardless, they did have a grant of security interest and it did appear to be perfected. There were participation certificates with the loans allocable to those statistics. So that in our judgment, they had better the arguments on COLB and their superior rights in those assets.

With respect to the AOT, however, we believed that, at least based on the course of conduct between the parties, some of which I described for you at length during the hearing on July 7th, that their position regarding that being a sale was really pretty weak, and we had the better argument that this relationship looked like a loan. And we

had a pretty good argument, we thought, in fact we had a very good argument, that they had not, at least on the paper, perfected a security interest. The bank had not perfected its security interest in these loans.

There were no participation certificates, there were no, or at least very few, recorded mortgages with respect to the real estate assets. However, the FDIC did have possession of virtually all the loans, which cures a lot of the ills otherwise with respect to perfection.

So our assessment going into the negotiation was that the FDIC likely wins the issue that they have, even if it's a loan, they have a perfected priority security interest in the loans, but we thought we could win entitlement to the REO, to the real estate and to the proceeds of the sales of that real estate.

And that's really the issue, without getting ahead of myself, that's the issue around which a lot of the negotiations ultimately revolved.

Then with respect to the Overline, the Overline had a very, very, very broad grant of a security interest that extended not only to the $16 million available on that line, but to all debts

owed by Taylor Bean to Colonial Bank, and in effect it extended to all assets.

Now, the FDIC-Receiver never read it that way. However, we were concerned that if the case continued in an adversarial posture, that they might come to the view that in effect they could bootstrap around this Overline grant of security interest and make our life even more miserable or exercise even more superior rights.

It was very difficult to argue that the bank had not perfected its security interest as granted under the Overline. And, just as a matter of fact, those zero-balance loans had been assigned to that line as collateral in the same way that other loans which had actually been advanced on that line had been assigned.

But we took comfort in the fact that there were very few, and likely none, recorded mortgages on the REO.

So our assessment was virtually the same as it was with the AOT: the loans are probably subject to their security interest, the REO we may win. But given the number of loans, in effect the FDIC-Receiver was overcollateralized.

With respect to the loaned owned by Taylor

Bean, we believed we had a stronger position on the facts, but you had to do a lot of work to get there, and we didn't have access to witnesses and neither did they. We were concerned about the confusion in the way that the loans had been managed and the way that they were titled, and we were very concerned that these loans, if the FDIC changed its position with respect to the Overline and that grant of security interest, that we might lose them as collateral, securing all obligations owed by Taylor Bean to the bank.

And then we looked, as we were forced to, at those FDIC specific issues. And our conclusion was that, because they had possession of most of these mortgage notes, as well as the bank accounts obviously, that they had the better argument that jurisdiction belonged in the receivership.

We did recognize that D'Oenche Duhme was an issue for us at several levels, especially when our arguments on the AOT fundamentally depended on disregarding what the written agreement between the debtor and the bank had said.

We came to the conclusion, but we didn't, quite frankly, spend an enormous amount of time on this because it was not the subject of debate, but

it's clear that the prior conduct of bank management under many, many circumstances cannot be imputed to the FDIC-Receiver. Even though it was evident to us that certain employees at the bank had some involvement and been complicit with Taylor Bean in its misuse of some of these funding sources, what really occurred to us as a practical matter, it was the bank that was most damaged by that conduct.

And then we were concerned that in fact the receiver was right, and the receiver could set off against whatever assets it had under its control, certainly with respect to the bank accounts, and we owed them more money than there were assets under their control.

Again, we consulted with the UCC regarding this analysis. And then on April 6th we met in Orlando, the debtor and the FDIC-Receiver, with lawyers. We vetted each other's positions. We went back and forth for a number of hours. Mr. Califano and I got to know each other very well that day.

But at the end of the day, we had scoped out what we believed might form the framework for a resolution, and that would be, consistent with our

analysis and I think probably consistent with theirs, that the COLB would be confirmed as a true sale but our one-percent interest would be preserved.

The AOT going forward would be recharacterized as a loan. The fallout from that was they have a first priority security interest in the loan collateral but they had no interest in the REO. That's tens of millions, almost a hundred million dollars, as we'll see in a little while.

The Overline, we buttoned it up to make clear that, while they were over collateralized, the collateral was only available to repay the draw on the Overline. There was no exposure beyond that.

They agreed to disclaim any interest in loans that by this time we were able to begin to point to as being owned by Taylor Bean. And then they made clear that, if we're going to start talking about a settlement on these terms, we want a very broad release.

So we went away from that meeting and had to decide -- we said: Okay, we'll go forward and try to work on this. But, as in all negotiations, we had to decide: Here's what looks like it could be a deal. What is the litigation risk of not taking

this deal?

Again, in consultation with the UCC, we kind of came to the conclusion that we were not likely to do better than this if we litigate for the next two, three, four, five years with them, that this is in all likelihood our best case result. And, if we litigated, there was the possibility that we would have very limited or no recovery. If both the COLB and the AOT were determined to be true sales and participation interest owned by the FDIC-Receiver, they get it all. They get all those assets, including that AOT REO.

If the blanket lien or the Overline was construed to cover all amounts owed by Taylor Bean and extended to all assets of Taylor Bean, and they had a priority perfected interest in that, we could get a goose egg.

And then we continued to be concerned about their rights to set off against the amounts owed.

And we looked, and based on our analysis of those jurisdictional and procedural issues, we knew that the FDIC was committed to litigating the jurisdictional issue to the highest courts possible if we challenged that, and, as I said earlier, our conclusion was that we likely had to go through the

receivership based on our analysis of the law.

The AOT, if we got into these issues about whether it was a loan or a true sale, which is really where the ballgame was in our judgment, the proof would be difficult. First we had to overcome D'Oenche Duhme and agree that the relationship was performed in a way binding on the receiver that was not consistent with these written agreements.

We were aware -- by this time we had done significant forensic work in the electronic evidence, and the parol evidence quite frankly seemed to bear out that the company intended throughout to grant the bank the greatest rights possible with respect to all assets. There's no way to know for sure because we didn't have access to the witnesses who were involved in the relationship.

We knew that it would be expensive. I believe Mr. Luria would testify that in his judgment and based on his experience in these negotiations in cases like this, that the litigation costs easily would run $5- to $10 million, and possibly more than that, given the amounts of money at issue. It would be a lengthy process that would delay this bankruptcy case.

So the ultimate conclusion seemed to be self-evident, that a settlement based on these terms would be far preferable to an uncertain result, the expense and delay associated with litigation.

So at that point we join with the UCC. They joined in the negotiations at that point, and together we committed to try to find a deal that we could present to the Court comfortably.

And in the wake of that meeting on April 6th, initial draft term sheets were exchanged.

There was another meeting. It was kind of back and forth, as you would expect. There was another meeting in New York City on April 22nd attended by the debtor and counsel, the receiver and counsel, and counsel for the committee. And by this time, these ensuing two or three weeks, all the key issues had been identified. Again, there were several hours of negotiation, but coming out of that meeting there was agreement on the basic terms that are now embodied in the settlement agreement that's before the Court for consideration today.

However, that agreement had to be drafted and the fundamental terms had to be approved by the board of directors of the Federal Deposit Insurance

Corp, which is not an easy process in terms of time, and there was a lot of work that the receiver had to do to make an appropriate presentation to the board of the FDIC. The debtor's board had to approve it and the committee still had to approve it.

So drafting ensued. Numerous drafts were exchanged, calls among counsel, which ultimately resulted in the FDIC board approving the fundamental terms in a meeting on July 12, 2010, yet subject to staff and counsel concluding the negotiations and drafting of the written agreement.

The written agreement was finalized in early August. It was formally approved by the debtor's board on August 6th, and approved by unanimous vote of the committee at virtually the same time.

So we filed the motion to approve on the 11th with the agreement as drafted then. We had obviously continuing review and some feedback that caused us to file a clarifying amendment just earlier this week, adjusting some of the schedules, removing some loans from the schedules, and other what I would call cleanup with respect to the fundamental deal.

And, Judge, even though under the agreement

many of the terms are not effective unless and until a plan consistent with the agreement is confirmed, we deemed it appropriate to file this motion really for two reasons.

First, there are certain aspects of the transaction that need to be implemented now, and under the agreement require approval of the agreement, but then those can begin to play out.

And then, secondly, we thought it fair and appropriate to provide the Court and other stakeholders with notice of this settlement because it was significant and because it provides a roadmap and a foundation for the plan that will be filed in just a few weeks.

However, I want to make clear, and I've committed to a number of people that I would make this absolutely clear, it is not the intention of the settling parties to adjust or compromise the rights at this juncture of any other interested party.

If there's a determination that any of the loans listed in the schedules either belong to another investor or in which another investor or other party has a prior lien, a superior lien interest, then they will not be included in this

agreement. We believe that we've vetted in such a way that there are none or very, very few that will still require work, and we're committed with those involved to work on that. But today that issue remains open for resolution, hopefully in the very near future.

Likewise, with respect to these provisions of the settlement agreement that are in agreement to include in the plan or have the plan provide the following, we're not asking for a ruling today on things that are effectively confirmation issues.

So to the extent a party has a right to object, contest, litigate, whatever, a plan provision, your approval of an agreement today under Rule 9019 that provides that those provisions be in the plan is not in any way intended to prejudice those rights, especially the two issues I've been asked to mention, and I will, the release that will be in the agreement in favor of the FDIC, which is broad, and the assignment of a small portion of the FDIC's general unsecured claim to trade creditors, as those are defined under the agreement. Those are confirmation issues. They're not Rule 9019 issues.

Quickly, Judge, I'd just like to walk you

through what we believe are the key provisions of the agreement.

Section 1.1 does provide in effect for a liquidating plan, the establishment of a trust. Mr. Luria will be proposed as the trustee and a very high level, the structure of that trust.

The FDIC-Receiver agrees to support the plan. And I think I mentioned this before, but the committee and the debtor will be co-proponents of that plan.

With respect to the COLB loans, this is one of those issues that will be effective on confirmation, but the plan will confirm Colonial's 99-percent interest, participation interest, in the COLB loans, as the agreement reads, with respect to which there are no conflicting claims of ownership, and we've endeavored to include in Exhibit E, as amended, loans about which there is no question about anybody else's claim.

The debtor will retain its one-percent interest and be paid for that interest as the FDIC and when the FDIC-Receiver is paid in the sale of that. It avoids the foreclosure-related claim by the FDIC.

With the AOT, this is a bit more complicated.

Parties agree that the AOT will be treated as a loan going forward. Therefore, the assets belong to the debtor. The FDIC-Receiver has a first priority security interest in those assets.

This portion of the agreement is one of those things that goes effective with this Court's approval of the agreement, because what will happen is the oversight responsibility for these loans will move from the FDIC-Receiver to the debtor, and that will happen upon approval.

The provision has what's called a waterfall that provides for how monies obtained, either through borrower payments or sales proceeds from selling the loans, would be allocated. Important in that, the debtor recovers servicing advances made, those kinds of monies that I talked about during the reconciliation report. The receiver will allow for the repayment of those servicing advances, which is several million dollars, as we'll see.

I should highlight for the Court and for others, the debtor is currently in negotiations with -- it can't obviously be the actual servicer of the loans for lots of reasons, but it is in negotiations that it hopes will conclude very, very

quickly, hopefully tomorrow but within days, with a servicer to actually take responsibility for servicing these loans, these AOT loans. And I'm telling you and others that, when we file that motion, we will likely be seeking some expedited review or hearing on that contract because this is one of the things about which there is really time sensitivity.

Under Section 1.5 of the agreement, upon confirmation the debtor's ownership in the REO and the proceeds of the REO that's already been sold will be confirmed, and the FDIC will disclaim any interest in those proceeds, whether they are obtained in the future or have been obtained in the past.

With respect to the Overline, consistent with what I said earlier, confirms they have a perfected security interest in all the collateral, including zero-balance loans, but only to the extent of the amount owed on that line, which today I think has been reduced to $13 million, plus or minus.

Again, the debtor will own the REO and the REO proceeds related to the Overline upon confirmation.

With respect to loans, in Section 1.6, loans owned by Taylor Bean, they do clarify that the

receiver relinquishes any claim to those loans, and in fact those loans -- that was effective at the time of the signing of the agreement, so those loans have already been delivered to or disclaimed by the receiver so that the debtor can and is working on a way to maximize the value of those assets, likely through a 363 sale.

Another issue that emerged as these conversations were ongoing were monies on deposit at Colonial Bank. And in effect -- the details will be here available in a second -- but in effect the FDIC-Receiver agrees that Taylor Bean is entitled to -- or at least the receiver will disclaim any interest and release approximately $20 million in funds that are in three accounts.

And then -- we've been here a number of times on the borrower issues -- there's $13.8 million on deposit in some of those escrow accounts, the tax and insurance kind of escrow accounts, at Colonial Bank.

For some period of time the receiver, probably in consultation, but the receiver and the debtor will together figure out how that money might be used to either solve an individual borrower's problem, or under certain circumstances it may be

appropriate to reimburse an investor who has solved a specific problem. And that $13 million will be available to do that. And after a period of time, I think about eight months, that money comes to the debtor or the postconfirmation trust for these very same purposes. And then at some point in the future, if it's not used up in the solution of borrower problems or related kind of investor reimbursement, the money is available to go into the corpus of what will be distributed to creditors.

We don't know today -- it's hard to estimate -- exactly how much of the $13.8 million will be used up, but I think it's our expectation there will be some left at the end of the day to go into the estate.

In the agreement, it provides the plan will allow a claim, an unsecured claim, to the FDIC-Receiver, and there's a formula of calculation. It takes the gross amount owed by Taylor Bean, which is slightly in excess of $3.2 billion, and then reduces from that the value of those COLB loans, which we have now acknowledged that they own, minus whatever is paid to them out of those AOT loans that are now collateral securing that AOT debt,

plus the payoff of the remaining balance on the Overline.

When you do all that arithmetic, our current estimate is that at the end of the day the FDIC-Receiver will have an unsecured claim, an allowed unsecured claim in this case, of about $2.3 billion.

In addition, the plan will provide, pursuant to Section 1.8 of the agreement, that the FDIC-Receiver will have an allowed substantial contribution claim in the amount of $1.75 million.

And I can personally attest that without the extensive involvement and cooperation of the FDIC-Receiver and the professionals that they've had to hire to sort out this relationship and things about which the Court has heard much in the last year, it would not have been possible for us to be where we are, and their involvement certainly saved this estate enormous amounts of money and brought issues to closure that we think are right, correct, because we worked so well together in uncovering these facts.

So I mentioned early that Section 1.10 provides that a portion of the unsecured claim of the FDIC-Receiver will be assigned to trade

creditors, and the maximum amount or the value of the assignment will be $15 million to the trade creditors.

There are 160 loans that were identified in the course of the reconciliation that are implicated in the Ocala Funding relationship, likely paid for by Ocala Funding. Certainly not paid for or owned by Colonial, it would appear. And so, as a part of this, the FDIC-Receiver disclaims an interest in those 160 loans. They'll come back into the estate, and then we can administer those appropriately. And we are in discussions with the Ocala Funding banks, Bank of America in particular, about what the issues are surrounding those loans.

Section 2.1 does provide for a very broad release to be included in the plan, releasing the FDIC from claims by the debtor's affiliates, the committee, creditors and parties in interest in this case. There is an important and significant carve-out. It is not a release of any of the claims that have been filed in the FDIC receivership for assets and the money that was at Colonial when Colonial failed.

However, the debtor's claim in the

receivership, all the debtor's claims are withdrawn. In fact, all of them are resolved as a result of the issues that I've outlined for the Court.

Conversely, there's a broad release by the FDIC-Receiver of the debtor, its professionals and the current employees of the debtor. There is a carve-out, specific carve-out, of parties with whom the FDIC-Receiver either has litigation or expects that it might have litigation going forward.

As I mentioned at the beginning, Judge, we estimate that the economic value -- or Mr. Luria estimates that the economic value of this settlement is somewhere between $176 million to roughly $206 million. And there on the screen we have the components of that estimate, kind of the low and high end.

The REO assets under the AOT, and to a lesser extent the Overline, provide a substantial portion of the value. Much of that REO has already been sold, so we know that if the plan is confirmed in accordance with this agreement, that $80 million from the REO that's already been sold will come into the estate. And there's more to sell, so it could be as high as $85 million.

Those whole loans in which they disclaim an interest that are owned, we estimate that they can be sold for somewhere between $43- and $55 million.

This excess collateral on the Overline, even though I said it was hundreds of millions of dollars in UPP, they're very old and have issues, but we believe that the excess collateral on the Overline can likely be sold for somewhere between $11- and $20 million.

The bank accounts, that TBW Funding II, is $13.8 million. That's one of the accounts at Colonial.

The advance recoveries that the FDIC-Receiver has agreed to reimburse Taylor Bean for is $5.7 million. The value of the one-percent interest will depend on the value of the COLB loans, but it's between $4- and $6 million.

The waterfall provides that the receiver will pay Taylor Bean a one-percent disposition fee for overseeing the sale of the loans that it's now going to be responsible for overseeing the servicing. And that fee we estimate will be somewhere between $1.2 and $1.8 million.

There are REO proceeds on deposit at Colonial that will come to the debtor, about a million and a

half dollars.

And then, though it's not in the agreement -- the FDIC-Receiver didn't feel like it was appropriate in the agreement, we felt like it was appropriate in the winding up and clearing up of this relationship -- the FDIC-Receiver has released in effect the cloud on the title or a claim of interest in some sales proceeds and other remittances received with respect to some mortgage-backed securities that total in excess of $11 million.

So there is the economic value in addition to the resolution and the expense savings.

There ends my proffer, Your Honor, of the testimony of Mr. Luria and Mr. Hutchins. In connection with that, I've marked the five AOT, COLB and Overline exhibits as Exhibits 1, 2, 3, 4 and 5. They are exhibits to the settlement agreement as well, but we didn't file them in the electronic filing system just because they were so big.

I would tender those into evidence.

THE COURT: Any objection to those documents coming into evidence?

(No response.)

THE COURT: There being no objection, they're admitted as previously numbered.

(Whereupon, the documents previously marked as Debtor's Exhibits 1, 2, 3, 4 and 5 for identification were received in evidence.)

MR. DANTZLER: Judge, in closing, I'd just like to quickly focus on the Justice Oaks factors and how we see the facts lining up with the law here.

This settlement clearly comports with the four factors that you're to consider under Justice Oaks.

First, the probability of success in litigation. As indicated, the debtor's assessment was that it is highly unlikely that the debtor could obtain a better outcome in litigation with the FDIC-Receiver on the merits than it has obtained in this settlement. And, quite frankly, in the debtor's judgment and that of its professionals, or its lawyers at least, there's a substantial likelihood that the result could be worse on the merits if we litigated, especially with respect to those monies on deposit at Colonial Bank that the receiver is turning over. And, as I said earlier, our assessment was there's real risk of no recovery or a much smaller recovery in

litigation.

If there's anything I've learned in the last year is that it's difficult to collect from an FDIC-Receiver, so there are collection difficulties here. We are likely limited to the statutory claims process under FIRREA. By all appearances, Colonial was very insolvent. The FDIC-Receiver in all likelihood have setoff rights. All of which goes to say that collection would be very difficult if we were doing this involuntarily at the conclusion of successful litigation on behalf of the debtor.

I believe the complexity, expense, inconvenience and delay, the third Justice Oaks factor, is self-evident, but, as I've tried to walk through with you, the substantive issues are complicated, the jurisdictional issues are complicated and procedural issues complicated. It would be very expensive to litigate these, and some of these issues, especially those around jurisdiction and the powers of the FDIC-Receiver, we are convinced that the FDIC would litigate vigorously, so there's that savings.

It would be inconvenient if we were unsatisfied with the receiver's decision regarding

our claim filed in the receivership. Then litigation would have to take place in Montgomery, where the bank was headquartered, or Washington, D.C.

Witnesses, to the extent they are available, willing and able to testify, have now scattered and are located throughout the country.

It would likely take years to resolve this litigation, and we're convinced that if the debtor was successful, there would very likely be an appeal by the receiver.

We believe that the record regarding this motion is evidence that this is in the interest of creditors. We've had the committee at our side throughout, and you will hear from Mr. Singerman on that. As I said, there have been very few objections filed, and those objections are limited in nature.

Therefore, that seems to be enough, but I think on its face this is clearly in the interest of this estate and its stakeholders.

And then finally, Judge, in your Winn-Dixie opinion, when you did the analysis under Justice Oaks, you then went further to just make a further finding that the resolution under consideration

there was fair and equitable and in the best interest of the estate.

The debtor hopes that this is not the last time we'll bring something like this to your attention for approval. However, we do anticipate that it will be one of the largest recoveries, if not the largest recovery, in the case. As I said, it does provide the framework and foundation for a plan.

As a result, we're on track to file the plan by the 21st of September. And while it is currently difficult to predict with any precision, I know there's a process, a disclosure statement, in which this will be further vetted.

In round numbers, if approved and carried through, the top end of claims filed here -- we expect that the actual number will ultimately be smaller -- will be about $8 billion, and we expect that there will be several hundred million -- I can't be any more specific than that -- available for distribution against those claims, and this is key.

Therefore, from the debtor's perspective, the negotiations were hard and vigorous, but the ultimate decision, when we were able to work

through to these terms, was really quite easy and therefore we wholeheartedly recommend to the Court that it be adopted and approved.

With that, I'll sit down, except I do want to make clear that -- I guess I should clean up, my lawyers are telling me -- that Mr. Luria's testimony will be admitted as well without objection.

THE COURT: Does anybody wish to examine Mr. Luria on the matters that Mr. Dantzler represented?

(No response.)

THE COURT: Very well. There's no objection.

Before we go forward, is there anybody that objects to the settlement, not the ramifications that go with it, but just whether or not this is in the best interest of the estate and thinks they should make a better deal?

(No response.)

THE COURT: Good.

Mr. Singerman, would you like to speak? Or is somebody else supposed to talk before you talk?

MR. SINGERMAN: Yes, sir. You anticipated correctly that our choreography would call for Mr. Califano to speak before me.

THE COURT: Mr. Califano, it's always a

pleasure.

MR. CALIFANO: Good morning, Your Honor.

THE COURT: Good morning.

MR. CALIFANO: It's a pleasure to be back here.

Your Honor, just to put things in context from the FDIC-Receiver viewpoint, the Colonial Bank failure caused a $4-billion loss to the deposit fund, Your Honor. $3.2 billion is generally attributable to the Taylor Bean relationship. And as we said early on this in case, we viewed there were three sort of buckets of assets and issues and problems.

There were those that were clearly receivership issues and assets. There were those which were clearly Taylor Bean issues and assets. And then there was the gray area in the middle where there was overlap because of the complex and close banking relationship that Colonial and Taylor Bean had.

And early on in this case it looked as if we were going to spend a considerable amount of time and money fighting over that gray area, fighting over who got to administer those assets in the gray area, and we decided and the debtor decided to try

and work together to the extent possible. So that's what led to the original stipulation which resulted in the resolution and the reconciliation process and eventually led to this settlement.

And, Your Honor, there were very significant litigation issues, and they weren't litigated before Your Honor, but the parties sort of went through the process consensually outside of the Court's supervision, as was described by Mr. Dantzler. And it was not just through the exchange of position papers, but Navigant employees and FDIC employees spent a considerable amount of time sitting down, without lawyers present, working out and identifying factual issues and going through the process.

So what we have here is basically the potential litigants working through the process without the necessity of discovery, without motion practice and pleadings, and basically coming to what the parties believed would be a fair and reasonable resolution without the necessity of actual litigation.

So it was a lot of things, as I've said in this case, that have been unique, including the FDIC's involvement in this Chapter 11 case. But I

think this settlement process, for the amount that's at issue, approximately a billion dollars in disputed assets are resolved and some $200 million created in estate value, I've never been a part of a process that occurred completely without the necessity of the Court's intervention where the parties went through the issues. We went through the FIRREA defenses, we went through the issues related to -- there's a specific Alabama statute on securitizations and true sales and the like, there's UCC issues. And there were very complicated, very fact-intensive issues that would have been years of discovery and fighting over discovery. But the parties said: We'll just go and exchange the information. We're going to open up the books and we're going to talk.

And that resulted in the settlement. And the importance of this settlement -- Mr. Dantzler talked about the importance to the debtor, and that's true, but it's also very important to the FDIC-Receiver because it allows us to go forward without litigation to proceed towards wrapping up the receivership of one of the largest bank failures ever.

And we have throughout this case -- and Mr.

Dantzler referred to loans that some other parties may claim to be owned -- we have throughout this case, and we continue, and I will tell you right now, Your Honor, that to the extent the FDIC-Receiver in the administration of loans and accounts that are at Colonial or come through this process, to the extent any other investor is the true owner or that cash belongs to any other investor, the FDIC-Receiver has and will turn that cash over, turn those loans over, as part of what would be the the receivership process.

We have agreed, Your Honor, through meetings yesterday, conversation, we have agreed to preserve third-party rights and to preserve issues to confirmation.

But I do want to make clear that these issues need to be resolved at confirmation. Our agreement is, for example, with respect to our claim, our agreement is that we have an allowed claim at confirmation in the amount that's set forth.

It's important to us that these assets are distributed at confirmation, because it's essential to the receivership and the receivership getting wrapped up. It is important that these ownership issues which are being deferred be resolved as part

of confirmation. I think that's completely fair.

This case has been pending for almost 13 months. If there's a creditor who believes they have an interest in a particular loan, I think they've had the time, and it's incumbent upon them in the confirmation process to bring those issues to the fore. I think it would be extremely prejudicial to my client, after all the work that's been done, for someone to show up in the confirmation process and say: Judge, you need to preserve these postconfirmation. We may have an interest.

We want to look at these issues. I think people have had that opportunity to look at the issues.

I'm only saying that now, Your Honor, because I want everyone to understand that our deferral of issues to confirmation is not to be implied as a continued deferral of issues endlessly.

And Your Honor asked the right question. Despite the fact that we have some limited objections, no one has raised any issue of collusion or bad faith or the debtor failing to fulfill its fiduciary duties, and no one has addressed the Justice Oaks factors.

So the limited objections that we have relate to people's particular interest in the settlement.

And I'll address the Sovereign objection. Your Honor, the Sovereign is just plain wrong about the participation interest. They talk about participation interest and how the FDIC-Receiver's interests are gone in their participation. That, we disagree with, but that's not part of this settlement.

The proof of claim that's referenced in the settlement agreement expressly excludes any interest under that Sovereign participation agreement. So we're not trying to bury it in our claim, it's excluded. It's not dealt with in this settlement agreement at all, and it's not a component of our claim that we seek to have allowed.

Sovereign also makes a reference that they want to participate in this partial claims assignment, and that's an issue for confirmation, Your Honor. But I do want to make clear I just don't understand how anybody can raise an issue with how the FDIC chooses to distribute the claim that it receives.

The unsecured creditors -- it's very clear,

Your Honor -- they are getting a portion of our recovery that we've agreed to provide if, as and when we receive it. It is not an estate asset, it is a recovery on our claim.

The FDIC-Receiver believes and has believed throughout this case that the trade creditors and the homeowners are victims who were caught up in this fraud and who should be treated differently, which is why one of the important elements of the settlement is the $13.8 million in BB&T funds that's referenced at Section 1.7(d) of the settlement agreement, Your Honor.

We made it very clear that we wanted to make sure that homeowners and consumers who were somehow harmed by this insolvency process have a fund that can pay for them. $13.8 million, we believe, is going to be more than enough. The balance goes to the debtor.

But it was very important to the FDIC that those people be taken care of. Likewise, the trade creditors.

So I know it's an issue that's being preserved for confirmation. I just don't understand the Sovereign's point there.

With respect to Freddie Mac, Your Honor, we

have agreed and the debtors have agreed to preserve their rights. But there are a couple of things in there that I just have to address at this point, because some of the statements just go so far that I have to for the record.

They make a statement that they're not consenting to the FDIC receiver's jurisdiction over Colonial accounts.

Now, we've talked about jurisdiction, and there are some jurisdictional issues, but I don't know how anyone can make a straight-faced claim that the FDIC as receiver doesn't have jurisdiction over bank accounts at a failed bank. That's core FDIC-Receiver jurisdiction. If they don't have the rights to administer accounts at a failed bank, I don't know what they can do. So I can't leave that reservation of rights without being addressed.

Also, Your Honor, they reference these ownership issues. I just want to reiterate, this case has gone on for 13 months. People have been very active in this case. Freddie has been as active as anyone else.

It is our firm position that we're getting close to put-up-or-shut-up time.

So while we are consenting to reserve these

issues, these are issues that need to be resolved at confirmation, in our opinion.

That being said, Your Honor, unless Your Honor has specific questions, I have nothing further at this point.

THE COURT: Not at this time.

MR. CALIFANO: Thank you, Your Honor.

THE COURT: Anybody else want to make a speech for or against?

MR. SORIANO: Your Honor, this is Robert Soriano for Sovereign Bank. Is it my time to speak to my issues, or should I wait for someone else who wants to speak in favor of the settlement?

THE COURT: Go ahead and make your objection.

MR. SORIANO: Thank you, Your Honor. I apologize for not being able to be there in person. It was just impossible for me, and I appreciate you allowing me to do this by phone.

I really believe Mr. Califano and Mr. Dantzler have assuaged my concerns about the settlement by stating on the record that, to the extent the items that we brought up -- and I'll go over those in a second -- are not actually being fundamentally adjudicated in connection with the settlement agreement.

But Sovereign is the agent for itself and a group of banks under a servicing facility loan and security agreement and owed approximately $165 million, and Colonial Bank was a member of that group, had the FDIC as a receiver, but the FDIC has repudiated, which I think in FDIC speak means rejected, the servicing facility agreement.

And therefore, to the extent there was this provision in the agreement that said they're going to be entitled to certain rights, that's really for determination among the various banks and FDIC as receiver, and I don't believe for this Court, but it sounds from what I've heard today that that was not the intention of Section 1.9 of the settlement agreement. If that is the case, that's our only concern, that that was not being somehow determined today.

In addition, I also appreciate the statements about the issue about sharing proceeds -- that Mr. Califano can't understand but hopefully when the time comes I'll be able to help him -- is not on for today, it's a confirmation issue, and I understand now better his argument that basically what he's saying is FDIC, what it would receive on account of claims, is somehow being contributed to

the trade.

I would point out, however, his statement about victims, that the Sovereign and the other banks do believe that they too are victims, else I wouldn't be -- I don't think it's always fair to treat different groups differently. But that's for another day.

If that is the case, based on the comments, then we have no problem with the settlement being approved.

THE COURT: Thank you very much.

MR. MOAK: Morning, Your Honor, Paul Moak on behalf of Freddie Mac.

We had filed a limited objection which Mr. Dantzler and Mr. Califano have both referenced, and I think mentioned to the Court that all the rights, all the objections, that Freddie Mac may have to the adjudication of its ownership interest in these various loans that are being dealt with by the settlement are being preserved, they're not being addressed by the settlement today, by the Court's ruling today.

Similarly, the settlement provides the FDIC security interest in certain loans. Again, that issue, at least as regarding Freddie Mac, is not

being resolved today, it is being held over for another day.

Furthermore, all the plan provisions, including the releases, the granting to the FDIC of an allowed unsecured claim, the granting to the FDIC of a substantial contribution claim, this issue about trade creditors sharing in the FDIC's recovery, all of those issues are reserved until confirmation.

I have been working with Mr. Dantzler's firm on the terms of an agreed order, which I think we'll be presenting to the Court after the hearing or maybe tomorrow. We are still trying to hammer those terms out, but I think that it's clear that, notwithstanding the Court's entry of an order approving the settlement, all of Freddie Mac's rights are reserved with regard to issues addressed by the settlement.

One final thing, Your Honor, Mr. Califano addressed the issue of the jurisdiction of the FDIC. We're not raising that today. We are simply reserving our rights to contest that at the appropriate time.

Unless you have any questions of me, Your Honor, regarding our objection, that's all I have.

THE COURT: If you have a position, as you've put it out, that there may be some of these loans that are yours or you have a lien on or whatever, when are you going to do something about it?

MR. MOAK: Your Honor, we are in the process currently of attempting to resolve that with the debtor, and I'll give you a little more background.

When we got the original exhibit that identified thousands, maybe 10,000 loans, we ran a quick check and determined that approximately a thousand of them came up as hits in our system, that is, loans that for whatever reason Freddie Mac may have owned previously or might assert an ownership interest in.

Over the course of three or four days, I think we have narrowed the field of potential dispute to 175 or so loans, and we're continuing to work with the debtor to hopefully resolve that in the near future.

Our understanding is that this settlement, as incorporated in the plan, will be presented at plan confirmation, and therefore, to the extent we have any objections regarding the ownership interest in those loans, we need to assert those as objections to confirmation.

Your Honor can then attempt to adjudicate the ownership issues at that time, or can set aside that subset of contested loans for subsequent adjudication, but we understand the obligation to bring that issue to your Court's attention presumably within the context of a confirmation objection. Unless Mr. Dantzler would like to propose some other procedural mechanism to address it, we assume that's how it will be resolved.

THE COURT: Thank you.

MR. DANTZLER: There's a pro se participant who would like to be heard, Your Honor.

THE COURT: Sir, if you'll come forward.

State your name for the record, please, sir.

MR. CRAIN: Thank you, Judge, for allowing me to speak. John Crain, pro se.

The reason I come before this Court today basically, initially I was objecting. He had spoke to me. He said that more likely than not my particular loan is not in this pool, but then again I need that on paper.

One of the reasons that we're here today is because some of the formal complaints I made to a lot of administrators, elected officials and Federal Bureau of Investigation, period.

Also there's some other victims out there that need to be aware of what's going on in this Court. Unfortunately it's not televised on CNN because you'd probably have a heck of a lot more people here.

My general concern is this: I've put this in for the record. I have a particular loan. I can't even sell this property because of the way it actually got written up, sir. And a victim -- I did 20 years in the military, sir, and to sit here in court and having to travel here constantly, I should be concerned. I understand the Court's system, but it's cost me a heck of a lot more just to travel back and forth.

I've sold multiple properties, but unfortunately through my research I found out a paper trail that just baffles me. And I do know where a lot of people that used to work for your bank now work.

THE COURT: Speak this way.

MR. CRAIN: The reason is because --

THE COURT: I'm sorry, I'm missing it. You've got a problem with a property, and you can't find out who owns the mortgage so you can get a payoff? Is that what the problem is?

MR. CRAIN: Well, it's -- sir, I actually met Alex Sink, hopefully the new governor. The reason --

THE COURT: That means nothing to me. I want to know what your problem is. If it's something I can do, I will take care of it right now.

MR. CRAIN: I just want to know basically, if it gets transferred, I would like it --

THE COURT: If what gets transferred?

MR. CRAIN: My particular loan. If it gets transferred, as I came before the Court before --

THE COURT: Who has your loan right now; do you know?

MR. CRAIN: It's Taylor, Bean & Whitaker. That's all I know, sir.

THE COURT: It's being serviced by Taylor, Bean & Whitaker? Where do you make your payments?

MR. CRAIN: Sir, at this point, after I got returned letters multiple times from Taylor, Bean & Whitaker, when the cease and desist order went in effect, I was one of the ones that had brought it to the Court's attention that there was an issue, and that was the third largest mortgage company that existed at that point.

My big thing is basically -- this is my

objection. I object to the transfer of the notes free and clear of my claims, defenses and enforcements of my notes and mortgages. All the defenses I have on the debtor should transfer to whoever it gets assigned.

THE COURT: They do. If anybody tries to foreclose your mortgage, and there's a problem caused by anybody, whether it was Taylor Bean or any other mortgage holder that serviced or handled your loan, you can raise that in defense.

MR. CRAIN: Thank you, sir.

THE COURT: That's not being affected here.

MR. CRAIN: Thank you very much.

THE COURT: Write that down that I told you that.

MR. CRAIN: Sir, I've done research on you. You are a man of your word. Say no more.

THE COURT: Well, I don't know where your research had found that, but let me know.

MR. CRAIN: I just through back from D.C., sir. I'm fixing to go to California, going to South America in a couple of weeks.

THE COURT: Good luck to you, sir.

Any other objectors or semi-objectors or limited objectors that need to make any statements

who would like to be heard?

MR. MATHER: Your Honor, Ken Mather on behalf of U.S. Bank as trustee. We filed not so much an objection because we're in support of the compromise, but we request some clarifications. Spoke with counsel prior to the hearing, and all of those matters have been taken care of.

THE COURT: Thank you very much.

MR. MATHER: Thank you, Your Honor.

THE COURT: Mr. Singerman, you've come all the way from Miami. I'm sure you'd like to say something.

MR. SINGERMAN: It's my pleasure to be here, Your Honor. May it please the Court, good morning. I'm Paul Singerman from Berger Singerman, and our firm is counsel to the official committee of unsecured creditors in the Taylor Bean cases. Your Honor, with me at counsel table is Sheryl Newman, who is the chairperson of our committee from Lender Processing Services, and as well my law partner, James Berger.

I'm going to take almost none of your time. I don't think there's a great deal that I could add to Mr. Dantzler's presentation except that perhaps about a year into the case, given his free use of

terms like Justice Oaks and 9019, and he even said disclosure statement, I think it might be appropriate to move ore tenus that he can't any longer say he's not a bankruptcy lawyer.

The settlement agreement that's before the Court this morning reflects the signature of Ms. Newman in her official capacity as chairperson of the committee. The committee unanimously voted to approve the settlement agreement, as was part of Mr. Dantzler's presentation and Mr. Luria's proffer.

As to the reservation of rights, I think that the last thing I ought to do is say anything more other than the committee understands it, the settlement agreement expressly provides for it, and I only raise it to ensure that the Court is clear that the proposed order that will be presented does confirm the reservation of rights as to those matters that are to occur at confirmation, but allows to proceed, as contemplated by the motion to approve the agreement and the agreement itself, those transfers and other matters that are effective upon entry of the 9019 order.

I think last, Your Honor, I want to just say this for perspective, and relevant to Mr.

Dantzler's remarks, that this settlement is the foundation for the plan, which Mr. Califano on behalf of the FDIC in its capacity as receiver confirmed.

Preparing for the hearing yesterday and thinking through the resolution of the objection, some of us observed to one another that the gross claims now, before the claims reconciliation and before the reduction of the FDIC our claims pursuant to the settlement, are in excess of $9 billion. I think that it's fair to say that makes the case before you in your court this morning one of the largest cases pending in the country.

I join Mr. Califano's characterization of the process leading up to the settlement as unprecedented in my career and experience, too, given the magnitude of the issues and the potential for litigation that could otherwise have ensued had everybody not stayed focused on the efficient, right result.

This settlement is the foundation for the plan that we expect to file as a co-proponent with the debtors in under in three weeks, and it provides, I think, a clear pathway to exit in a case that had a minimal prospect of surviving when it was presented

to you about a year ago and that, moreover, can provide for a meaningful distribution to unsecured creditors.

And so, as is clear by our being a signatory to the agreement and a co-movant before the Court today, we endorse the settlement.

The last thing I'll say is purely precautionary, and I appreciate Mr. Dantzler's and the debtor's and Navigant's candor in the presentation of the Justice Oaks standards and his assessment of the litigation risks and opportunities.

In the unfortunate and highly unlikely event that at confirmation some or all of the aspects of the settlement agreement that are contingent upon confirmation are not approved, from the committee perspective, we reserve all rights and don't want anything in the record that was part of the presentation, apropos of the Justice Oaks settlement factors, to be deemed admissions against the estate in the unlikely event, as I've indicated, Your Honor, that these issues have to be litigated.

Thank you, Judge.

THE COURT: As I understand it, this agreement

is binding on the debtor, the FDIC and the committee. They're the signatories on it.

As to ownership of loans between those three, that's where they are. So that, to that extent, other creditors or parties in interest are bound by that decision, so you know you either go to the FDIC and argue that you have an interest in their loan, or the debtor, because you don't want to have to bring them both in since they decided between them who they think owns the loans.

Is that correct? I'm just making a statement, not a finding.

MR. DANTZLER: That's correct, Your Honor. I think in fairness, even to put a finer point on it, Exhibit E contains a list of loans in which the debtor no longer claims an ownership interest, and resolution in effect of the loans on the amended Exhibit E will be with the FDIC-Receiver.

With respect to loans or REO assets listed on all other exhibits, the FDIC-Receiver has disclaimed an interest in those assets, and it is between the debtor and Freddie Mac, is the best example, to resolve those issues. But because of the way these work, as Mr. Califano said, really do need to be resolved in the context of confirmation.

THE COURT: I understand.

Now, if you claim an interest in a mortgage that's owned by FDIC, and the debtor has disclaimed any interest, that doesn't have to be settled in my court, unless that's what we want.

If you have a claim against the debtor, of course I would have to deal with it.

I would recommend coming up with something between now and confirmation, a procedure to go ahead and let people, if they file objections earlier than confirmation, assuming -- they can't object to it until a plan comes in. But try to resolve those in some kind of administrative way; otherwise, we could be here forever doing this, just like you've settled all these other matters that you're afraid what the heck I would do with it, and I appreciate that. One way of judging is keeping everybody scared of what you would do.

(General laughter.)

THE COURT: I want to compliment everybody, even the objectors, on how this case has run. It has been one of the most complicated cases that I've seen. It's not your normal business creditor-debtor relationship. I mean, it's really been complex.

It's amazing that we are this far, and I have to give credit to all the professionals involved in handling it the way they did, and trying to protect all the injured parties, the victims, but primarily the mortgagors out there making payments and hoping they're getting credit for their payment.

The releases that are mentioned in the agreement, again, are just between the FDIC, the debtor and the committee, and that means that they can't object at confirmation to the releases because they've already agreed to it. Other parties, that's an issue that could be brought up, and we'll have to deal with those individually, depending on what happens, if there's still any objections to that.

That being said, I find that the settlement is in the best interest of the estate. To litigate these matters certainly wouldn't create any funds for unsecured creditors. If you're successful, you may cover some of the administrative expenses, and I think it would be a tremendous delay to the administration of this estate and would delay -- not that it's my official concern -- the FDIC winding up their business. So I think it's a good resolution for both of those.

Accordingly, the Court will approve the agreement. I'm not making the terms of that agreement an order of this Court, I'm just approving the agreement. Enforcing that agreement is between the parties in the appropriate forum, if that has to be, but it's not by contempt of this Court by failure to deliver on time.

I'll look to Mr. Dantzler, since he took the lead, for an appropriate order after it's been passed around by the appropriate parties and approved.

Is there anyone else that needs to make any comments or clarifications or administrative errors I may have just committed? I don't want any confusion and back here on clarification.

MR. MOAK: Your Honor, Paul Moak.

It's with some trepidation that I approach the podium again. I just want to mention one issue.

You stated earlier that, vis-a-vis the debtor and the FDIC, they have attempted to resolve the ownership of the various loans, and to the extent that they have agreed that certain loans are owned by the FDIC, then any party in interest would presumably have to go to the FDIC to resolve that and not Your Honor's court.

I think that the agreement as written provides that the debtor will convey upon plan confirmation its interest or ownership interest in the COLB loans, which are the Exhibit E loans, and to that extent I think it would be appropriate, although I'm not suggesting to Your Honor that we're going to have a fight about it, but that it would be appropriate at confirmation for a party such as Freddie Mac to object to the debtor's conveyance of interest in those loans to the FDIC.

MR. DANTZLER: Your Honor, we've been focused on an issue that you've raised earlier, and I think there are loans not only here but there are other loans about which we know there are issues, and we are collectively going to work together to try to frame those issues in a way that, brought to you or to whomever, I think Mr. Moak makes a fair point that we are wrestling with. And I am guardedly optimistic we'll have something to propose to the Court and to others as to how this might resolved in the context of confirmation.

THE COURT: That's fine. I just made my previous statement. That wasn't a ruling, that was just trying to get clarified so I'll know, if I start getting objections, whether there's an issue.

That being said, I'll look for the appropriate order. This hearing is concluded.

(Thereupon, at 11:35 a.m., the hearing was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the attached represents 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 September 7, 2010.

STATEWIDE REPORTING SERVICE

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CINDY DANESE