

UNITED STATES BANKRUPTCY COURT.
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

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

Debtor.

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TRANSCRIPT OF PROCEEDINGS

Hearing re: Rescheduled Motion for Relief
from Stay Filed by South Commons, Motion to Reject
Unexpired Executory Contracts, Disclosure Statement,
and Solicitation and Claim Procedures, before the
Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to
commence at 10:00 a.m., on Friday, November 5, 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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1	<u>T A B L E O F C O N T E N T S</u>	
2		<u>PAGE</u>
3	Item 2, Relief from Stay, South Commons	4
4		
5	Item 3, Motion to Reject Executory Contracts	5
6		
7	Item 1, Disclosure Statement	7
8		
9	Item 4, Solicitation and Claim Procedures	25
10		
11		
12	- -	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

P R O C E E D I N G S

1
2 November 5, 2010

10:00 a.m.

3 - - -

4 THE COURT: Good morning. Here on the case of
5 Taylor, Bean & Whitaker.

6 Mr. Blain, you're the MC for today?

7 MR. BLAIN: My MC duties are going to be very,
8 very short. I'm going to turn them over to Mr.
9 Kelley, who is going to handle this morning's
10 activities for the most part.

11 May it please the Court. The first two items
12 on the agenda we have filed with the Court -- and I
13 believe we'll be following the agenda -- the first
14 item is the motion for relief from stay that was
15 filed by South Commons Condominium Association,
16 docket number 1929. This is a condo association
17 that is seeking relief from stay with respect to a
18 condominium unit on which Taylor, Bean & Whitaker
19 has a mortgage.

20 We initially filed a response resisting this
21 relief from stay and opposing it based upon the
22 lack of showing of cause.

23 However, upon investigating it further, it
24 turns out there is not a lot of value in this
25 condominium unit so we have negotiated a resolution

1 with the condominium association and Arnstein &
2 Lehr, Mr. Cohn out of Tampa, and under this we are
3 agreeing to relief from stay being granted and the
4 stay being modified to permit the association to
5 take possession of the units.

6 The association has agreed to pay \$5,000 to
7 the debtor from future rent, which is not a
8 substantial sum of money but it does compensate the
9 estate for the interest it's giving up.

10 Based upon that, we would propose submitting
11 an agreed order that would grant stay relief under
12 the terms I just outlined.

13 THE COURT: Thank you very much.

14 Anybody have any comment?

15 MR. COHN: Ronald Cohn in Tampa. I represent
16 that what Mr. Blain's representing to the Court is
17 correct and that's the agreement we have.

18 THE COURT: Very well. I'll look for the
19 order.

20 MR. COHN: May I be excused, Your Honor?

21 THE COURT: You may be.

22 This hearing is concluded.

23 MR. BLAIN: The next item is calendar item
24 number 3, docket number 898. This is the debtor's
25 motion. It is a motion to reject executory

1 contracts pursuant to Section 365 of the Bankruptcy
2 Code. These are what I would call primarily
3 service type contracts. Some of them are software
4 services, some of them are personal, but these are
5 contracts that the debtor, no longer being an
6 active mortgagor originator and servicer, no longer
7 needs, so we have listed them and have sought
8 authority from the Court to reject these contracts
9 as burdensome and no longer necessary.

10 The motion recites the fact that some of the
11 contract parties may have claims for rejection
12 damages against the estate, so we would ask that,
13 since the bar date has already passed, we would ask
14 that the order granting the motion, if the Court is
15 inclined to grant this motion, provide that the
16 parties have 30 days from the entry of the order
17 within which to file a claim for rejection damages
18 if they have one.

19 THE COURT: The Court has no objection to
20 that. Does anyone else?

21 (No response.)

22 THE COURT: No one has an objection. Court
23 will grant the motion and include the language you
24 suggested.

25 MR. BLAIN: Thank you, Your Honor.

1 Your Honor, the other two items on the
2 calendar today are the approval of the disclosure
3 statement and the related matters and the motion of
4 the plan proponents to approve various procedures
5 with regard to solicitation and claim procedures.
6 Mr. Kelley has been heading up that part of it, so
7 I would ask him to take that part away, and I think
8 that will cover this morning's calendar.

9 THE COURT: Thank you very much.

10 MR. KELLEY: Good morning, Your Honor.

11 THE COURT: Good morning, Mr. Kelley.

12 MR. KELLEY: Your Honor, as the Court will
13 recall --

14 THE COURT: For the record, state your name.

15 MR. KELLEY: Okay, Your Honor. This is Jeff
16 Kelley with Troutman Sanders, special counsel to
17 Taylor, Bean & Whitaker.

18 As the Court will recall, on September 14th
19 Your Honor approved a comprehensive settlement
20 agreement among the debtors, the FDIC and the
21 Official Committee which, among other things,
22 resolved disputed issues as between the FDIC and
23 the debtors over billions of dollars of COLB, AOT
24 and Overline loans, all at great benefit to the
25 estates.

1 The settlement also resolved in the debtors'
2 favor the issue of entitlement to tens of millions
3 of dollars worth of AOT and Overline, REO. It also
4 resolved in favor of the debtor the issue of
5 ownership of the Selene loans which have an unpaid
6 principal balance of approximately \$126 million.

7 The settlement also provided for the
8 distribution in accordance with the final asset
9 reconciliation report of hundreds of millions of
10 dollars in custodial funds relating to the debtors'
11 servicing of corporate accounts.

12 The agreement provides for the release to the
13 debtor of millions of dollars in certain BB&T
14 accounts currently controlled by the FDIC.

15 The settlement contained a disclaimer by the
16 FDIC in the 160 so-called Ocala Funding loans and,
17 importantly, provided for the FDIC's support and
18 vote in favor of a joint plan of liquidation
19 consistent with the settlement agreement.

20 As an aside, Your Honor, we will be filing a
21 motion to resolve ownership issues that might arise
22 with respect to those Ocala loans that I referenced
23 and other loans later this month. Your Honor might
24 recall that was somewhat of an open issue when you
25 approved the settlement agreement. Other parties

1 might claim an interest in the Ocala loans and
2 other loans, so we are going going to be filing a
3 motion later this month to resolve those issues.

4 So having approved the FDIC settlement
5 agreement on September 14th, a week later, on
6 September 21st, the debtors and the Committee filed
7 their joint plan of liquidation and the attendant
8 proposed disclosure statement. The Court set last
9 Friday as the deadline for objections to the
10 disclosure statement and this hearing today as the
11 hearing on approval of the disclosure statement.

12 Only two objections to the disclosure
13 statement were filed, one by Freddie Mac and the
14 other by Sovereign Bank.

15 The plan proponents have engaged in
16 discussions with Freddie Mac and Sovereign and with
17 other constituencies who raised issues and
18 questions without actually filing objections. The
19 plan proponents are pleased to announce that all
20 objections to the disclosure statement have been
21 resolved.

22 The plan proponents of course acknowledge that
23 resolution of disclosure statement objections does
24 not resolve any potential confirmation objections,
25 and that the reservation of confirmation objections

1 contained in the order approving the FDIC
2 settlement agreement will remain in effect
3 notwithstanding entry of an order approving the
4 disclosure statement.

5 Your Honor, yesterday the debtors circulated
6 to the parties who had objected or who had
7 commented upon the disclosure statement an amended
8 disclosure statement showing the red line changes
9 and an amended plan of liquidation with red lines
10 showing changes flowing to the plan, flowing from
11 the disclosure statement revisions.

12 We also filed yesterday, Your Honor, an
13 amended plan and amended disclosure statement with
14 red lines against the original as filed, and those
15 documents that we filed yesterday are docket
16 numbers 2119 and 2120. I have handed up to Mr.
17 Readdick for Your Honor's convenience a copy of the
18 red line of the plan and disclosure statement that
19 was filed yesterday. We've also distributed copies
20 around the courtroom.

21 I do need to announce that there have been a
22 couple of tweaks to that since it was filed. The
23 first set has to do with three minor changes having
24 to do with designation of what TBW's status was as
25 servicer vis-a-vis Wells. They're very minor

1 changes.

2 And the other was a change that Mr. Califano,
3 just as I was getting ready to come forward to the
4 podium, wants me to make on page 69 of the red line
5 regarding the FDIC's payment to trade creditors.
6 We should have said that as a condition of
7 confirmation we will pay over to the -- the FDIC as
8 a condition of confirmation will pay over to the
9 liquidating trustee from recoveries by the FDIC on
10 its GUC claim, its general unsecured claim, and
11 that is stated properly elsewhere, the amount
12 capped at \$15 million. So that's another minor
13 revision that we'll make.

14 Your Honor, with that, the plan proponents are
15 also pleased to announce that, as a result of
16 extensive negotiations between Wells Fargo on
17 behalf of 12 trusts, which are delineated in the
18 disclosure statement, and the plan proponents,
19 another very significant and beneficial settlement
20 agreement has been reached subject to documentation
21 and final execution, which is ongoing literally as
22 we speak. These negotiations continued yesterday
23 and it's not yet been possible to document the
24 settlement or amend the disclosure statement and
25 plan to reflect that deal.

1 Pursuant to the derivative standing order
2 entered on March 2nd of this year by Your Honor,
3 which that order provides among other things
4 standing for the Committee to handle Wells-related
5 issues, those negotiations and the documentation of
6 that deal are being handled by the counsel for the
7 Committee. In a moment I'm going to yield the
8 podium to counsel for the Committee to describe the
9 proposed Wells deal, and I'm sure counsel for Wells
10 and others may have comments as well.

11 Thus, Your Honor, with a further amendment to
12 the disclosure statement and plan to be
13 forthcoming, we hope in the next few business days,
14 what we're asking the Court to do today is to enter
15 an order approving the disclosure statement in the
16 form filed yesterday subject only to any objections
17 that may be lodged specifically directed to the
18 forthcoming amendment reflecting the Wells deal.

19 If Your Honor goes along with that and does
20 that, we won't send out solicitation yet because,
21 as I said, we proposed to file and serve as quickly
22 as possible, hopefully by the middle of next week,
23 an amended proposed disclosure statement and plan
24 with red lines against the current form, and then
25 set November 19th, is what we propose, Your Honor

1 -- it's already an omnibus hearing date in this
2 case -- to set November 19th as the hearing on
3 approval of the Wells-related amendments to the
4 disclosure statement, again with that hearing on
5 the 19th being limited only to objections to the
6 new portions of the disclosure statement dealing
7 with the Wells deal.

8 I should mention, Your Honor, that in addition
9 to an amended disclosure statement and plan to be
10 filed reflecting the Wells deal, there will also be
11 filed a 9019 motion seeking approval of that
12 settlement, which is currently contemplated would
13 be heard -- by the plan proponents would be heard
14 on the confirmation date along with confirmation of
15 the plan.

16 With that, Your Honor, I would like to yield
17 the podium to counsel for the Committee to briefly,
18 or however he wishes to, describe the proposed
19 Wells settlement deal.

20 THE COURT: You may.

21 MR. SINGERMAN: Thank you.

22 Good morning, Your Honor, may it please the
23 Court. I'm Paul Singerman from Berger Singerman,
24 and our firm is counsel to the Official Committee
25 of Unsecured Creditors in this case.

1 Mr. Kelley properly described the procedure by
2 which the Committee became involved on behalf of
3 the estate in resolution of the estate's claims
4 against Wells, and in turn Wells' claims against
5 the estate. To be slightly more precise,
6 referenced by Mr. Kelley and me to Wells is in its
7 capacity as master servicer for 12 different
8 trusts.

9 What Your Honor will see as we proceed in the
10 manner described by Mr. Kelley to file a 9019
11 motion for the approval of what we're calling the
12 Wells settlement is actually 12 different
13 settlements, one with each of the 12 trusts.

14 Very briefly, Your Honor -- and I'll be happy
15 to respond or defer to my law partner, Mr. Berger,
16 who is present in the courtroom, regarding more
17 substantive questions about the settlement as he
18 has negotiated it and documented it on the
19 transactional side -- on the petition date, Wells
20 was master servicer for these 12 trusts for
21 mortgage loans with an aggregate approximate unpaid
22 principal balance of \$2 billion. This related to
23 approximately 14,000 different loans, and in
24 addition, approximately 2,000 REO parcels or real
25 estate that Taylor Bean had taken back as

1 subservicer in respect of the mortgages originally
2 initiated by it and recovered in enforcement or
3 foreclosure proceedings.

4 TBW alleges that it is owed or was on the
5 petition date owed approximately \$101,350,000 in
6 servicing advances that it made in its capacity as
7 subservicer.

8 Were this matter not settled and were
9 litigation to ensue, we expect, amongst the other
10 claims that would be litigated that Wells would
11 assert that as a result of the termination of TBW's
12 status as subservicer on or about October 19th
13 pursuant to an order entered by Your Honor
14 approving TBW's transfer of servicing and REO
15 property to Wells' designee, that Wells would argue
16 that that termination contractually deprived TBW
17 and its bankruptcy estate of the right to pursue
18 the \$101,350,000 in unpaid servicing advances that
19 it had made.

20 In addition, Wells, for itself and on behalf
21 of the 12 trusts, claims damages as a result of
22 TBW's cessation of servicing in the approximate
23 amount of \$15 million as of October 31st, 2010, and
24 further claims continuing damages to it in the
25 approximate amount of \$800,000 a month.

1 The settlement that we have reached, subject
2 to the execution of the definitive documentation
3 which is largely completed, is that Wells for
4 itself and its trusts will receive a damage claim
5 in the amount of \$10,150,000 capped, no continuing
6 \$800,000 or so a month. And the TBW estate will
7 receive \$91,200,000 subject to an adjustment in the
8 approximate amount of \$451,000 dealing with two
9 particular issues involving what we call the
10 Medford condos and certain net-funded loans.

11 The arrangement, as Mr. Kelley advised, will
12 be subject of a master 9019 motion for the approval
13 of the 12 separate settlements and folded into the
14 plan, and it is for that reason that we propose to
15 file, along with the debtors as the plan
16 proponents, the amended plan and amended disclosure
17 statement describing the Wells deal and have an
18 advance and be considered in conjunction with
19 confirmation.

20 That's a highlight, an
21 overview of the settlement, Your Honor. I'm happy
22 to answer any further questions that you have. And
23 I'm sure that Mr. Weitnauer on behalf of Wells may
24 wish to be heard, too.

25 The settlement also involves, as my colleague
just advised, the release of certain funds the TBW

1 estate has held since the petition date
2 attributable to the Wells portfolio. That amount
3 is in the aggregate of slightly less than \$100
4 million, \$96 million.

5 Judge, I'm happy to answer any questions you
6 have or defer to Mr. Weitnauer if he wishes to
7 remark.

8 THE COURT: I have no questions at this point.

9 MR. SINGERMAN: Thank you, Your Honor.

10 MR. WEITNAUER: May it please the Court, my
11 name is Kit Weitnauer. I'm with the Atlanta law
12 firm of Alston & Bird. I represent Wells Fargo as
13 master servicer on the 12 trusts that have been
14 referred to. Thank you, Your Honor.

15 As has been pointed out, Wells Fargo is and
16 was the master servicer on 12 trusts where TBW was
17 the servicer, and early in the case a stipulation
18 was filed that allowed the servicing to be
19 transferred from TBW to Wells Fargo.

20 Really the next major development in the case
21 as far as we were concerned was the filing of the
22 final reconciliation report which addressed the
23 custodial accounts at Regions Bank and Colonial
24 Bank, and gave us a platform to go forward to the
25 next steps of seeing if we could resolve the

1 matters between the parties, and not long
2 thereafter we began our settlement talks.

3 At first, Your Honor, it was just between
4 Wells Fargo and the Committee. When we finally got
5 far enough along of resolution, we brought in the
6 trustees. There are two different trustees. One
7 is trustee for 11 of these trusts, one is the
8 trustee in one trust, and two insurance companies
9 we have. Of these 12 deals, three of them have
10 insurers who insured a certain traunch or a level
11 of certificates. There are two different insurance
12 companies, and so they were brought in later on as
13 we got closer to working something out.

14 Last night we finally got some of the last
15 numbers to populate the various separate settlement
16 agreements. As has been mentioned, we are still
17 working on the final documents even as this hearing
18 is under way, and I think at the insurer level,
19 while we've gotten buy in from the people on the
20 front lines, there may be a final business review
21 that still is awaiting -- some folks are out of
22 town in one case that we couldn't get to them in
23 time for today's hearing -- but I don't expect any
24 bumps in the road at this point, and we hope to
25 have something filed with you early next week to

1 get this before the creditors for their approval.

2 I know we've got counsel for one of the
3 insurance companies here, if they want to say
4 anything. I think Matt Brown is possibly on the
5 phone as well.

6 So that's where it stands. I think all
7 systems are go to put the final cherry on top of
8 the sundae and bring it to you here in the next few
9 days.

10 THE COURT: Thank you.

11 Mr. Singerman, one question.

12 MR. SINGERMAN: Yes, sir, Your Honor.

13 THE COURT: The hundred million that you're
14 giving over to the trusts was not funds that the
15 debtor considered would be available for creditors;
16 is that correct?

17 MR. SINGERMAN: The debtor has in its
18 financial reporting referred to these funds being
19 on deposit, but it's not characterized them as
20 unrestricted cash.

21 THE COURT: And the \$91 million you're getting
22 will be available to pay claims, creditors,
23 administrative expenses; is that --

24 MR. SINGERMAN: Yes, sir, that's exactly
25 right, Your Honor.

1 THE COURT: So it's not just swapping dollars.

2 MR. SINGERMAN: No, sir, it is not. Hardly.

3 THE COURT: Just wanted to make sure I
4 understood that.

5 MR. SINGERMAN: Yes, sir. I'm sorry that I
6 was less than clear about that, Judge.

7 THE COURT: No, you were clear. I'm sure
8 everybody else understood that, I just like to make
9 sure I got it right.

10 MR. SINGERMAN: Yes, sir.

11 THE COURT: Anyone else have a comment on
12 that?

13 MS. COX: Good morning, Your Honor. Betty Cox
14 on behalf of NBIA Insurance Corporation, one of the
15 two insurance companies that have insured the
16 trusts.

17 We've insured two of the trusts that Mr.
18 Weitnauer was discussing, and I just wanted to
19 concur with his comments and say that we're in the
20 process of getting final internal approvals for the
21 settlement and anticipate that we will be able to
22 sign off on it very soon.

23 Thank you.

24 THE COURT: Thank you.

25 MR. BROWN: Good morning, Your Honor. Matthew

1 Brown with White & Case on behalf of Assured
2 Guaranty, one of the other insurers that Mr.
3 Weitnauer alluded to.

4 I also just want to say that we, too, are in
5 the process of getting internal approvals, and
6 except for some logistical issues, we were just
7 unable to get those approvals by today.

8 With that said, Your Honor, we can represent
9 that nothing we've seen or heard would lead us to
10 believe that we can't get the deal done in the next
11 few business days.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Nobody asked me to approve this today.

15 MR. SINGERMAN: Absolutely not, Your Honor. I
16 still think that our interest was in setting up the
17 request of the plan proponents for the approval of
18 the disclosure statement that was filed last night
19 subject only to comments or objections that might
20 be interposed to the additional language describing
21 the Wells settlement that will be documented and
22 filed next week and then coming back before Your
23 Honor on the 19th. We're not asking for approval
24 today.

25 THE COURT: Very well.

1 MR. KELLEY: Your Honor, this is Jeff Kelley.
2 I have nothing further to present with respect to
3 approval of the disclosure statement as filed last
4 night, and note that the podium is now open for
5 anybody else that wishes to make a comment on that
6 issue.

7 THE COURT: Anybody want to make a comment on
8 the conditional approval of the disclosure
9 statement?

10 MR. MOAK: Your Honor, Paul Moak with McKool
11 Smith on behalf of Freddie Mac.

12 As Mr. Kelley indicated, we filed an objection
13 earlier in the week. We have worked with the
14 debtors. They've included some of the language we
15 wanted. They decided not to include some of the
16 language we wanted, but they've assured us that we
17 can talk with them privately to get that
18 information.

19 We have no objection to proceeding in the
20 manner that Mr. Kelley outlined with regard to the
21 Wells Fargo settlement.

22 I would note, though, Your Honor, that we were
23 in the rather unprecedented position having to file
24 a motion to compel Mr. Dantzler to be more verbose.
25 We never thought we'd be in that position, but we

1 were.

2 (General laughter.)

3 MR. MOAK: He picked a strange time to be
4 stingy with his words, but we've worked that out,
5 Your Honor.

6 Thank you.

7 THE COURT: Anything further?

8 MS. CASS: Your Honor, this is Danielle Cass
9 on behalf of Sovereign Bank.

10 I also would like to say that the debtor has
11 worked with us. Mr. Kelley has worked with us all
12 week to make sure that our concerns were addressed
13 in the disclosure statement, and everything was
14 addressed and Sovereign appreciates that.

15 THE COURT: Good.

16 Anything else on the disclosure statement?

17 (No response.)

18 THE COURT: There being nothing further, the
19 Court's only one comment is I know one of the
20 issues that was in there is this substantial
21 contribution bonus, and I have never, ever given a
22 substantial contribution bonus to any nonbankruptcy
23 lawyer in a bankruptcy case. So if you have
24 declared yourself as a nonbankruptcy attorney here,
25 you probably are not going to get a substantial

1 contribution bonus. We only have one on the record
2 that I'm aware of that that's appeared in this case
3 that's declared himself a nonbankruptcy lawyer.

4 (General laughter.)

5 THE COURT: That being said, the Court will
6 approve the disclosure statement subject to it
7 being amended as stated in open court. The amended
8 disclosure statement or restated amended disclosure
9 statement is to be filed within a certain period of
10 time, I would assume.

11 MR. KELLEY: Yes, Your Honor. We're going to
12 shoot to file it by the middle of next week.

13 THE COURT: And we'll have a final hearing on
14 the disclosure statement the date we have the next
15 omnibus hearing; is that correct?

16 MR. KELLEY: Yes, Your Honor. It's
17 November 19th, Your Honor.

18 THE COURT: November 19th, so it will be filed
19 and circulated prior to that time. You will
20 prepare me an order spelling this out.

21 MR. KELLEY: Yes, sir.

22 THE COURT: And then we'll have the final
23 approval at that hearing assuming there's no
24 objections, or we can take care of the objections
25 and then schedule confirmation thereafter.

1 MR. KELLEY: Thank you, Your Honor.

2 THE COURT: Is that procedurally how we're
3 anticipating, Mr. Singerman?

4 MR. SINGERMAN: Thank you, Your Honor.

5 On behalf of the Committee, that's exactly how
6 we're anticipating. But to be clear -- and I will
7 ask Mr. Kelley to confirm this -- our view is that,
8 in light of the resolutions of the objections that
9 were timely filed and those that were resolved by
10 agreement, that the only objections that would be
11 considered on the 19th would be those in respect of
12 the Wells settlement.

13 THE COURT: That's it. I'm approving it
14 subject to the additional Wells information which
15 can be objected to prior to that.

16 MR. SINGERMAN: Yes, sir.

17 THE COURT: Spell all that out in the order,
18 Mr. Kelley, whoever prepares it.

19 MR. KELLEY: Yes, sir.

20 THE COURT: It's approved in its entirety with
21 the exception of the amendments that are going to
22 be added concerning Wells.

23 MR. KELLEY: Thank you, Your Honor.

24 The only other matter that is on the docket I
25 believe today is the motion of the plan proponents

1 for entry of an order approving procedures for the
2 solicitation and tabulation of votes, related
3 notice and objection procedures, procedures to
4 determine holders of claims in TBW class 9, and a
5 waiver of the local rule.

6 Your Honor, the only item of that motion
7 that's slightly outside the ordinary is the aspect
8 of the motion that deals with TBW class 9.

9 Again to summarize, what this motion is asking
10 for is four things: Setting the date for approval
11 of the disclosure statement --- I'm actually
12 looking at the wrong thing, Your Honor. I
13 apologize. Let me go back.

14 The motion asks for approval of procedures for
15 solicitation and tabulation of votes to accept or
16 reject the plan, and a limited waiver of local rule
17 3018-1 which deals with balloting and voting plans,
18 basically to incorporate the fact that we're using
19 a balloting agent instead of the Court.

20 The second thing that the motion asks for is
21 related notice and objection procedures with
22 respect to confirmation of the plan.

23 The third thing I mentioned a moment ago is
24 procedures for determining holders of claims in TBW
25 class 9.

1 And the fourth thing is a waiver of local rule
2 3071-1(b) dealing with the timing of applications
3 for administrative expenses.

4 There have been no objections filed to this
5 motion, and I propose to just deal briefly with
6 only the one that's more out of the ordinary, which
7 is the class 9 procedures issue.

8 Your Honor, in conformance with the FDIC
9 settlement agreement, the plan provides for a TBW
10 class 9 which consists of holders of trade claims.
11 That's a defined term. Under the plan, trade
12 claims means allowed unsecured claims for goods or
13 services provided to or performed on behalf of TBW,
14 but specifically excludes claims of any insider of
15 TBW, any institutional or noninstitutional lender
16 to TBW, including but not limited to warehouse and
17 nonwarehouse line lenders and lenders of certain
18 security interest and mortgage loans. And it also
19 excludes any institutional or noninstitutional
20 investor in mortgage loans or related debt or
21 equity securities.

22 Those trade creditors who are not excluded are
23 classified, as I said, as TBW class 9, and they are
24 to receive under the plan from the plan trustee on
25 behalf of the FDIC their pro rata share of 10

1 percent of the first \$100 million available for
2 distribution to the FDIC on its unsecured claim,
3 plus five percent of amounts thereafter available
4 for distribution in respect of the FDIC general
5 unsecured claim, until a total of \$15 million, if
6 that much is ever paid, is received by the trade
7 creditors.

8 This treatment is afforded to the trade
9 creditors because the FDIC has assigned a portion
10 of its distribution, just to be clear, in its
11 general unsecured claim according to that formula I
12 just repeated, so that once the FDIC receives any
13 distribution pursuant to the plan the funds will be
14 property of the FDIC, not the debtors' estates.

15 What we're saying here in essence is that
16 under this feature of the FDIC settlement agreement
17 the FDIC is in essence gifting a portion of its
18 distribution as an unsecured creditor to the trade
19 creditors, with the plan trustee, who is proposed
20 to be Mr. Luria, to administer that distribution.

21 So what this motion does today is, in order to
22 determine which creditors are trade creditors, the
23 plan proponents propose that on or before the
24 solicitation date -- the solicitation date will be
25 within seven days after final approval of the

1 disclosure statement, which is now set for
2 November 19th. So on or before the solicitation
3 date the plan proponents are to publish their
4 determination of which holders of general unsecured
5 claims are entitled to treatment as trade creditors
6 by filing a notice thereof on the docket in this
7 case and by making a list of trade creditors
8 available to view online free of charge at a
9 website identified in the motion.

10 The plan proponents propose -- and this is the
11 procedure -- that if any holder of a claim
12 disagrees with the determination by the plan
13 proponents that such holder either is or is not a
14 trade creditor, then that holder must file with
15 this Court a motion seeking a final determination
16 by the Court as to whether such holder is properly
17 classified as a trade creditor or not.

18 Under the motion that we filed, the plan
19 proponents propose that the trade creditor -- we're
20 calling it the trade creditor status motion -- must
21 be filed and served upon counsel for the plan
22 proponents so as to be actually received by us no
23 later than 14 days after the solicitation date.

24 The plan proponents further are proposing in
25 this motion that if a holder of a claim fails to

1 file a trade creditor status motion within that
2 time frame or otherwise fails to follow the
3 foregoing procedures regarding status as a trade
4 creditor, the holder will be deemed to have waived
5 its right to object to the plan proponents'
6 determination of such holder's status.

7 That's really, I think, the only portion of
8 the solicitation motion as I call the procedures
9 motion that required some explanation. And again,
10 as I said, there have been no objections, Your
11 Honor.

12 THE COURT: Anyone in the courtroom have any
13 comments?

14 (No response.)

15 THE COURT: Anyone on the telephone who wants
16 to make a comment?

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

19 We don't have an objection to the procedures
20 motion or the procedure they presume is set up with
21 regard to the trade creditors.

22 I just wanted to note for the record, though,
23 that under the plan Freddie Mac is classified as a
24 class 8 creditor. We disagree with that. We have
25 asserted in our proof of claim that we should be

1 entitled to priority treatment.

2 Notwithstanding that dispute, the debtors are
3 going to presumably send to us a class 8 ballot,
4 and we've indicated that we will send it back, to
5 the extent we do, modified to indicate that it's
6 submitted provisionally.

7 The debtors have indicated that they have no
8 objection to us doing that and won't consider that
9 to be a defective ballot or somehow an invalid
10 vote. I just want to make that clear.

11 THE COURT: Mr. Singerman.

12 MR. SINGERMAN: Thank you, Your Honor.

13 On behalf of the Committee, Your Honor, we are
14 aware of the discussions between Freddie and the
15 debtor's representatives regarding phrase intention
16 in respect of its ballot, and for the record and
17 the same preservation of rights as Mr. Moak offered
18 for his client, the Committee reserves its right to
19 object to the characterization and classification
20 of whatever ballot and claim Freddie Mac may
21 advance.

22 Thank you, Your Honor.

23 MR. KELLEY: The debtor also clearly reserves
24 all of its rights to object to any classification
25 of Freddie Mac as anything other than a general

1 unsecured creditor, but that's not an issue that's
2 before the Court today.

3 THE COURT: No one having objected, the Court
4 will grant the motion. Look to you for the
5 appropriate order.

6 MR. KELLEY: Thank you, Your Honor.

7 MR. SINGERMAN: Your Honor, if it pleases the
8 Court, I'd like a moment of Your Honor's time to
9 address a supplemental declaration that I filed on
10 behalf of our firm, Berger Singerman, as counsel to
11 the Official Committee of Unsecured Creditors.

12 I am not now, Your Honor, asking the Court for
13 any relief. Our supplemental declaration did not
14 seek relief, but instead was consistent with what
15 we believe to be our continuing disclosure
16 obligations under Federal Rule of Bankruptcy
17 Procedure 2014(a). I think this will take less
18 probably than 90 seconds, maybe two minutes at the
19 most, if I may, Your Honor.

20 THE COURT: You got the floor.

21 MR. SINGERMAN: Thank you, Your Honor.

22 Judge, on September 21st of 2010, I signed a
23 declaration that was filed under docket entry 2019
24 in the docket of this case, and the purpose of it
25 was to disclose that a member of the Creditors'

1 Committee, in fact the chairperson of the
2 Creditors' Committee, Lender Processing Services,
3 Incorporated, had retained our firm to assist it in
4 matters, at that time two, now three, wholly
5 unrelated to this bankruptcy case. And we filed
6 that and I said in my declaration it was being
7 filed out of an abundance of caution because of our
8 reading of the disclosure rule and the continuing
9 disclosure obligation of estate professionals.

10 In response to my and our firm's supplemental
11 declaration, three papers were filed with the
12 Court.

13 The first was a paper filed by a Mr. Jay
14 Oyler, O-y-l-e-r, at docket entry 2040, on
15 October 12th of 2010. In Mr. Oyler's paper he
16 refers to ongoing investigations of LPS, Lender
17 Processing Services, Inc., the chair of the
18 Committee, in a number of jurisdictions regarding
19 its role in various consumer foreclosure
20 proceedings, mortgage documentation in connection
21 with foreclosures and assignment of mortgage
22 documents.

23 In Mr. Oyler's pleading, he cites a number of
24 statutes, some of which are of uncertain relevance
25 to me, and at the end of the pleading purports to

1 seek certain relief but didn't file any motion. He
2 asks for certain discovery of documents and,
3 failing that, asks for an internal review of the
4 Committee and the trustee, and then, and I'm
5 quoting, "a motion for discovery and inspection of
6 alleged evidence and de novo review of this case."

7 Your Honor did not set that for hearing, and
8 we on behalf of the Committee or Berger Singerman
9 aren't going to further respond.

10 After Mr. Oyler filed his paper, Charles
11 Tanner and Joni Cox filed the same paper, including
12 in the prologue saying they were Mr. Oyler, at
13 docket entry 2051, and it is for all intents and
14 purposes a clone of Mr. Oyler's paper.

15 And, finally, Sandy Smith filed a paper at
16 docket entry 2060 which is largely duplicative of
17 Mr. Oyler's pleading and also refers to allegations
18 of alleged wrongdoing by Lender Processing Services
19 in a bankruptcy case in Mississippi.

20 Again, Your Honor, I'm standing up and taking
21 your time to supplement my own supplemental
22 disclosure because I didn't want to ignore these
23 pleadings and I wanted Your Honor to know about
24 them in the event you chose to take any action. It
25 is our view that for purposes of our retention and

1 disinterestedness no further action is required.
2 And finally to say that Lender Processing Services
3 has served as an extraordinary chairperson of this
4 Committee, making time available to contribute
5 significantly to the Committee's actions, and we
6 don't believe as Committee counsel that any
7 response in respect to the allegations made about
8 it in wholly unrelated cases is necessary or
9 appropriate.

10 That concludes the remarks I wanted to make on
11 the record. If Your Honor has any questions, I'm
12 happy to answer them.

13 THE COURT: I have no questions.

14 MR. SINGERMAN: Thank you, Your Honor.

15 Any more business to come before the Court?

16 MR. BLAIN: Your Honor, I do not believe
17 there's anything else on the calendar today, and
18 the debtor is not aware of anything that needs to
19 come before the Court. I believe the next omnibus
20 hearing is scheduled for November 19th as Mr.
21 Kelley indicated.

22 THE COURT: Thank you very much. This hearing
23 is concluded.

24 (Thereupon, at 10:44 a.m., the hearing was
25 concluded.)

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the attached represents the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Jerry A. Funk, Bankruptcy Judge, in the matter of In Re: Taylor, Bean & Whitaker; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on November 22, 2010.

STATEWIDE REPORTING SERVICE

Cindy Danese