

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: TAYLOR, BEAN & WHITAKER MORTGAGE CORP., REO SPECIALISTS, LLC, and HOME AMERICA MORTGAGE, INC., Debtors.	Chapter 11 Case No. 3:09-bk-07047-JAF Case No. 3:09-bk-10022-JAF Case No. 3:09-bk-10023-JAF <i>Jointly Administered Under Case No. 3:09-bk-07047-JAF</i>
---	--

**DEBTORS' MOTION FOR
EXTENSION OF EXCLUSIVE PERIOD TO
OBTAIN ACCEPTANCE OF PLAN**

TAYLOR, BEAN & WHITAKER MORTGAGE CORP. (the “**Debtor**” or “**TBW**”), REO SPECIALISTS, LLC (“**REO Specialists**”), and HOME AMERICA MORTGAGE, INC. (“**HAM**,” and, together with TBW and REO Specialists, the “**Debtors**”), as Debtors and as Debtors in Possession in these jointly administered Chapter 11 cases, request that the Court extend the period prescribed by Section 1121(c)(3) of the Bankruptcy Code, during which the Debtors have the exclusive right to obtain acceptance of a plan. The Debtors propose that the 180-day period prescribed in Section 1121(c)(3) be extended until April 23, 2011. As grounds for the requested extension, the Debtors state the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue in this district is proper pursuant to 28 U.S.C. §1408.

2. The statutory predicates for the relief requested by this Motion are Sections 1121(c)(3) and 1121(d) of the Bankruptcy Code. Sections 1121(b) and 1121(c)(2) of the Bankruptcy Code provide that only the Debtors may file a plan for 120 days following the filing of the Chapter 11 petition. Section 1121(c)(3) extends that period to 180 days for acceptances to be obtained. Section 1121(d)(1) gives the Court authority for cause shown to increase the 180-day period, subject to Section 1121(d)(2), which provides that the 180 day period may not be extended beyond a date that is 20 months after the filing of the Chapter 11 petition.

BACKGROUND

3. On August 24, 2009, TBW filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On November 25, 2009, REO Specialists and HAM filed voluntary petitions for relief under Chapter 11. The Debtors have continued to manage their properties and assets as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code and orders of this Court. After notice and a hearing, the Court on December 15, 2009, ordered that the cases be jointly administered under the TBW case, Case No. 3:09-07047-JAF. References in this Motion to “Debtor” in the singular refer to TBW.

4. By notice dated September 11, 2009, the United States Trustee in the TBW case appointed the members of the Official Committee of Unsecured Creditors (the “**Committee**”, together with the Debtors, the “**Plan Proponents**”) pursuant to Section 1102 of the Bankruptcy Code [Doc. No. 203] and amended its appointment by notice dated December 11, 2009 [Doc. No. 761].

5. No trustee or examiner has been appointed in any of these cases.

6. On December 22, 2009, the Debtors filed their initial *Motion for Extension of Exclusivity* [Doc. No. 819] (the “**First Motion to Extend**”). The First Motion to Extend sought to extend both the 120-day and 180-day exclusivity periods for all three Debtors. The Court granted the First Motion to Extend and entered its written *Order Extending Periods of Exclusivity* on February 4, 2010 [Doc. No. 997] (the “**First Extension Order**”). The First Extension Order extended, for all three Debtors, the 120-day exclusivity period to June 21, 2010, and the 180-day exclusivity period to August 20, 2010. The First Extension Order expressly provided that it was without prejudice to the Debtors’ right to seek further extensions. *See* First Extension Order ¶ 5.

7. On June 20, 2010, the Debtors filed their *Motion for Second Extension of Exclusivity Periods* [Doc. No. 1573] (the “**Second Motion to Extend**”). The Second Motion to Extend also sought to extend both the 120-day and 180-day exclusivity periods for all three Debtors. The Court granted the Second Motion to Extend and entered its written *Order Further Extending Debtors’ Exclusivity Periods* [Doc. No. 1760] (the “**Second Extension Order**”). The Second Extension Order extended, for all three Debtors, the 120-day exclusivity period to September 21, 2010, and the 180-day

exclusivity period to November 23, 2010. The Second Extension Order expressly provided that it was without prejudice to the Debtors' right to seek further extensions.

See Second Extension Order ¶ 5.

8. On September 21, 2010, within the 120-day exclusivity period as extended by this Court, the Plan Proponents filed their *Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 1966] (the "**Plan**"). Also on September 21, 2010, the Debtors filed their *Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (Doc. No. 1968) (the "**Disclosure Statement**"). On September 22, 2010, the Court entered its *Order for Hearing on Disclosure Statement and Fixing Time for Filing Fee Applications* [Doc. No. 1969] (the "**Disclosure Statement Hearing Order**"), setting a hearing to approve the Disclosure Statement on November 5, 2010, at 10:00 a.m. (Prevailing Eastern Time) (the "**Initial Disclosure Statement Hearing**").

9. On October 26, 2010, the Plan Proponents filed their *Motion of Plan Proponents for Entry of an Order Approving (I) Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Plan Proponents' Chapter 11 Plan and Limited Waiver of Local Rule 3018-1; (II) Related Notice and Objection Procedures; (III) Procedures to Determine Holders of Claims in TBW Class 9; and (IV) Waiver of Local Rule 3017-1(b)* [Doc. No. 2093] (the "**Solicitation Procedures Motion**"), which motion was set to come before the Court at the Initial Disclosure Statement Hearing.

10. Prior to the Initial Disclosure Statement Hearing, and in response to and resolution of objections to the Disclosure Statement filed by Sovereign Bank (“**Sovereign**”) [Doc. No. 2104] and the Federal Home Loan Mortgage Corporation (“**FHLMC**”) [Doc. No. 2109], and in response to comments from other parties in interest who did not file objections, the Debtors filed on November 4, 2010, (i) the *First Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 2119], dated as of November 4, 2010 (the “**Amended Plan**”), and (ii) the *First Amended and Restated Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to First Amended Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 2120], dated as of November 4, 2010 (the “**Amended Disclosure Statement**”).

11. By Order dated November 10, 2010, the Court approved the Amended Disclosure Statement [Doc. No. 2136] (the “**Disclosure Statement Approval Order**”).

12. The Disclosure Statement Approval Order set a hearing for November 19, 2010 (the “**Final Disclosure Statement Hearing**”), to hear only any objections that relate to further, contemplated amendments to the Amended Disclosure Statement to reflect an anticipated, but, at the time, not yet fully documented or executed settlement agreement involving 12 trusts administered by Wells Fargo Bank, N.A (the “**Wells Fargo Settlement Amendments**”).

13. By Order dated November 10, 2010 [Doc. No. 2137], the Court approved the Solicitation Procedures Motion (the “**Solicitation Procedures Order**”). The

Solicitation Procedures Order, *inter alia*, (i) sets the date for the hearing to confirm the Plan for January 19, 2011 (the “**Confirmation Hearing**”); (ii) sets the deadline to object to confirmation as 5:00 p.m., Prevailing Eastern Time, on the date that is seven days prior to the Confirmation Hearing, *i.e.*, January 12, 2011; and (iii) sets the deadline to cast ballots to vote to accept or reject the Plan as 5:00 p.m., Prevailing Eastern Time, on the date that is seven days prior to the Confirmation Hearing, *i.e.*, January 12, 2011 (the “**Voting Deadline**”).

14. The Debtors finalized a settlement with Wells Fargo and on November 12, 2010, filed the *Second Amended and Restated Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [Dkt. No. 2144] (the “**Second Amended Disclosure Statement**”), and the *Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditor* [Dkt. No. 2143] (the “**Second Amended Plan**”) reflecting the settlement with Wells Fargo with respect to the “REMIC Securitizations” (as defined in the Second Amended Plan).

15. On November 17, 2010, the Debtors filed their *Motion to Approve Settlement Agreement Related to Mortgage Pools Held by 12 Separate Mortgage Backed Securities Trusts with Respect to which the Debtor, Taylor, Bean & Whitaker Mortgage Corp., Served as Servicer and Wells Fargo Bank, N.A. Served as Master Servicer* (Dkt. No. 2157).

16. The Solicitation Procedures Order directs the Plan Proponents to cause solicitation packages to be mailed to creditors entitled to vote on the Second Amended Plan no later than 10 days after entry of an Order approving the Second Amended Disclosure Statement following the Final Disclosure Statement Hearing on November 19, 2010. Thus, by Order of this Court, the Plan Proponents will begin the solicitation of votes to accept the Second Amended Plan no earlier than November 19, 2010.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

17. By this Motion, the Debtors seek to further extend the 180-day period prescribed in Section 1121(c)(3) in each of the three cases beyond the current deadline, which is November 23, 2010. The Debtors seek to extend the 180-day period to April 23, 2011, which is within 20 months of the date of TBW's petition (August 24, 2009) and thus permitted under Section 1121(d)(2)(B). Although the Voting Deadline is set as January 12, 2011, Debtors nevertheless seek an extension of the Section 1121(c)(3) exclusivity period through April 23, 2011 out of an abundance of caution to allow for the possibility of further modifications to the Second Amended Plan that may necessitate an extension of the Voting Deadline.

18. Numerous grounds establish cause for increases in the 1121(c)(3) period of exclusivity. The legislative history of Section 1121 recognizes that the sheer size of a Chapter 11 case may constitute cause to extend exclusivity:

Proposed Chapter 11 recognizes the need for the debtor to remain in control to some degree, or else debtors will avoid the reorganization provisions in the bill until it would be too late for them to be an effective remedy. At the same time, the bill recognizes the legitimate interests of creditors, whose money is in the enterprise as much as the debtor's, to have a say in the future of the company. The bill gives the debtor an

exclusive right to propose a plan for 120 days. In most cases, 120 days will give the debtor adequate time to negotiate a settlement without unduly delaying creditors. The court is given the power, though, to increase or reduce the 120-day period depending on the circumstances of the case. For example, if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement. If, on the other hand, a debtor delayed in arriving at an agreement, the court could shorten the period and permit creditors to formulate and propose a reorganization plan. Again, the bill allows the flexibility for individual cases that is unavailable today.

H.R. Rep. No. 95-595, 95th Cong., 2d Sess. 221-222 (1978) (citations omitted).

19. Although “cause” is not defined in the Code, courts have developed and adopted the following nonexclusive list of factors to determine whether cause exists to extend the exclusivity period:

- (a) the size and complexity of the case;
- (b) the necessity for sufficient time to negotiate and prepare adequate information;
- (c) the existence of good-faith progress toward reorganization; and
- (d) whether creditors will be prejudiced by the requested extension.

See In re Friedman’s, Inc., 336 B.R. 884, 888 (Bankr. S.D. Ga. 2005); *In re Service Merch. Co.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000); *In re Express One Intern., Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re McLean Indus. Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

20. In evaluating these factors, the courts are given maximum flexibility to review the particular facts and circumstances presented in the cases before them. *See In re Public Serv. Co.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent ... is to promote maximum flexibility ...”); *In re Hoffinger Indus, Inc.*, 292 B.R. 639 (8th

Cir. BAP 2003) (stating that not all factors “are relevant in every case” and the court has discretion to “decide which factors are relevant and give the appropriate weight to each”).

21. An analysis of these factors in this case leads to the conclusion that cause clearly exists to further extend the 180-day exclusivity period.

Size and Complexity of Case

22. Courts frequently grant extensions of exclusivity based upon the size and complexity of a Chapter 11 case. *See McLean*, 87 B.R. at 834; *In re Homestead Partners*, 187 B.R. 706, 720 (Bankr. N.D. Ga. 1996) (recognizing the presence of complex legal issues as one of the bases for cause pursuant to Section 1121(d)); *see also Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (in a case involving 100 creditors holding approximately 225 claims aggregating \$10 million against the estate valued at \$13 million, the district court affirmed the bankruptcy court’s enlargement of the exclusivity period and held that cause may exist if the case is unusually large).

23. The size and the complexity of the Debtors’ cases alone support an extension of exclusivity and are well documented in the First Motion to Extend and the Second Motion to Extend.

24. More important, over 3,200 claims have been filed in these cases, and the aggregate amount of claims filed are close to \$9.2 billion.¹ The solicitation and tabulation of votes for this vast number of creditors and claims is a significant

¹ These numbers are not final and are subject to further review and analysis by the claims agent.

undertaking the Plan Proponents will not be able to begin until November 19, 2010, at the earliest.² The Plan Proponents need sufficient time to properly solicit votes and tabulate ballots following the Final Disclosure Statement Hearing, and the current 180-day deadline of November 23, 2010, simply does not allow sufficient time to do so. Accordingly, the 180-day exclusive period should be extended to allow the Debtors to solicit acceptances of the Second Amended Plan.

Necessity of Sufficient Time to Negotiate and Prepare Adequate Information

25. The Debtors have already gained approval of the Amended Disclosure Statement, but as of the filing of this Motion TBW is still in the process of seeking approval of the *Second Amended Disclosure Statement* reflecting the settlement with Wells Fargo that is critical to the ultimate success of the Second Amended Plan. The Plan Proponents cannot begin soliciting acceptances of the Second Amended Plan until the Second Amended Disclosure Statement is approved by this Court. Approval of the Second Amended Disclosure Statement is currently set to come before this Court at a hearing on November 19, 2010, making solicitation of acceptances impossible by the November 23, 2010 deadline. Accordingly, an extension of the 180-day exclusivity period is justified to allow the Plan Proponents to obtain acceptances of the Second Amended Plan.

² Even if TBW had not filed the Second Amended Disclosure Statement and Second Amended Plan to provide for a settlement with Wells Fargo, approval of the Amended Disclosure Statement at the November 5, 2010 hearing would not have provided the Plan Proponents sufficient time to solicit acceptances of the Amended Plan by the November 23, 2010 deadline.

Good-Faith Progress Toward Reorganization/Orderly Liquidation

26. The Debtors' good-faith progress in these Chapter 11 cases toward an orderly liquidation justifies an extension of the 180-day period. In addition to the Debtors' numerous achievements in these cases,³ on September 21, 2010, the Debtors filed their Plan and Disclosure Statement within the 120-day exclusive period, as extended by the Court. The Plan and Disclosure Statement were the result of over a year of exhaustive efforts by the Debtors and their professionals to reconcile the Debtors' vast and complex assets and liabilities, negotiate countless issues with the FDIC, FHLMC, Ginnie, and numerous other constituencies too numerous to list, and administer these complicated estates in the most expeditious manner possible.

27. Moreover, the Debtors successfully resolved numerous objections and comments to the Disclosure Statement and obtained approval of the Amended Disclosure Statement without seeking a continuance of the Initial Disclosure Statement Hearing set by the Court.

28. The Debtors' efforts in filing the Plan, the Amended Plan and the Second Amended Plan and obtaining approval of the Amended Disclosure Statement are clear indicia of their good-faith progress toward reorganization. Accordingly, cause exists to extend the 180-day exclusive period.

Absence of Prejudice to Creditors and Parties in Interest

29. The requested extension of exclusivity will not prejudice the legitimate

interest of any creditor or other party in interest. To the contrary, the proposed extension will advance the Debtors' efforts to confirm the Second Amended Plan as expeditiously as possible, bring these cases to a resolution, preserve value, and avoid unnecessary and wasteful motion practice.

30. Under the circumstances of these cases, a premature termination of exclusivity would deny the Debtors a meaningful opportunity to solicit acceptances of the Second Amended Plan and would be antithetical to the paramount objectives of Chapter 11. Termination of exclusivity would do nothing more than have the undesirable effect of encouraging the development of multiple, competing plans that would only frustrate the Debtors' intention to confirm the Second Amended Plan as expeditiously as possible and lead to unwarranted confrontations, litigation, and administrative expenses. The requested extension will increase the likelihood of a consensual resolution of these cases that preserves value much more than would a competing plan filed while the Debtors are in the midst of seeking plan acceptance. Put simply, a competing plan at this juncture in the case would be counterproductive.

31. This Motion is not submitted for purposes of delay and will not prejudice any party. The Debtors have been in continual and regular discussions with the numerous constituencies in this case, most if not all of which are aware of Debtors' progress. To the best knowledge of the Debtors and their professionals, none of the constituencies in these cases seek to propose a competing Chapter 11 plan.

32. The Committee supports the proposed extensions of exclusivity requested

³ An extensive list of the Debtors' progress in these cases is laid out more fully in the First Extension

by this Motion.

PRAYER FOR RELIEF

33. TBW has kept the Court apprised of the progress of these cases through numerous filings of pleadings and documents and frequent hearings before the Court. In its discretion, the Court may be in a position to evaluate and rule upon the requested extension of exclusivity without a further hearing.

WHEREFORE, the Debtors respectfully request that the Court—

- (A) grant this Motion;
- (B) extend until April 23, 2011, the 180-day period prescribed in Section 1121(c)(3), without prejudice to the Debtors' right to seek a further extension as appropriate; and
- (C) grant such other and further relief as is just and proper.

Motion and the Second Extension Motion.

DATED: November 18, 2010.

Respectfully submitted,

/s/ Jeffrey W. Kelley

Ezra H. Cohen (Ga. Bar No. 173800)
ezra.cohen@troutmansanders.com
Jeffrey W. Kelley (Ga. Bar No. 412296)
jeffrey.kelley@troutmansanders.com
J. David Dantzler, Jr. (Ga. Bar No. 205125)
j.dantzler@troutmansanders.com
TROUTMAN SANDERS LLP
600 Peachtree Street, Suite 5200
Atlanta, Georgia 30308
Telephone: (404) 885-3000
Facsimile: (404) 885-3900
SPECIAL COUNSEL TO DEBTORS

—AND—

Russell M. Blain (Fla. Bar No. 0236314)
rblain@srbp.com
Edward J. Peterson, III (Fla. Bar No. 0014612)
epeterson@srbp.com
STICHTER, RIEDEL, BLAIN & PROSSER P.A.
110 East Madison Street, Suite 200
Tampa, Florida 33602
Telephone: (813) 229-0144
Facsimile: (813) 229-1811
ATTORNEYS FOR DEBTORS