

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

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

Debtor.

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TRANSCRIPT OF PROCEEDINGS

Motion for an Order Authorizing and Directing Examination Under Rule 2004 of Federal Home Loan Mortgage Corporation and joinders to the motion, before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 9:30 a.m., on Wednesday, March 17, 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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A P P E A R A N C E S

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

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PAGE

Motion for Authorization for 2004 Exam & Joinder 4

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P R O C E E D I N G S1  
2 March 10, 2010

10:00 a.m.

3 THE COURT: Case of Taylor, Bean &amp; Whitaker.

4 The Court has before it a motion for an order  
5 directing examination under Rule 2004 concerning  
6 Federal Home Loan Mortgage Corporation and several  
7 joinders to that motion.8 Court will take appearances for the record, in  
9 the courtroom first.10 MR. DANTZLER: David Dantzler, Troutman  
11 Sanders, here for the debtor.12 MR. WEISS: Alan Weiss, Your Honor, Holland &  
13 Knight, here on behalf of BNP Paribas Bank.14 MR. MARTINO: Phillip Martino, Your Honor, on  
15 behalf of the FDIC receiver.16 MR. TESSITORE: Morning, Your Honor. Mike  
17 Tessitore on behalf of Bank of America as  
18 collateral agent, indentured trustee and custodian.

19 THE COURT: Thank you.

20 MS. PREDERGAST: May it please the Court,  
21 Leanne Prendergast on behalf of Wells Fargo Bank.22 MR. GASSENHEIMER: Good morning, Your Honor.  
23 James Gassenheimer from Berger Singerman on behalf  
24 of the committee.

25 MR. JOHNSON: Morning, Your Honor. Jason

1 Johnson for Federal Home Loan Mortgage Corporation.  
2 With me in the courtroom is Soha Mody, my  
3 co-counsel and in-house counsel for Freddie Mac.  
4 Also on the phone is George Kielman, in-house  
5 counsel for Freddie Mac.

6 THE COURT: Thank you.

7 Anybody else on the phone that would like me  
8 to know they're here?

9 MR. BLAIN: Good morning, Your Honor. This is  
10 Russ Blain, also appearing on behalf of the debtor.

11 MR. KOBERT: Your Honor?

12 THE COURT: Yes.

13 Mr. KOBERT: Your Honor, Roy Kobert appearing  
14 on behalf of Bayview, M&T Bank and U.S. Bank.

15 MR. KELLEY: Good morning, Your Honor. This  
16 is Jeff Kelley on behalf of the debtor as well.

17 THE COURT: Anybody else?

18 (No response.)

19 THE COURT: Okay. On behalf of the debtor,  
20 Mr. Dantzler, you have the floor.

21 MR. DANTZLER: They let me come by myself  
22 today, Your Honor.

23 THE COURT: I'm proud for you.

24 MR. DANTZLER: But that's probably short-  
25 lived.

1           With respect to the debtor's motion for the  
2           2004 Exam of Freddie Mac, in a nutshell I believe  
3           the 2004 issues have been resolved between the  
4           debtor and Freddie Mac.

5           Just to make clear for the Court, that does  
6           not mean that the discovery issues themselves have  
7           been resolved. I think there's likely still some  
8           difference of opinion between the debtor and  
9           Freddie Mac about the scope and how robust  
10          discovery needs to be.

11          But we have had productive discussions  
12          regarding how at least document discovery might  
13          proceed. Those discussions are ongoing.

14          But I think where we came to is the debtor  
15          believes that a formal process needs to begin so  
16          that, as this plays out, issues can be properly  
17          framed for the Court should that become necessary.

18          Freddie Mac does not object, therefore, and  
19          with clarity from the debtor to the 2004 process  
20          beginning in accordance with the motion as filed.  
21          However, Freddie -- and Mr. Johnson can speak for  
22          them, certainly -- but Freddie has reserved, and we  
23          clearly acknowledge that they have reserved their  
24          rights to object to discovery under the discovery  
25          rules should that become necessary.

1           The debtor understands that discovery is a  
2 dynamic process, especially in a matter this size,  
3 and will do what it can to meet its obligations  
4 under the rules.

5           I just want the Court to know that the fact  
6 that we've resolved the 2004 issue does not mean we  
7 won't be back on the substantive discovery issues  
8 themselves.

9           As the discussions between the debtor and  
10 Freddie Mac played out over the last week or so,  
11 we've worked on the terms of the consent order, but  
12 these joinder motions were pending, and the debtor  
13 didn't feel like we could -- we just couldn't get  
14 the joinder issues resolved, for lack of a better  
15 word. And that's what's left, I think, for today.

16           Given a draft consent order that was  
17 circulated late yesterday, I noticed that Deutsche  
18 Bank, who filed a joinder motion late yesterday, is  
19 not represented. I think they're the only moving  
20 party with respect to joinder who is not in  
21 appearance.

22           But the way that the consent order was drafted  
23 kind of left for those who cared to to leave the  
24 joinder issue for a later date. I think the  
25 appearance here today and certainly the committee

1 felt like that the issue needed to be address.

2 So the debtor does not object to joinder.  
3 We're going to get out of the way and let the Court  
4 hear from the parties who are moving and Freddie  
5 Mac.

6 THE COURT: Very well.

7 Mr. Johnson, do you want to go ahead, or do  
8 you want to hear what everybody else says first?  
9 I'll give you that opportunity.

10 MR. JOHNSON: I think I'll let them state  
11 their motions first, Your Honor, and then I'll  
12 respond.

13 THE COURT: Very well.

14 MR. KOBERT: Your Honor?

15 THE COURT: Yes.

16 MR. KOBERT: Your Honor, Roy Kobert. I'll  
17 take that invitation. Can I speak, though I have  
18 no motion pending? I think it's relevant, and let  
19 me tell you why.

20 I do not have a --

21 THE COURT: My note here says that you've only  
22 paid to listen on the phone and not to talk. It  
23 says "listen only" by your name, Mr. Kobert.

24 MR. KOBERT: That's obviously a clerical  
25 mistake, Your Honor, but obviously you can remedy



1           that with the mute button. But I'd ask you to give  
2           me just 90 seconds to tell you why I should be  
3           heard and not put on mute, even though --

4           THE COURT: I don't want to hear why you  
5           should be heard. Do you have something really  
6           relevant to say?

7           MR. KOBERT: Very quickly, Your Honor. I have  
8           not had a chance to speak to debtor's counsel  
9           before the hearing today. We've done this once  
10          before, I guess, in terms of the motion by Deutsche  
11          Bank and the joinders filed by my client and  
12          others, at the hearing on February 19th. We had a  
13          bunch of me too's, the people who wanted to depose  
14          the debtor, and primarily prior management of the  
15          debtor.

16          And Your Honor announced at that hearing that  
17          to avoid filling the file with a bunch of joinders,  
18          that you're going to approve a 2004 Examination,  
19          other interested parties could just, part of the  
20          order, just notify the lead party taking the depo  
21          and coordinate it that way without everyone filing  
22          a bunch of joinders. I didn't file one because of  
23          that.

24          But, Your Honor, there's no order which  
25          established that protocol of having to file

1           joinders every time there's a 2004 Examination.  
2           And maybe it's an oversight, I don't know who was  
3           doing the order, but docket entry 513 was the  
4           original motion, with the hearing on February 19th  
5           involving joinders 1054, 763 and 897 of the docket  
6           by various lenders who are also joining here.

7           So as a nonjoined party, again I'd like to  
8           participate, but I want to avoid papering the file,  
9           and I thought we had a protocol on February 19th.

10          THE COURT: Thank you for your comments.

11          MR. WEISS: Good morning, Your Honor. Alan  
12          Weiss on behalf of BNP Paribas.

13          I would also agree with Mr. Kobert that what  
14          he said was in essence what the Court indicated at  
15          the prior hearing.

16          In this instance, BNP filed the joinder  
17          because there was an objection by Freddie to the  
18          2004 Exam, and we wanted to be sure that there was  
19          a paper record of our joinder in the debtor's  
20          motion for 2004 Exam in the event, as the  
21          circumstance has now played out, Freddie resolves  
22          the issue with the debtor but still wants to  
23          maintain the objection with regard to the parties  
24          who are seeking joinder.

25          BNP filed the joinder in the 2004 motion

1 because information that the debtor is seeking from  
2 Freddie is absolutely critical to BNP Paribas and  
3 probably the other creditors that are here as well  
4 today, Your Honor, in doing an analysis of what  
5 assets are owned by whom.

6 Mr. Dantzler has been candid with the Court  
7 from day one of this case that the debtor's records  
8 are unreliable. He's also maintained from day one  
9 of this case that TBW's biggest customer was  
10 Freddie Mac.

11 Given that the records of the debtor are  
12 unreliable, the second best source of information  
13 to determine the nature of the transactions, the  
14 assets of the debtor, the liabilities of the debtor  
15 are the counterparty to these transactions, which  
16 the majority are Freddie Mac.

17 For that reason, BNP has sought and would  
18 request that this Court allow it to attend the 2004  
19 Examination, see the documents that are going to be  
20 produced, participate in the 2004 Exam to the  
21 extent necessary. I don't think anybody here has a  
22 crystal ball and knows whether or not at the end of  
23 the debtor's examination there will be any further  
24 questions. They may cover the waterfront and  
25 everybody else gets up and packs their bags and

1 goes home.

2 We want to preserve the right at that 2004  
3 Exam to ask questions that we don't think the  
4 debtor covered.

5 I think it is significant, Your Honor, that  
6 none of the parties that filed joinder motions have  
7 sought to expand that which the debtor has  
8 requested in its 2004 Exam. We're happy with the  
9 specificity spelled out by the debtor. We don't  
10 want to go any further with the discovery than the  
11 debtor wishes to go. We're going to limit  
12 ourselves to what is specifically set forth in the  
13 motion in whatever order the Court enters with  
14 regard to the 2004 Exam.

15 If to the extent there's a settlement  
16 agreement of a discovery dispute between the debtor  
17 and TBW, since we have only filed a joinder, I  
18 think that's going to be binding on us as well.

19 BNP filed the joinder, and I think creditors  
20 in this case in the other discovery, including  
21 Freddie, have joined in other 2004 motions  
22 principally to keep costs down, to avoid duplicate  
23 of discovery. I mean, there's no question that the  
24 information that the debtor seeks is information  
25 that creditors need, and the creditors could and I

1 believe the Court would grant each and every one of  
2 them the ability to take a 2004 Exam.

3 So either we do it cooperatively as a group,  
4 or what's going to end up happening is everybody  
5 that has any interest in the assets that were  
6 moving between TBW and Freddie Mac are going to  
7 file their own motions for 2004 Exam, seek the  
8 exact same discovery, duplicate everything that the  
9 debtor and Freddie are agreeing to do here today at  
10 a great cost to the estate and at a great  
11 diminution to the recovery for the creditors.

12 Freddie's opposition to having other parties,  
13 who they acknowledge are creditors and having now  
14 acknowledged the right of the debtor to take this  
15 2004 Exam, to me is almost bizarre. They've  
16 stipulated with the debtor that the information  
17 sought is appropriate under Rule 2004.  
18 Given the information is appropriate under Rule  
19 2004, there really is no good reason for parties in  
20 interest to participate and take part in this  
21 discovery process. It will cut down time, it will  
22 cut down expenses. It works to the advantage of  
23 everybody.

24 In the objection filed by Freddie Mac, they  
25 make some allegations or allusions to my client in

1 particular, seeking to use the 2004 Exam to assist  
2 it in other litigation pending in other courts.

3 Well, that's just nonsense, Your Honor. We  
4 didn't file the motion for 2004 Exam. We're riding  
5 the coattails of the debtor. So unless there's  
6 some conspiracy theory out there that we are  
7 colluding somehow with the debtor and the debtor  
8 wants to assist BNP Paribas in litigation that's  
9 not involved, that argument just goes nowhere.

10 If we wanted to take the deposition of Freddie  
11 Mac in the New York litigation, we're certainly  
12 free to do so. So, to me, that was just a smoke  
13 screen that they were throwing up.

14 Judge, in the interest of the economies of  
15 this case, the resolution of discovery disputes,  
16 allowing creditors to join and participate in the  
17 2004 Exam is what should happen and that's what  
18 we're requesting the Court to do.

19 THE COURT: Question. Would Freddie Mac, when  
20 when they produce their discovery to the debtor,  
21 their written discovery, documents or whatever they  
22 agree, would they be obligated to produce the  
23 duplicate discovery to each of the joinders, or  
24 just discovery furnished to the debtor would be  
25 sufficient?

1 MR. WEISS: We worked out a protocol, again  
2 with the Deutsche Bank 2004 Exam. Documents are  
3 produced once. If a party wishes those documents,  
4 it's up to them to pay the cost of having them  
5 copied and delivered. For the most part it's being  
6 done electronically, so there would not be a  
7 request, I don't believe, by any party for Freddie  
8 Mac to produce the documents more than once.

9 THE COURT: And your questions at the  
10 deposition, if you needed to ask more than Mr.  
11 Dantzler or whoever was asking the questions, would  
12 not get into other areas that have no relation to  
13 this case?

14 MR. WEISS: Absolutely not, Your Honor.  
15 Again, our joinder is clear. We are riding their  
16 coattails. We will not seek any discovery beyond  
17 what's set forth in the debtor's motion.

18 THE COURT: Or what they later agree to.

19 MR. WEISS: Correct.

20 THE COURT: Thank you very much.

21 Let me hear from some other joinders.

22 MR. MARTINO: Your Honor, briefly. The FDIC  
23 has a unique role in this case. We are a part of  
24 the reconciliation process, that is, tracking  
25 money, tracking assets. We have a good

1 relationship with all the players here. They've  
2 given us information.

3 Our concern is that we want there to be no  
4 question that whatever documents are made available  
5 to the debtor for the debtor to use as part of the  
6 asset reconciliation process are equally available  
7 to us as a, if you will, partner -- and I use that  
8 term generically and not legally -- in the  
9 reconciliation process.

10 Further, as I'm sure you can appreciate, when  
11 we receive information, we receive documents for  
12 this case, it becomes part of, if you will, the  
13 library for this case. There is a great deal of  
14 discovery and a great deal of litigation that has  
15 already occurred involving the parties, and that  
16 may well occur in the future.

17 We don't want there to be any question  
18 regarding why and whether we're allowed to have  
19 these documents. The fact is that we do have them  
20 or we will have them. We will need them as part of  
21 the reconciliation process, and we don't want there  
22 to be a fight over whether we should have had them  
23 because they were only produced to the debtor, they  
24 were not produced to us or made available to us.

25 Secondly, Your Honor, with respect to what Mr.



1 Weiss said, we also intend to watch to review  
2 documents. We likely will participate in or at  
3 least attend the 2004 Examination. Don't have any  
4 agenda other than making sure that we have the best  
5 information available so that we can make our  
6 decisions with respect to how assets ought and  
7 ought not to be allocated.

8 So we will sit back and watch, may ask follow-  
9 up questions, but certainly do not intend to take  
10 the lead, do not intend to propound our own  
11 discovery, and do not intend to do anything other  
12 than, as Mr. Weiss put it, ride the debtor's  
13 coattails.

14 THE COURT: I didn't mean to misspeak. I  
15 think you're right, I think everybody is entitled  
16 to see whatever discovery the debtor receives,  
17 unless there's some confidentiality involved, you  
18 know, a particular process or something.

19 What I meant is, I didn't want to put the  
20 burden on Freddie Mac to have to send out packages  
21 to everybody that joins.

22 I don't have a problem, I think you're  
23 entitled to see it. I just wanted to make it  
24 easier on these people. The easier you are on  
25 them, the more you may get from them.

1           MR. MARTINO: Well, in the advent of  
2 electronic discovery, I don't think there will be  
3 mountains. There will be a few DVDs, I suspect, or  
4 an electronic room set up.

5           THE COURT: Very well. So, with that  
6 exception, you agree with what Mr. Weiss said.

7           MR. MARTINO: Do I have to say that, Your  
8 Honor?

9           (General laughter.)

10          THE COURT: No.

11          MR. MARTINO: Yes, Your Honor, I do.

12          MR. TESSITORE: Your Honor, Mike Tessitore on  
13 behalf of Bank of America.

14                 I will gladly say that I agree with Mr. Weiss  
15 because his comments were virtually identical to  
16 the ones that I was going to make in terms of both  
17 the scope of the relief that we request and the  
18 reasons why we think the relief is appropriate.

19                 So I'm not going to repeat all those comments.  
20 I would rather just emphasize a couple of points.  
21 I adopt Mr. Weiss's comments as my own in support  
22 of Bank of America's request to join in this 2004  
23 process vis-a-vis Freddie Mac.

24                 A couple of points of emphasis. Your Honor  
25 mentioned confidentiality. In fact, Mr. Johnson

1 before the hearing today mentioned to me that that  
2 was one of their concerns. Bank of America is a  
3 competitor, and they're concerned about proprietary  
4 information getting out.

5 He also mentioned, and I think Mr. Weiss  
6 referred to it, and that is the fact that he's  
7 concerned that this 2004 process, which is really  
8 directed to this Chapter 11 estate and matters  
9 concerning this Chapter 11 estate, would somehow go  
10 afield, go amuck, and turn into a discovery  
11 exercise for other cases.

12 What I want to emphasize is that the order  
13 that the debtor has negotiated with Freddie Mac  
14 specifically reserves their right to object on any  
15 of these points, so Your Honor would not be ruling  
16 today that all of the stuff that is the subject of  
17 the 2004 motion that the debtor filed would  
18 necessarily be produced to everyone. In fact, if  
19 they've got an objection, it would play out in the  
20 normal course. That is, they would file it. If  
21 it couldn't be resolved via agreement, which  
22 generally speaking most of discovery objections  
23 are, then we'd be back here before Your Honor on a  
24 discrete issue.

25 So I don't think there's a danger of this

1 running amuck, and I don't think there's a danger  
2 of confidentiality being waived. Mr. Johnson will  
3 do whatever is necessary to protect his client in  
4 that regard.

5 The other point, Judge, is just that sometimes  
6 I think it goes back to looking at the rule itself.  
7 The rule, if you break it down, says, "Any party in  
8 interest may examine any entity regarding the acts,  
9 conduct, property, liabilities, financial  
10 condition, and any matter that might affect the  
11 administration of this estate." We've all read  
12 that rule, we've all dealt with the rule.

13 That's exactly what we're doing. We're a  
14 creditor. We're the indentured trustee with  
15 respect to the Ocala line. There's a \$1.75-billion  
16 indebtedness outstanding on that line.

17 We have a proffer that was made by Mr.  
18 Dantzler at the January 22nd hearing in which he  
19 made some comments that indicate and show why this  
20 need for discovery is pressing.

21 And just a few comments. Since July 2008 --  
22 and this is a preliminary determination, or was at  
23 that time, that \$800 million went directly from  
24 Ocala Funding to Freddie Mac P and I accounts and  
25 then paid directly to Freddie Mac.

1           Other just snippets of Mr. Dantzler's proffer,  
2           there are, quote, significant issues with respect  
3           to Bank of America's collateral. There could be a  
4           shortfall of \$1.5 billion. There are three  
5           potential claimants, the 7,883 TBW loans, including  
6           Bank of America and Freddie Mac.

7           So we've got a direct stake in this discovery  
8           that's going to be conducted. There's a protocol,  
9           if you will, in place already, and that is  
10          subpoenas have been issued, and Bank of America's  
11          issued mirror subpoenas for the same information so  
12          they wouldn't be duplicative. It could be produced  
13          once as long as we had access to it.

14          We don't plan to ask the same questions that  
15          the debtor asks, and the way Mr. Martino described,  
16          we can be there and ask follow-up questions that  
17          are within the scope of discovery.

18          And once again, Judge, any time that Freddie  
19          Mac thinks we're stepping out of bounds, they've  
20          got the right to object, as they would in any  
21          discovery process.

22          So we would ask the Court to approve our  
23          joinder in the 2004 process.

24          Thank you.

25          THE COURT: Thank you.

1 Ms. Prendergast?

2 MS. PRENDERGAST: Thank you, Your Honor.

3 My colleagues have stated the reasons in favor  
4 of the joinder very well, and I would like to adopt  
5 their arguments as well rather than belabor the  
6 point.

7 Wells Fargo believes it would be both more  
8 efficient and more cost effective to allow all  
9 interested parties to participate in the 2004  
10 Examination at this time. Otherwise, Your Honor,  
11 we're likely to have six more motions for Rule 2004  
12 Examinations down the line.

13 The debtor consents to the joinder motions.  
14 The cost savings and efficiencies benefit the  
15 estate, and we think the motion should be granted.

16 THE COURT: Thank you.

17 Yes, sir.

18 MR. GASSENHEIMER: Good morning, Your Honor.  
19 James Gassenheimer, again, Berger Singerman. We  
20 represent the committee in this case, whose  
21 position might be a little bit different, but in  
22 large part it's very similar to the other parties  
23 who have spoken already, and we would for many of  
24 the reasons stated believe in and support the  
25 adoption by the Court in granting of the joinders.

1           The committee in the case plays a little bit  
2 different role in the sense that we have a duty,  
3 charged, as I think the Court's very familiar with,  
4 to consult with the debtor on the administration of  
5 the estate, to investigate the acts, conduct,  
6 assets, liabilities and financial condition of the  
7 debtor, to investigate the operation of the  
8 debtor's business, to investigate any other matter  
9 relevant to the case for the formulation of a plan,  
10 and to participate in the formulation of a plan,  
11 and to deal with and address claims and have the  
12 right potentially to question claims filed in the  
13 case.

14           In this case, as has been shown in the  
15 pleadings filed by Freddie Mac, who have objected  
16 to almost everything that's gone on in this case  
17 and particularly with respect to our motion to seek  
18 derivative standing, which was docket entry 1041,  
19 Freddie Mac emphasized that they claimed to be the  
20 single largest creditor in the case.

21           Freddie Mac claims it is owed hundreds of  
22 millions of dollars from TBW, far more than the  
23 \$245 million that Navigant, the CRO, has suggested  
24 in its second interim reconciliation report, which  
25 is docket entry 919. This is Freddie's position

1 taken in docket entry 919 of paragraph 23.

2 We certainly have the obligation to be  
3 prepared to address any issues raised by Freddie  
4 Mac with respect to their contention that they are  
5 owed hundreds of millions of dollars more than what  
6 Navigant's investigation would reveal. Therefore,  
7 we have, rather than, again for efficiency  
8 purposes, filing our own motion, have joined in the  
9 debtor's motion.

10 Discovery, as I think the Court knows and  
11 understands, is a dynamic process, and while the  
12 debtor's motion seeks and specifies certain areas,  
13 to the extent the debtor abandons any of those  
14 areas, we do not want to be in a position where we  
15 are not able to pursue if we think it is reasonable  
16 for us to be prepared to address and handle the  
17 issues with which we are charged in the case, to  
18 adopt or pursue issues if we think it's necessary  
19 for us to understand and participate in our role in  
20 the case.

21 If history is anything to judge by, we have  
22 experienced at every turn in the issues that we've  
23 addressed to the Court's objection to our  
24 participation from Freddie Mac, particularly the  
25 derivative standing motion where we spent hours



1 getting ready for a motion that was only resolved  
2 on the courthouse steps, and therefore, to avoid as  
3 much as we can having to come back here more than  
4 is absolutely necessary, have joined in the motion  
5 and would seek full authority from the Court to  
6 conduct 2004 discovery, reserving to Freddie Mac  
7 the right to object as they deem necessary and  
8 appropriate, hopefully in good faith, in the  
9 process as we try to understand their claims.

10 THE COURT: Thank you very much.

11 Now, Mr. Johnson, I'll hear what you have to  
12 say.

13 MR. JOHNSON: Thank you, Your Honor. Jason  
14 Johnson for Federal Home Loan Mortgage Corp.

15 With respect to the first issue that the Court  
16 raised or was raised by one other party that there  
17 was a procedure set up with respect to another Rule  
18 2004 motion, that motion was a motion to examine  
19 the debtor, Your Honor. A number of creditors got  
20 involved in that. I think it's a completely  
21 different situation than examining a nondebtor  
22 third party and the scope of the examination of  
23 that type of party.

24 As I think was intimated by Mr. Gassenheimer  
25 but was not explicitly stated, they're seeking to

1 issue their own subpoenas, issue their own document  
2 requests. They don't want to just tag along with  
3 the debtor.

4 Your Honor, that's one of the large reasons  
5 that Freddie Mac filed this objection when we saw  
6 the joinders. There's been a new joinder filed  
7 almost every day in this case. There's nothing to  
8 say that a new joinder won't be filed tomorrow, or  
9 two filed tomorrow, or five filed on Friday, all  
10 seeking to do their own discovery under the guise  
11 of: We're just joining and riding the coattails of  
12 the debtor.

13 Freddie Mac could be responding and objecting  
14 to subpoenas from tens or hundreds of different  
15 creditors in the case, Your Honor. It's not  
16 efficient to do that.

17 The debtor filed its motion for the limited  
18 purpose of gathering information necessary to  
19 complete the asset reconciliation and to formulate  
20 a plan and a disclosure statement in the case.

21 The other creditors who are worried about what  
22 assets belong to who, those concerns are going to  
23 be addressed by virtue of the debtor's asset  
24 reconciliation report. They're going to get the  
25 information they require from the debtor's asset

1 reconciliation report.

2 If everyone's concerned about efficiency, the  
3 most efficient way to do this is for Freddie Mac to  
4 produce to the debtor under Rule 2004, and allow  
5 the debtor to complete its asset reconciliation  
6 process and allow the debtor's asset reconciliation  
7 report to be filed and released to creditors, and  
8 then we can go from there.

9 But if every creditor wants to join in in this  
10 Rule 2004 process, Your Honor, we're talking about  
11 Bank of America, Wells Fargo, other parties who are  
12 competitors of Freddie Mac in the marketplace.

13 The scope of the information requested by the  
14 debtor in its Rule 2004 motion includes voluminous  
15 amounts of proprietary data, Your Honor,  
16 proprietary information.

17 If we're going to have to provide that  
18 information to the debtor and it's going to be  
19 allowed to be seen by every other party in this  
20 case, then we're going to be back here on  
21 objections and protective motions on almost every  
22 single discovery request, because there's going to  
23 be some party who wanted to join who shouldn't be  
24 allowed to see some proprietary information of  
25 Freddie Mac, and instead of just reaching an

1 agreement with the debtor and providing that  
2 information to the debtor so it can complete the  
3 asset reconciliation report and complete its plan  
4 of disclosure statement while keeping that  
5 information confidential from our competitors in  
6 the marketplace, we're going to have to come back  
7 here and have the Court determine who can and  
8 cannot see what information. It's completely  
9 inefficient, Your Honor.

10 Rule 2004 is not allowed to be used as a  
11 device to launch into a wholesale investigation of  
12 nondebtor's private business affairs. We cited to  
13 a case for that proposition, Your Honor. Your  
14 Honor has, I think, understood that and gone down  
15 the road of asking people: You're not going to go  
16 outside of what the debtor wants to ask. But it  
17 still gets into the problem of the proprietary  
18 nature of a lot of the information that's requested  
19 by the debtor, Your Honor.

20 There's no way to get around that other than  
21 coming back to the Court on motions for protective  
22 orders and objections to the discovery, not because  
23 we don't want to be reasonable with the debtor in  
24 providing information, but because we have to  
25 protect our client's proprietary interests, Your

1 Honor. I don't think there's any way to get around  
2 that other than denying the joinder motions,  
3 allowing the debtor and Freddie Mac to participate  
4 in the discovery process and reach a mutual  
5 resolution on what information is required by the  
6 debtor to complete the asset reconciliation and to  
7 formulate its plan of disclosure statement.

8 Otherwise we're going to get into a situation  
9 where numerous other creditors outside of the  
10 creditors committee want to issue their own  
11 subpoenas, want to send their own document  
12 production requests.

13 Freddie Mac's going to be fighting on 20, 30,  
14 40 different fronts, Your Honor. Talk about overly  
15 burdensome on a creditor, on a nondebtor party.  
16 It's going to get way outside the range of  
17 reasonableness, Your Honor, pretty quickly.

18 So we have reached an agreement with the  
19 debtor to allow them to make the 2004 requests.  
20 We'll deal with them one by one, and hopefully be  
21 able to resolve them without having to come back to  
22 the Court. But if we're going to allow every other  
23 creditor, every other joining party, people who  
24 want to join tomorrow, Thursday, Friday, next week,  
25 next month to participate in the process, we're

1 going to be back here on a voluminous number of  
2 protective orders or protective order motions and  
3 objections to the discovery requests. It's  
4 completely inefficient, Your Honor.

5 THE COURT: Is something burning in your  
6 heart?

7 MR. DANTZLER: Well, just based on a couple of  
8 the questions that you asked, Judge, I thought it  
9 might be helpful.

10 One, I just want to -- and this is not today's  
11 fight, but there are issues, as you can get a sense  
12 here today, between us about what the scope of this  
13 could be going forward, even between the debtor and  
14 Freddie Mac. But based on the questions that you  
15 asked earlier, Your Honor, I thought it would be  
16 appropriate and helpful to the debtor, depending on  
17 how you rule, to kind of know and take into  
18 account the following.

19 As I've alluded to in prior hearings, we have  
20 developed and continue to develop what is a very  
21 robust electronic evidence discovery process that  
22 had its genesis in information exchanges with  
23 Deutsche Bank, Bank of America, BNP Paribas, which  
24 is kind of in the process of being expanded to  
25 include the FDIC, and I expect that other

1 stakeholders like Freddie Mac will ultimately seek  
2 to join in the access to that information.

3 And as that has evolved, it is, like many  
4 things in this case, different from what we  
5 expected when we started, but has become a fairly  
6 good, to use Mr. Martino's language, library or  
7 repository, and we've developed ways that in fact,  
8 if information is turned over to the debtor, to  
9 make it available to others.

10 That cost right this minute is being spread  
11 across the entire estate, and it has been our  
12 expectation and continues to be that we'll bring  
13 some protocol to the Court, but it may just be the  
14 right way to deal with that is as a part of the  
15 administration of the estate, and this is kind of a  
16 service provided for stakeholders.

17 But I do think if the Court, as at least your  
18 questions would indicate, would be inclined to let  
19 these joining parties have access to what's  
20 provided, I think there are some confidentiality  
21 issues, that either it would make sense to get some  
22 direction from the Court on today or for the Court  
23 to give us some help in providing a framework how  
24 we might get those issues decided timely, because  
25 there is at least a part of this 2004 process that

1 is absolutely necessary to the reconciliation  
2 process. And I'll remind the Court we have an  
3 April 30 date, a reporting date by which we hope to  
4 have much substantive information available to the  
5 Court and others about some of these fundamental  
6 asset and money issues.

7 And I'm anxious that, if we leave here today  
8 without at least some clarity about how we're going  
9 to proceed in the near term, that we go another 30  
10 or 45 days talking about issues that are thresholds  
11 to getting any information from Freddie Mac, we're  
12 going to have real trouble making that April 30th  
13 date.

14 THE COURT: Here's what we're going to do.  
15 I'm going to, of course, grant the 2004 Exam by the  
16 debtor. I'm going to allow parties that have asked  
17 for joinder to join.

18 They are prohibited from filing or seeking  
19 independent discovery. They have to just go on the  
20 debtor's discovery.

21 They can make inquiry at the examination at  
22 the conclusion of the debtor's inquiry, and it's  
23 subject to objection by Freddie Mac, and those  
24 issues then will be brought to the Court if they  
25 exceed the scope of the purpose of the 2004.



1           As to discovery of documents, the documents  
2 will only be furnished to the debtor. There's two  
3 types of documents that may be sensitive. Number  
4 one, they may have some documents that they don't  
5 mind the debtor seeing but they don't want anybody  
6 else to see. They'll furnish those documents in  
7 some form, saying: These cannot be disclosed to  
8 anybody else. And then I'll have to have a hearing  
9 on that if necessary.

10           And then of course they'll have the ones that  
11 they don't even want you to see, and we'll have a  
12 hearing on those, you know, at some point. In  
13 other words, if there's something that the debtor,  
14 you think, is entitled to see but there are certain  
15 competitors you don't want to see and you can't  
16 work out some kind of agreement with them, then you  
17 will furnish them to the debtor, and the debtor has  
18 to put those somewhere where nobody can see them  
19 but the debtor at that point.

20           The committee can join in, but the committee  
21 is just like any other party. They can go for the  
22 ride. They can't propound further discovery other  
23 than what the debtor has asked for.

24           This is without prejudice to anybody, after  
25 this is said and done, to seek further discovery or

1           whatever, and that will be a fight between them and  
2           Freddie Mac, either this forum or some other forum.  
3           I can't stop that. But I'm not sure they can --  
4           you know, they may have to do it in the way of a  
5           deposition if there's some contested matter. I'm  
6           not ruling, I'm just saying they just go for the  
7           ride here.

8                     Now, what I'd like to do, similar to that  
9           other case, let's put a deadline. Anybody that's  
10          going to join has to join by a certain date and  
11          that's the end of it. I don't care when it is. It  
12          will run a short time, maybe sometime next week or  
13          something, and put that in the order.

14                    That's what I'm ruling, but I'll hear what  
15          administrative or suggestions anybody has to help  
16          accomplish that.

17                   MR. JOHNSON: How about 10:45 a.m., Your  
18          Honor.

19                   THE COURT: You got it. You're getting beat  
20          up on. I think 10:45 is good enough.

21                    (General laughter.)

22                   MR. JOHNSON: Your Honor, let me ask for a  
23          point of clarification. There would be three  
24          categories of documents that Freddie Mac would  
25          produce. One category is that we don't mind

1 anybody seeing, another category is the debtor can  
2 see but we believe there's proprietary information  
3 that should be excluded from some of our  
4 competitors --

5 THE COURT: Right.

6 MR. JOHNSON: -- and the third is privilege,  
7 whatever --

8 THE COURT: Whatever, depending on the level  
9 and who needs to see it, they can make a motion and  
10 we'll have a hearing to determine if they can see  
11 that, or you work out a confidentiality agreement,  
12 if it's like with maybe the committee or something,  
13 depending on what the documents are.

14 MR. JOHNSON: As a point of information, Your  
15 Honor, we had agreed in principal with the debtor  
16 to execute a confidentiality agreement so that  
17 whatever we provided would be confidential and not  
18 be produced.

19 Under that general principal, the production  
20 would have been rather quick.

21 If we're going to have to go through -- I  
22 understand it's the Court's ruling, I'm just  
23 pointing out that, if we're going to have to go  
24 through all the documents that we're going to  
25 produce and categorize them and figure out which

1 are proprietary, it's going to take a lot more  
2 time.

3 THE COURT: I'm trying to do you a favor here.

4 MR. JOHNSON: Pardon, Your Honor?

5 THE COURT: You can produce to the debtor  
6 under a confidentiality agreement, and then you  
7 have a certain period of time to come back and  
8 break that down as to which part of that at some  
9 point you let people see.

10 I don't know. I think you got to work this  
11 out. You got to do it right off the bat, so if  
12 that's going to take a little bit more time, that  
13 answers some questions and allows other people to  
14 participate.

15 MR. JOHNSON: We just know the debtor's under  
16 the gun to complete its asset reconciliation, so we  
17 thought it was more efficient, but we'll --

18 THE COURT: Work out what you can. I'm just  
19 trying to do it that way so that -- that seemed to  
20 be your concern about these joinders.

21 MR. JOHNSON: Correct, Your Honor.

22 THE COURT: Can't you work that out?

23 MR. DANTZLER: I think we can. My  
24 understanding with respect to confidentiality --  
25 this is exactly the reason I raised it, because we

1 have had some talks this morning about there are  
2 some of these issues. I wasn't as focused on the  
3 competitive issues as I was that there is non-TBW  
4 kinds of information in the bulk information, and I  
5 think a redaction of that information.

6 So I'm thinking that, given the parameters  
7 that the Court gave us, there may be some buckets  
8 of debtor-only material they can give us that would  
9 allow us to get moving, and we can decide how to  
10 give these folks access to pieces of that as we go.

11 THE COURT: Or I can require any joinder to  
12 have to sign a confidentiality agreement to  
13 participate.

14 MR. DANTZLER: Exactly.

15 MR. GASSENHEIMER: Briefly, Your Honor. What  
16 you've characterized as a bucket to the --  
17 confidential to the debtor only because of the  
18 competitor issue, the committee is not a  
19 competitor, and I would ask that we be allowed to  
20 participate in that --

21 THE COURT: You sign the same confidentiality  
22 agreement as -- the committee isn't, but some of  
23 its constituency may be. I'm not sure.

24 Work that out. We do that all the time. I  
25 think there's some rules, if you sign it and I

1           require that you can't divulge specific information  
2           to certain members, then you can't --

3           MR. GASSENHEIMER: We can state that our  
4           counsel can look at it but our constituencies  
5           cannot.

6           THE COURT: Right. I've done that before.

7           MR. MARTINO: Your Honor, a related issue.  
8           Obviously we're a part of the reconciliation  
9           process. We'll also sign whatever we need to. But  
10          we anticipate the information that's being made  
11          available to the debtor we'll have access to to  
12          complete the reconciliation process.

13          MR. JOHNSON: Your Honor, Jason Johnson again.  
14          My apologies to Mr. Martino. I meant to inform the  
15          Court that we understand that the FDIC is an  
16          integral part of the reconciliation process and  
17          that they're going to see the information. And  
18          they're not a competitor, so we don't have any  
19          objection to that, Your Honor.

20          THE COURT: You see where I'm coming from?  
21          Work it out. If you have a problem, call me, fax  
22          me what you want, and we'll discuss it.

23          MR. JOHNSON: Freddie Mac is reasonable, Your  
24          Honor. Of course we will.

25          THE COURT: You always are, Mr. Johnson.

1           Mr. Weiss, I did everything you wanted. What  
2 else do you want?

3           MR. WEISS: To say thank you, Your Honor.

4           THE COURT: You're welcome.

5           MR. WEISS: The only thing I want to throw out  
6 in case it's just not clear to everybody, obviously  
7 if there's going to be documents that parties  
8 aren't going to see, we're going to have to at  
9 least have a log to know what they are to know  
10 whether or not to bring --

11           THE COURT: Right, because somebody is going  
12 to want to bring that to my attention, and I may  
13 let you see it, I may not.

14           MR. DANTZLER: Your Honor, I'm going to  
15 suggest that in the order we set next Friday as the  
16 deadline for joinder.

17           THE COURT: I don't know. Mr. Johnson -- it  
18 may be Monday afternoon at 3:00 o'clock. That's  
19 farther than what he wants to go now.

20           You're talking about this Friday or --

21           MR. DANTZLER: Oh, no, I meant Friday the  
22 26th. But I'm happy if you think that's too --

23           MR. JOHNSON: Your Honor, respectfully, the  
24 motion was set for hearing today. I would think  
25 any joinders that are on file --

1 THE COURT: I would say this Friday is good  
2 enough, because those that were going to join  
3 should have, if they're staying on top of things.

4 MR. DANTZLER: Everybody we've heard from  
5 about joinder, with the exception of Mr. Kobert --

6 THE COURT: He'll file one. I know Mr.  
7 Kobert.

8 MR. DANTZLER: I'm getting to know Mr. Kobert.  
9 I'm sure you're right.

10 THE COURT: Anything else for today?

11 MR. DANTZLER: No, thank you, Your Honor.

12 THE COURT: It's always a pleasure. Thank you  
13 very much. Have a good week.

14 MR. JOHNSON: Thank you, Your Honor.

15 (Thereupon, at 10:50 a.m., the hearing was  
16 concluded.)

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STATE OF FLORIDA )  
COUNTY OF DUVAL )

I, Cindy Danese, 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 March 19, 2010.

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CINDY DANESE