

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

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

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.

- - -

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

PAGE

PowerPoint Presentation by Mr. Dantzler 4

Comments:

Mr. Califano	43
Mr. Soriano	51
Mr. Moak	53
Mr. Crain	56
Mr. Mather	60
Mr. Singerman	60

Court's Ruling 63

--

E X H I B I T S

Debtor's Exhibits 1, 2, 3, 4 & 5 38

P R O C E E D I N G S

September 2, 2010

10:00 a.m.

- - -

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

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

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

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

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

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

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

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

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

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

1 for the confirmation of a plan.

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

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

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

1 THE COURT: That's fine.

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

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

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

1 some basic issues.

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

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

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

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

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

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

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

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

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

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

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

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

25 And then, finally, the debtor had filed a

1 claim in the Colonial receivership.

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

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

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

1 taking in the negotiations with the FDIC.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 credible to say that everything belonged to the
2 bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 With respect to the loaned owned by Taylor

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this deal?

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

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

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

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

1 receivership based on our analysis of the law.

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

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

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

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

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

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

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

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

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

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

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

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

25 And, Judge, even though under the agreement

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

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

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

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

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

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

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

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

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

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

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

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

11 With respect to the COLB loans, this is one of
12 those issues that will be effective on
13 confirmation, but the plan will confirm Colonial's
14 99-percent interest, participation interest, in the
15 COLB loans, as the agreement reads, with respect to
16 which there are no conflicting claims of ownership,
17 and we've endeavored to include in Exhibit E, as
18 amended, loans about which there is no question
19 about anybody else's claim.

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

25 With the AOT, this is a bit more complicated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 plus the payoff of the remaining balance on the
2 Overline.

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

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

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

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

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

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

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

25 However, the debtor's claim in the

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

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

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

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

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

4 This excess collateral on the Overline, even
5 though I said it was hundreds of millions of
6 dollars in UPP, they're very old and have issues,
7 but we believe that the excess collateral on the
8 Overline can likely be sold for somewhere between
9 \$11- and \$20 million.

10 The bank accounts, that TBW Funding II, is
11 \$13.8 million. That's one of the accounts at
12 Colonial.

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

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

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

1 half dollars.

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

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

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

22 I would tender those into evidence.

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

25 (No response.)

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

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

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

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

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

1 litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (No response.)

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

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

18 (No response.)

19 THE COURT: Good.

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

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

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

1 pleasure.

2 MR. CALIFANO: Good morning, Your Honor.

3 THE COURT: Good morning.

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

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

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

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

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

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

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

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

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

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

25 And we have throughout this case -- and Mr.

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

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

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

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

1 of confirmation. I think that's completely fair.

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

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

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

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

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

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

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

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

25 The unsecured creditors -- it's very clear,

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

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

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

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

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

25 With respect to Freddie Mac, Your Honor, we

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

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

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

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

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

25 So while we are consenting to reserve these

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

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

6 THE COURT: Not at this time.

7 MR. CALIFANO: Thank you, Your Honor.

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

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

14 THE COURT: Go ahead and make your objection.

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

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

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

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

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

1 the trade.

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

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

11 THE COURT: Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

15 Over the course of three or four days, I think
16 we have narrowed the field of potential dispute to
17 175 or so loans, and we're continuing to work with
18 the debtor to hopefully resolve that in the near
19 future.

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

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

10 THE COURT: Thank you.

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

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

14 State your name for the record, please, sir.

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

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

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

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

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

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

20 THE COURT: Speak this way.

21 MR. CRAIN: The reason is because --

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

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

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

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

9 THE COURT: If what gets transferred?

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

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

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

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

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

25 My big thing is basically -- this is my

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

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

11 MR. CRAIN: Thank you, sir.

12 THE COURT: That's not being affected here.

13 MR. CRAIN: Thank you very much.

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

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

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

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

23 THE COURT: Good luck to you, sir.

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

1 who would like to be heard?

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

8 THE COURT: Thank you very much.

9 MR. MATHER: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Thank you, Judge.

25 THE COURT: As I understand it, this agreement

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

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

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

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

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

1 THE COURT: I understand.

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

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

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

19 (General laughter.)

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

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

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

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

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

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

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

16 MR. MOAK: Your Honor, Paul Moak.

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

- - -

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

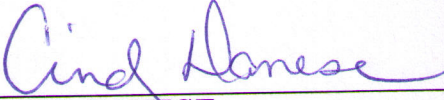
CINDY DANESE

C E R T I F I C A T E1
2 STATE OF FLORIDA)

3 COUNTY OF DUVAL)

4 I, Cindy Danese, a Notary Public, State of
5 Florida at Large, do hereby certify that the attached
6 represents the proceedings before the United States
7 Bankruptcy Court, Middle District of Florida,
8 Jacksonville Division, before the Honorable Jerry A.
9 Funk, Bankruptcy Judge, in the matter of In Re: Taylor,
10 Bean & Whitaker; such transcript is an accurate
11 recordation of the proceedings which took place. A
12 transcript of this proceeding has been produced on
13 September 7, 2010.

14
15
16 STATEWIDE REPORTING SERVICE

17 
18 _____
19 CINDY DANESE

