UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,

CASE NO: 09-07047-3F1

Debtor.
_____/

TRANSCRIPT OF PROCEEDINGS

Various motions before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 10:00 a.m., on Friday, September 11, 2009, 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 A P P E A R A N C E S

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13

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15 Attorneys for Bank of America.

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17 THOMAS LAURIA, ESQUIRE

18 Attorney for Assured Guaranty Corp.

19

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1 A P P E A R A N C E S (CONTINUED)
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5 Attorney for Lender Processing Service.
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7 KENNETH MEEKER, ESQUIRE
8 Attorney for the U.S. Trustee.
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1 P R O C E E D I N G S

2 September 11, 2009 10:50 a.m.

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4 THE COURT: For the record, we're here on the
5 case of Taylor, Bean & Whitaker Mortgage
6 Corporation.
7 I have a number of motions on the agenda for
8 relief from stay and for other matters.
9 The Court notes the appearance of Mr. Blain on
10 behalf of the debtor, and would ask him to step
11 forward and let's take care of any settled matters
12 so those people can leave the room if they want, go
13 on about their business, and then we'll move
14 forward with any other housekeeping we have.
15 MR. BLAIN: Thank you, Your Honor. May it
16 please the Court, Russ Blain of Stichter, Riedel,
17 Blain & Prosser appearing on behalf of the debtor.
18 First of all, thank you, Your Honor, for the
19 time this morning to continue to make some efforts
20 to resolve these matters.
21 To give the Court just one overview, there has
22 been a substantial amount of time in the last week
23 trying to resolve the massive and complicated
24 matters in the case, and that culminated in an all-
25 parties meeting that started yesterday afternoon

1 and went into the night, continued this morning and
2 up through the hearing. Those efforts and those
3 conversations have led to a substantial number of
4 resolutions.
5 There are some unresolved issues that we will
6 deal with today, but I'm pleased to be able to
7 announce to the Court that we have a number of
8 resolutions of matters.
9 Taking them off the top, the first one -- if
10 the Court would allow me to take these in a
11 different order, I'll take first the ones that are
12 settled.
13 The one is the motion for relief from stay
14 that was filed by Sovereign Bank, represented by
15 Mr. Soriano. It has been agreed that that motion
16 will be rolled over to a date in early October,
17 whatever date in early October the Court sets
18 hearings in the case.
19 We had earlier discussed setting a half day or
20 a day at various intervals subject to Your Honor's
21 availability. But an order would be entered
22 continuing the stay in effect and resetting that
23 hearing for a date in early October.
24 THE COURT: You'll send me an order on that
25 with a blank and we'll fill in the date.

1 MR. BLAIN: That's correct, yes, Your Honor.
2 The second one is Number 6 on the Court's
3 calendar, which is the motion for relief from stay
4 related to servicing of Ocala funding loans that
5 was filed by the Bank of America. That's docket
6 number 95.
7 Mr. Zaron is representing Bank of America,
8 and as to that motion it has been agreed that it
9 would be continued, if there is time available, in
10 late September for consideration of that motion.
11 Again, there would be an order that would be
12 entered continuing the stay in effect and setting
13 the hearing for the end of September.
14 THE COURT: Very well. You'll send an order
15 on that with a blank.
16 MR. BLAIN: Yes, Your Honor, will do.
17 The next is item number 7, which follows it.
18 This is the motion for relief from stay filed by
19 RBC Bank. RBC Bank is represented by Cameron
20 Story. Mr. Story is here in the courtroom. I
21 don't believe he was at the first hearing.
22 As to this motion, we have reached agreement
23 on the relief that is to be given subject to the
24 documentation, and we propose agreeing on the
25 language of an order and submitting an agreed order

1 as to that motion.
2 So either that agreed order would be reached
3 and submitted promptly, or we would submit an order
4 continuing the stay in effect subject to the
5 parties filing an agreed order promptly with the
6 Court.
7 With respect to item number 9, which is the
8 motion for relief from stay filed by Natixis Real
9 Estate, Mr. Rich of the Gates law firm is here in
10 the courtroom today, and it has been agreed on that
11 motion that it would be rolled over until an date
12 in early October at which the Court sets hearings
13 in the case.
14 Again on that one, we would submit an order
15 continuing the stay in effect and having a blank
16 date to reset the hearing in early October.
17 With respect to item number 10, which is the
18 scheduling conference in connection with the motion
19 for relief from stay filed by Bayview Loan
20 Servicing, that motion was scheduled for an
21 emergency hearing earlier in the case -- that was
22 last week -- and prior to that hearing we submitted
23 an agreed order to the Court that granted relief
24 under that motion. That order was signed by Your
25 Honor, and the parties have proceeded in accordance

1 with that order.
2 There is still some additional relief
3 requested in that motion, and it has been agreed
4 between Bayview, represented by Mr. Kobert, and our
5 firm and the Troutman Sanders firm on behalf of the
6 debtor, that that would be reset for the end of
7 October, whatever date the Court picks in the last
8 part of October.
9 MR. KOBERT: Your Honor, if I can comment on
10 that. Roy Kobert on behalf of the movant on item
11 number 10.
12 Mr. Blain's representations are correct. I
13 want the Court to be aware the reason we're
14 agreeing to late October is not because we're not
15 excited or interested in getting the money and
16 dealing with the issues to deal with our customers,
17 it's because Your Honor did enter the order on
18 August 31st. Remember when I stood up and said I
19 wanted a stay relief hearing and only needed 15
20 minutes, Your Honor was kind enough to give me a
21 quick hearing for 15 minutes and we resolved it
22 beforehand.
23 We got the order, docket entry 76. We got the
24 servicing transferred. The debtor has been working
25 with us on a seamless basis to get that done to

1 take care of third-party customers who are not
2 here. And so we're very pleased with the
3 cooperation of the debtor.
4 That was the most important thing, was the
5 servicing, and we realize the reconciliation is
6 going to be very difficult for this debtor in
7 conjunction with the FDIC, so we want to give the
8 debtor and the FDIC as much time as they need.
9 We'd love to get our money this month, but
10 we're going to, because of that earlier servicing
11 accommodation, to go ahead and go near the end, by
12 going at the tail end of October to give them the
13 time to finish that work. And the more we can do
14 to let them focus on reconciliation, it's better
15 for everyone here in the courtroom.
16 THE COURT: How much time are you going to
17 need at the end of October, assuming it's not
18 resolved?
19 MR. KOBERT: Your Honor, I think we would
20 need, if the issue of termination -- I guess if the
21 issue of termination of our servicing prepetition
22 is still contested, we'll need a day. If it's not
23 contested --
24 THE COURT: Wouldn't that be proceeded through
25 an adversary proceeding as opposed to a motion for

1 relief from stay? I think that normally requires
2 an adversary proceeding.
3 MR. KOBERT: Well, Your Honor, I think we'll
4 focus just on the relief from stay aspect, which is
5 really the action relating to assets of the estate
6 and leave that issue aside --
7 THE COURT: We'll give you a couple of hours.
8 MR. KOBERT: I can do it in a couple of hours,
9 Judge. I'll work on that. I'll send someone else
10 in my place, Judge.
11 THE COURT: Thank you.
12 MR. BLAIN: In Mr. Kobert's defense, the last
13 hearing he'd requested 15 minutes and we resolved
14 it prior to the hearing.
15 THE COURT: Maybe we'll give him 15 minutes
16 then.
17 (General laughter.)
18 MR. BLAIN: Your Honor, the next matter is
19 item number 5, which is the motion for relief from
20 stay filed by the Federal Home Loan Mortgage
21 Corporation, otherwise known as Freddie Mac.
22 That motion, it has been agreed with Freddie
23 Mac, would be continued over to September 21st
24 subject to time on that date. The Court has
25 scheduled matters in this case for September 21st.

1 The one contingency to that is we will be
2 announcing shortly a resolution of matters with the
3 Federal Deposit Insurance Corporation, and the
4 rolling of this motion is contingent upon the
5 Court's approving today the stipulation that has
6 been reached with the FDIC.
7 So for purposes of announcing settlements and
8 resolutions, we are optimistic and confident that
9 the Court will approve the stipulation with the
10 FDIC, and, provided that occurs, then the Freddie
11 Mac motion can be rolled and rescheduled on the
12 21st.
13 I would let the Court know that we are
14 considering settlement terms with Freddie Mac that
15 is a settlement involving several parties, and
16 we'll continue to make effort to do that so that
17 hopefully that will go away also and there would
18 not be a need on the 21st.
19 But for purposes of today, we can announce
20 that that would be continued until the 21st, and we
21 would propose again submitting an order with the
22 date of September 21st at whatever time Your Honor
23 approves.
24 THE COURT: Thank you.
25 MR. BLAIN: That leaves one housekeeping

1 matter that we'll take up at the end of the case
2 because there is some controversy over it, but I
3 think it would be appropriate at this time to deal
4 with the other -- there actually are two issues.
5 Item number 3 is the motion for relief from
6 stay filed by FDIC, and item number 4 is the
7 debtor's emergency motion for turnover and approval
8 of procedures. Those go hand in hand because the
9 motion that the debtor filed seeks the flip side of
10 the relief that the FDIC sought in its motion, and
11 it is the subject of those two motions that are
12 conveyed and were resolved in the stipulation that
13 has been reached between the debtor and the FDIC.
14 That stipulation was filed as an agreed order
15 this morning. It provides for a stipulation and
16 approval by the Court. And I'm not going to get
17 into the terms of that stipulation at this point,
18 but just to tell the Court that that is coming and
19 that that's what we're going to be talking about
20 primarily this morning.
21 Before doing that, the other item on the
22 calendar that is a settlement is the motion for
23 relief from stay that was filed by Wells Fargo
24 Bank. That is item number 58.
25 That has also been resolved, and because

1 there's so many moving pieces to this case, the
2 person who understands that resolution that can
3 most effectively present it to the Court is Wells's
4 attorney, Kit Weitnauer, so Mr. Weitnauer is going
5 to present the terms of that resolution.
6 THE COURT: Good morning.
7 MR. WEITNAUER: May it please the Court, Your
8 Honor, my name is Kit Weitnauer. I'm with Alston &
9 Bird, Atlanta, Georgia.
10 Our firm represents Wells Fargo in this case
11 in its capacity as master servicer for 12 trusts
12 for which TBW is the servicer.
13 Wells Fargo and TBW have agreed to continue
14 today's hearing on Wells Fargo's motion to
15 September 21, 2009, if the Courts calendar will
16 permit.
17 We ask for this continuance because Wells
18 Fargo and TBW have engaged in extension
19 negotiations that, subject to additional work and
20 some further negotiations and some approvals of a
21 comprehensive agreement, the parties may be able to
22 present an order to the Court by the middle of next
23 week that will eliminate the need for any hearing
24 on the Wells Fargo motion.
25 From a very high level, Your Honor, some of

1 the key precepts that the parties hope to resolve
2 include the following:
3 First, an effective and orderly transfer of
4 ongoing servicing to Wells Fargo effective upon the
5 entry of an agreed order;
6 Second, a retention by TBW of servicing the
7 REO property, with the recognition that TBW wants
8 to propose a bulk sale process for that property,
9 and with the reservation of Wells Fargo's rights to
10 object to the terms of any bulk sale;
11 Three, a process to resolve whether any of the
12 12 servicing agreements were validly terminated;
13 Four, for any servicing agreements that were
14 not validly terminated, the ability of TBW to
15 realize for the benefit of the estate the value of
16 any of those mortgage servicing rights through an
17 agreed process for the assumption or the assumption
18 and assignment of such servicing agreements, the
19 reservation of Wells Fargo's rights to object to
20 any such assumption or assignment in accordance
21 with 11 USC, Section 365;
22 Five, immediately following the entry of an
23 order, all borrower payments received by TBW
24 thereafter and all payments released from the
25 Colonial lock box under their arrangements with the

1 FDIC will be transferred to Wells Fargo as interim
2 servicer;
3 Six, other assets on hand belonging to the
4 Wells Fargo trusts will not be distributed to the
5 interim servicer until, one, there's been a
6 reconciliation and agreement to the distribution,
7 or such earlier date as this Court may order in
8 response to a motion filed only after October 21 to
9 give the process some time seeking earlier
10 distribution.
11 Your Honor, we made considerable progress
12 given all the other fires that have been burning
13 for the debtor, but we've not reached a final
14 agreement. But given the progress made, both Wells
15 Fargo and TBW ask the Court to continue today's
16 hearing on the Wells Fargo motion until September
17 21, 2009.
18 THE COURT: Mr. Blain, you agree to that?
19 MR. BLAIN: Yes, Your Honor.
20 THE COURT: The Court will continue this until
21 the September 21st hearing date.
22 MR. TESSITORE: Your Honor, Mike Tessitore.
23 I'm special counsel for Bank of America, and if I
24 could make a few comments on the motions that were
25 addressed by Mr. Blain.

1 THE COURT: Certainly.
2 MR. TESSITORE: Bank of America, through me,
3 filed limited objections to the motions for relief
4 from stay, and what I've heard Mr. Blain describe
5 is that one of the motions has been resolved by an
6 agreed order with RBC, that U.S. Bank also has
7 reached an agreement to provide for further relief
8 under its motion, and that that's going to be
9 continued over to another hearing and that they're
10 in the process of working out an agreed order with
11 Wells Fargo.
12 We don't know whether those agreements are
13 going to address and satisfy the terms of our
14 objections. I think any agreement resolving the
15 motion for relief from stay needs to be circulated
16 and subject to input and possibly objections.
17 So as to the RBC agreement, the U.S. Bank
18 agreement and any agreement that's reached with
19 Wells Fargo, I think those need to be circulated
20 and, as I said, subject to our input and possibly
21 objections, hopefully to resolve our objections.
22 Further, any continuance of the hearings, I
23 believe our objections should be continued over
24 with those so they can be addressed at that time.
25 THE COURT: They will be continued over.

1 Mr. Blain, as far as notice of the
2 stipulations and objection periods?
3 MR. BLAIN: Yes, Your Honor. This case has
4 been moving very fast, as the Court is aware, and
5 we have kind of built a circulation group of
6 attorneys representing parties in the case.
7 This is the group that we met with yesterday.
8 There were nearly 40 people involved in that, and
9 what we are doing is, any party who would like to
10 be included in a distribution list for the progress
11 of those stipulations, we're doing so. We'll be
12 happy to do that.
13 Mr. Tessitore and his co-counsel are on that
14 list, and, as soon as we have reached stipulations
15 with any of these parties, we will be glad to
16 provide them with copies of those to review.
17 THE COURT: Mr. Kobert, this has nothing to do
18 with you.
19 MR. KOBERT: It does, Your Honor.
20 (General laughter.)
21 MR. KOBERT: Your Honor, docket entry 189 is
22 our limited objection to the multiple stay relief
23 motions.
24 As far as Bank of America is concerned, our
25 stipulation is a matter of record. It's docket

1 entry 76. We received some limited objections to
2 it.
3 I'd ask the Court for scheduling to get those
4 heard on the 21st. We went first sort of as the
5 template, so if there's concerns, we can address
6 them then. All we wanted to do was transfer
7 servicing, which we've done and are in the process
8 of. The money hasn't gone anywhere. We want the
9 debtor to finish its reconciliation and do it in an
10 orderly way with transparency.
11 So ours is out there. If we can deal with it
12 it on the 21st, if anyone is involved in an
13 objection, we'll try to deal with it beforehand.
14 And our limited objection to all the other stay
15 reliefs was: Let's treat all the lenders the same.
16 It's not a race to the courthouse. Whoever gets
17 there first doesn't grab the money and then it's
18 not left for everyone else. It's going to be
19 orderly.
20 We have confidence in the debtor and the FDIC
21 to go ahead at this stage and provide that
22 reconciliation and share it with us. So we want to
23 take the pressure off the Court and the parties and
24 stop this race. Let's take care of the customers
25 and let's get the information.

1 So if we can have that heard on the 21st, that
2 would be ideal.
3 THE COURT: I thought I said that any
4 objections will be carried over to the hearing, but
5 that's fine.
6 MR. KOBERT: Great.
7 (General laughter.)
8 MR. TESSITORE: Your Honor, there is one item
9 I neglected to mention, and that is because U.S.
10 Bank had an agreed order entered before my
11 appearance in the case, I think very early on in
12 the case, we filed a motion for reconsideration of
13 that order, so if that could also travel with the
14 new hearing date.
15 So to the extent that our objections which are
16 set forth in that motion for reconsideration are
17 not resolved by our input into the stipulation that
18 they're currently working on, that motion can also
19 be heard at the same time.
20 THE COURT: Mr. Readdick will take care of
21 that. Thank you.
22 MR. LAURIA: Good morning, Your Honor. My
23 name is Tom Lauria, I'm with White & Case. We
24 represent Assured Guaranty Corp, who has provided a
25 financial insurance guarantee with respect to one

1 of the series of securitizations that's covered by
2 the Wells Fargo program. There are 12
3 securitizations. We're involved with one.
4 We filed a joinder in Wells Fargo's motion,
5 and I think the only other thing that I wanted to
6 make sure we understood is that we too are
7 concerned with urgency and transparency here,
8 because my client, while this is being sorted out,
9 is required to make monthly payments on the
10 securitizations until the money continues flowing
11 from the people who are paying the mortgages to the
12 people who are entitled to the payments on the
13 securitization.
14 In that regard, what we want to make sure is
15 that there is an agreement on the record here that
16 Assured Guaranty will be permitted to participate
17 in the negotiation of this stipulation, and to the
18 extent that there is a reconciliation and further
19 resolution of how money is going to flow, that we
20 will be permitted to participate and that that will
21 not be done in a fashion that is in any way
22 prejudicial to our rights.
23 THE COURT: Thank you.
24 Anybody want to respond to that?
25 Mr. Blain.

1 MR. WEITNAUER: Your Honor, we welcome
2 Assured's participation. We had one other
3 guarantor that was with us as we tried to work out
4 these issues. Hopefully everybody will be singing
5 from the same hymnbook at the end of the day. If
6 not, I think each party will have to resolve what
7 their duties are with respect to these documents
8 and a possible settlement. But, yes, we'd like to
9 have their participation.
10 MR. BLAIN: And, Your Honor, the debtor, too,
11 would welcome and appreciate the participation of
12 Mr. Lauria and his client and the other party
13 involved in this, so that is an open process.
14 THE COURT: So he's on the list.
15 MR. BLAIN: Yes, he is.
16 THE COURT: You're satisfied?
17 MR. LAURIA: I am, Your Honor. Thank you.
18 MR. BLAIN: Your Honor, I believe that the
19 only other matter before the Court today, other
20 than one routine matter we'll take up at the end of
21 the case, are items number 3 and four.
22 I mentioned this earlier in the preview as I
23 was going through these things just to give the
24 Court an overview.
25 Item number 3 is the motion for relief from

1 stay filed by the FDIC. Item number 4 is the
2 motion for turnover.
3 This stipulation that was reached with the
4 FDIC was the subject of much discussion in our all-
5 parties meeting yesterday, and there has been a
6 substantial amount of effort on the part of all of
7 the parties in reaching this.
8 It is a straightforward, we believe,
9 resolution and procedural resolution of the issues
10 with the FDIC.
11 David Dantzler of the Troutman Sanders firm,
12 who is special counsel to the debtor, has been
13 involved from the very beginning with the FDIC, and
14 Mr. Dantzler is going to present to the Court the
15 terms of that stipulation that we are asking the
16 Court to approve today.
17 THE COURT: Go right ahead.
18 MR. DANTZLER: Thank you, Your Honor.
19 It is not my intension this morning to walk
20 through every fact that got us here in the last six
21 weeks, but I think it is important for the Court to
22 have some perspective and context as you consider
23 this stipulation.
24 As you may know, Judge, before August 3rd
25 Taylor, Bean & Whitaker was the largest independent

1 -- that would be nonbank -- mortgage lender in the
2 United States, and at that time had no apparent
3 indication of financial distress.
4 Throughout its history or much of its history,
5 it had an extensive and long banking relationship
6 with Colonial Bank, and that relationship involved
7 billions of dollars, either through warehouse
8 participation facilities and monies held at
9 Colonial in both custodial accounts or its various
10 what I would call customers, the ultimate owners of
11 the mortgages, and its own depository accounts.
12 Much happened in early August, and the facts
13 that you're interested in -- and I'm happy to
14 address any of them -- but the ones that kind of
15 bring us to where we are today are that August 6th
16 Colonial Bank issued an administrative freeze of
17 all of Taylor Bean's accounts.
18 On August the 11th the FDIC issued a cease and
19 desist order, essentially tightening that freeze.
20 And then on August the 14th the FDIC was appointed
21 as the receiver for Colonial Bank.
22 Along with other termination notices and
23 self-help efforts and transfers, very quickly
24 Taylor Bean was effectively out of business. Its
25 collapse was sudden.

1 As these events unfolded, Taylor Bean
2 installed a new board of directors, independent and
3 strangers to the old company and its historical
4 management, appointed a chief strategic officer,
5 Mr. Casas, and a chief restructuring officer, Mr.
6 Lauria, both from Navigant, restructuring
7 professionals, and have hired this team of
8 professionals that you're becoming familiar with.
9 I think as you consider this stipulation, I'm
10 going to state the obvious. It may become apparent
11 to you before this is over I'm not a bankruptcy
12 lawyer, but even I and certainly all these other
13 people understand very well the fiduciary duty that
14 this debtor has to this estate and all of the
15 stakeholders here.
16 I should mention that both the board members
17 and the CRO were approved by the OTC -- OTS; excuse
18 me -- OTS because of the fact that Taylor Bean was
19 ultimately a majority owner of Community Bank.
20 Petition was filed on August 24th in this
21 case, and where that left us was two competing
22 insolvency proceedings, the Colonial Bank
23 proceeding where Taylor Bean's money and that of
24 its investors was frozen that is operated under the
25 regimine of FDIC receivership, as prescribed by the

1 Federal Deposit Insurance Act, and with this
2 bankruptcy proceeding and the regimen provided for
3 by the Bankruptcy Code.
4 Recognizing that this was an issue even before
5 the filing of the petition, we engaged with the
6 FDIC in negotiations to try to resolve and
7 reconcile how these might intersect and work
8 together.
9 There are exigent circumstances that were
10 existing even as August the 14th that have
11 continued through today. Some have been alleviated
12 by the acts of some of the investors, but ultimate
13 individual consumer borrowers who had taxes and
14 insurance payments due to their insurance carrier
15 or state had those funds frozen, which resulted in
16 over 40 cease and desist actions being filed by
17 states attorney general and other regulators
18 against Taylor Bean which we've been fending off or
19 trying to manage at great cost to the estate.
20 Checks were coming in unable to be deposited.
21 Electronic transfers of mortgage payments are hung
22 up and continue to be hung up, and there are
23 literally tens of millions, maybe a couple hundred
24 million dollars of payments in limbo that today
25 could be going stale.

1 The issues have been very hard, however,
2 because of these two regimens. I think we've gone
3 to places in uncharted waters where the FDIC has
4 certainly never been, and I do want to thank them,
5 because this has been hard work. Even as we filed
6 motions that staked out pretty extreme positions,
7 the parties continue to work together. There have
8 been all-day meetings, multiple conversations
9 between people on the ground at the debtor and at
10 the FDIC, at Colonial Bank.
11 And they resulted, thankfully, in a
12 stipulation that we really do believe provides a
13 framework for the property of the debtor to be
14 protected, administered and value realized for the
15 benefit of its stakeholders, while at the same time
16 recognizing the jurisdiction of the FDIC receiver
17 in accomplishing the goals and objectives of that
18 receivership.
19 It will allow us to move forward in a
20 cooperative way rather than litigating with each
21 other at great cost and delay.
22 There are fundamental issues that have been
23 raised in this case about transactions by ownership
24 of assets. This allows us to get to the bottom of
25 that cooperatively rather than in a push and pull

1 kind of circumstance, and, most importantly, it
2 allows for the prompt payment and the ability to
3 address the issues that are affecting the
4 consumers, the borrowers, whose lives have been
5 impacted by failure to pay the taxes and the
6 insurance.
7 And I think I should just say and acknowledge
8 Freddie Mac, who is the largest of the investors,
9 has gone deep into its own pocket to satisfy the
10 tax and insurance payments of its borrowers.
11 The stakeholders here are a little bit
12 different, I think, than the typical bankruptcy in
13 that we do have the FDIC standing in the shoes of
14 Colonial Bank, and this was truly a large and
15 complicated relationship with the debtor. Then you
16 have investors who are not creditors in the classic
17 since, but Freddie Mac, Ginnie Mae, Wells, Bayview.
18 Most of the people who have been the most active
19 early are in fact these investors, the people who
20 ultimately own the mortgages.
21 We have secured and unsecured creditors.
22 There are also serious employee claims here because
23 of the sudden collapse. 2000 people were laid off
24 on August 5th by e-mail, and they have raised
25 questions about Warren Act claims, which the debtor

1 takes seriously. And, as I mentioned, we've got
2 these state proceedings that we are dealing with.
3 And then there are government investigations, civil
4 and criminal, revolving around Colonial Bank, as
5 far as we know right now.
6 But the result has been, with all these
7 competing interests, with this money frozen, with
8 state and federal regulators descending on us,
9 we've literally been dealing with chaos for the
10 last -- since before the petition was filed. As I
11 say, we've been drinking out of a fire hose and
12 have literally had no time to breathe.
13 So what this stipulation is intended to do and
14 what we believe it does is bring order out of that
15 chaos, preserves the rights of all, including the
16 debtor and the FDIC, to later resolve issues about
17 which we may have disputes, protects the rights of
18 all stakeholders, we believe.
19 And in effect what it provides is that the
20 debtor -- you've heard several people say, that the
21 debtor will act as reconciler as a result of the
22 systems available at Taylor Bean. If we can engage
23 in a meaningful and comfortable cooperative
24 information exchange, we can reconcile what are the
25 large buckets of assets or money, a lot of money in

1 accounts at Colonial Bank. The debtor's systems
2 and the bank systems need to talk to each other in
3 order for those monies to be properly allocated
4 among investors and other uses.
5 There are these checks undeposited. The last
6 count I had -- and Mr. Califano may have an updated
7 number for you -- were in excess of 50,000 checks
8 sitting at Colonial Bank that have come in since
9 August 6th that are undeposited, going stale. Same
10 with these unexecuted electronic transfers.
11 And then there is also money that has come to
12 the debtor, and over time we've solved at least the
13 going-stale problem by depositing in excess of $50
14 million, and you heard a lot about that at the
15 first hearing.
16 But with respect to those buckets of money,
17 the debtor will perform a reconciliation and report
18 to the Court what its findings are, report to the
19 FDIC what its findings are, in an effort, as I say,
20 to bring order.
21 And then there are literally billions of
22 dollars in mortgage assets that need to be properly
23 identified and allocated among certain investors
24 who seem to have competing interest. The vast
25 majority of the mortgage assets there are no such

1 questions, but there is a big bucket about which
2 there are questions about who owns them. And so
3 that reconciliation will also happen.
4 We believe what the agreement refers to as the
5 servicing reconciliation, which are the three
6 buckets of money, in relative terms we expect that
7 it will receive a high priority. We can get some
8 of these feet off our neck. It will receive a high
9 priority, and we ought to be able to report and
10 deal with frame issues about those monies sooner
11 rather than later.
12 We set an October 31 reporting date to the
13 Court. It is our hope it will be done by then. If
14 not, successive reporting is required.
15 With respect to the asset reconciliation, who
16 owns some of these disputed mortgage assets, that
17 may take a while longer, and I think we've been
18 clear about that with everybody.
19 It is the intention -- and this has received a
20 lot of attention by all concerned, including
21 yesterday -- that all rights of all parties are
22 reserved. But what the stipulation does is opens
23 up the system and allows the money to start flowing
24 again in a way that borrowers are not being
25 prejudiced, and these checks and other payments,

1 tens of millions of dollars, are not going stale
2 and creating defaults and problems for the ultimate
3 investors.
4 But, from the debtor's perspective, there are
5 servicing advances that we believe are owed by
6 various constituencies, the value of the servicing
7 rights which have been essentially stripped out of
8 the estate need to be reviewed, there are these
9 disputed assets, and there are allegations of
10 misconduct. All of that and what flows from that
11 is intended to be preserved for another day.
12 But let's free up the money and let's get the
13 answers to the basic questions so we can frame
14 these issues and address them to the Court in
15 something less than a free-for-all.
16 And what this is really all about is creating
17 value for the stakeholders, turning what are very
18 complicated assets into value and then apportioning
19 them appropriately in accordance with what the law
20 requires.
21 As Mr. Blain mentioned, we did have a meeting
22 yesterday. After invitation went out Tuesday, I
23 believe, it was well attended. Not everybody in
24 this room was there, but lots of people in this
25 room were there. I think that I can say we reached

1 consensus but not unanimity. You may hear from
2 some people today.
3 I'm happy to walk you through the details. I
4 think it might be appropriate, however, for you to
5 hear from Mr. Califano, who represented the FDIC in
6 these discussions, and get their perspective, and
7 then together we can actually just walk you through
8 it.
9 THE COURT: I've read the agreement. Since
10 you took that hour to work it out, that gave me
11 time to read some of the stuff that came in during
12 the night while I was trying to get some rest. But
13 if you want to put that on the record, that's fine.
14 MR. DANTZLER: I think it's important that you
15 hear from Mr. Califano before we open it up --
16 THE COURT: I always like to hear from Mr.
17 Califano.
18 MR. CALIFANO: Thank you, Your Honor.
19 Your Honor, just in context, you have in about
20 a one-week period the sixth largest bank failure in
21 the history of the United States, the largest this
22 year -- that was Colonial -- and you have the
23 collapse, as Mr. Dantzler described, of the largest
24 independent mortgage provider at the same time.
25 And those two happen to be extensive trading

1 partners, and the extent of their relationship is
2 going to be part of the process of this case.
3 But one thing has been become clear to
4 everyone. You can't resolve the Colonial issues
5 without a look into the Taylor Bean estate, you
6 can't resolve the Taylor Bean issues without a look
7 into the Colonial receivership estate, just because
8 of the way the business was transacted between the
9 two. So we have an unprecedented situation here.
10 And what we could have done is the FDIC could
11 have retreated behind its statute and litigated and
12 held onto its information and fought for
13 jurisdiction over money and information and
14 process, and the debtor could have fought under
15 Chapter 11 and the turnover provisions. And we had
16 those issues teed up, Your Honor, and they might
17 have been interesting issues to argue, but in the
18 meantime everyone would have suffered. Borrowers
19 would have suffered, creditors would have suffered,
20 and this case would have been paralyzed.
21 So what we did and what we've spent a lot of
22 time on over the last few weeks, employees of
23 Navigant, employees of FDIC and the professionals,
24 we worked out a way for things to go forward.
25 Now, I think it's important to think of what

1 the stipulation isn't before we talk about what it
2 is.
3 It isn't intended to affect the substantive
4 rights of any party, and we've tried to make that
5 clear, and I'm making it as clear as possible. We
6 don't intend to impact anyone's substantive rights.
7 There's no determination of any issues.
8 It's also not intended to resolve every
9 party's issue that they have at this point in the
10 case. It's not a plan, it's not a global
11 resolution.
12 What it is, it allows a framework for the
13 interface between the bankruptcy estate and the
14 receivership.
15 The benefits, there are some 80,000 Freddie
16 Mac borrowers who are technically in default now
17 because the payments aren't resolved. And I agree
18 that Freddie has done a great thing for their
19 borrowers by advancing T and I payments. But
20 that's resolved.
21 You've got the homeowners who have their taxes
22 and insurance, and we talked about that on the very
23 first day in this case that that was a big concern.
24 Well, that's resolved because those payments can go
25 out.

1 And this Chapter 11 case, which is really
2 stalled because Navigant can't do the resolution
3 that they need to by getting into the Colonial
4 records, and the FDIC can't do what they need to do
5 because they need to get into TBW records, well
6 that's fixed, and there's a protocol for how people
7 can work together without interference and without
8 anybody claiming that their jurisdiction trumps the
9 other.
10 What issues are we avoiding? We're avoiding
11 those jurisdictional issues that we discussed.
12 We're avoiding the issue of whether this was
13 properly terminated. We're avoiding the transfer
14 of information issues and the turnover, and we're
15 avoiding the issues regarding the ownership of the
16 accounts.
17 What we did, Your Honor -- and you may hear
18 complaints about process and the fact that this
19 shouldn't be approved today. I disagree. I think
20 every issue is teed up in the lift stay and the
21 turnover motion, and this is a resolution/agreed
22 order resolving those two motions. But the debtor
23 and the FDIC went to great lengths to bring people
24 along.
25 Now, I forwarded the stipulation in draft form

1 to some of the participants in here. We had a
2 meeting with B of A yesterday and explained and
3 gave him the draft stipulation, meeting with
4 Freddie Mac.
5 Then the debtor called a meeting of all the
6 movants and anybody that had notice. We had the
7 meeting at the Omni. We told people what the
8 stipulation was about and we handed out a draft.
9 We answered questions. There were some corrections
10 that were made. Some things were wrong people
11 pointed out and corrected. Some things were
12 drafting issues that people were concerned about
13 and was inadvertent on our part and the debtor's
14 part. That was fixed.
15 We broke for an hour, we came back and then we
16 showed everyone the final version, and we answered
17 questions, Your Honor, and we made it clear over
18 and over and over again: there's no intent to
19 impact anybody's substantive rights.
20 So to the extent that the Court deems that
21 notice is necessary, we would point the Court to
22 Rule 9006(c) which allows the Court to shorten any
23 notice provision, and we would ask that the Court
24 deem the notice that we gave over the last 48 hours
25 or so to be appropriate under the circumstances.

1 Because we have real exigent circumstances
2 here, Your Honor, and these are things that need to
3 be resolved, and the business people here, the
4 people on the ground who are dealing with these
5 issues, worked together to come to a framework that
6 resolves all these issues.
7 Now, one substantive provision that you may
8 hear about, Your Honor, is the provision that gives
9 the FDIC a release for liability under the
10 stipulation. I'd like to just bring that to the
11 Court's attention so it's not as if we're trying to
12 hide anything, and I'd like to give the Court the
13 reasons for that release.
14 Your Honor, we're dealing with a federal
15 agency that is in the middle of the largest banking
16 crisis maybe ever in this country. We've had
17 approximately 90 banks shut down this year, and
18 obviously more to come.
19 What the FDIC is doing under this stipulation
20 is unprecedented, because it is not retreating
21 behind its statute, it's not litigating and saying:
22 We're only going to turn over what the judge orders
23 us to and then dropping a box of documents off at
24 Mr. Dantzler's office.
25 What we're doing is cooperating and working

1 together so the bankruptcy estate and the
2 bankruptcy estate professionals can do what they
3 need to do.
4 And since that federal agency is no longer
5 insisting on all statutory rights and hiding -- or
6 not hiding -- being protected by its statute, it is
7 very important that, to the extent the FDIC and its
8 professionals and its employees are working with
9 the debtor and the debtor's professionals and
10 cooperating with the estate and giving information
11 and helping the estate with processes that will
12 benefit this estate and that are necessary for this
13 estate to go forward, the FDIC needs to know that
14 neither its employee nor the FDIC or its
15 professionals are going to be held liable except
16 for gross negligence or willful misconduct.
17 So I wanted to bring Your Honor's attention to
18 it, because that may be deemed to be a substantive
19 provision and people may complain about that, but
20 it is necessary, Your Honor, and it is necessary
21 for the information flow to start. And I believe
22 that the receivership employees and the Navigant
23 employees are ready to start immediately, that they
24 will start working together as soon as the
25 stipulation is ordered, Your Honor.

1 So I would ask that under the circumstances,
2 if the Court does deem any notice to be necessary,
3 that the Court deem that the notice requirements
4 have been complied with and that it shorten. I did
5 want to bring that to your attention.
6 Thank you, Your Honor.
7 THE COURT: Nobody wants to say anything
8 before I make a -- oh, you do.
9 MR. ZARON: Your Honor, I'd like to say a few
10 things. Andy Zaron on behalf of Bank of America,
11 as the indentured trustee, collateral agent and
12 custodian for various lenders under what's been
13 referred to as the Ocala line.
14 Your Honor, what I'd like to do is start my
15 presentation by just rehashing what Bank of
16 America's role is here.
17 The debtor had a wholly owned subsidiary
18 called Ocala Funding, LLC, and I'll refer to that
19 as Ocala. Ocala bought loans from the debtor.
20 Ocala financed the purchase of those loans by
21 issuing commercial paper and subordinated notes,
22 and Bank of America was the indentured trustee,
23 collateral agent and custodian for those parties
24 that were in effect lenders.
25 As of today, those lenders are owed

1 approximately $1.75 billion, and perhaps a little
2 bit more than that. They were secured by the
3 various mortgage loans and all the attended rights
4 that Ocala purchased from the debtor.
5 Now, in early August, when Bank of America
6 caught wind of what was happening with Colonial
7 Bank, they started to get concerned. And the
8 reason they got concerned, among other things, is
9 that they had a bailment arrangement with Colonial
10 Bank.
11 And, as I mentioned, Bank of America was the
12 collateral agent, so it was going to be in
13 possession of the various mortgage loans, loan
14 files, et cetera, and under the bailment
15 arrangement, they put those mortgage loans over to
16 Colonial Bank, and Colonial Bank had 15 days to
17 either sell the loans, basically to Freddie Mac,
18 and remit the proceeds from the sale to Freddie Mac
19 back to Bank of America, or to return the loans to
20 Bank of America.
21 When the whole Colonial Bank issue started to
22 arise in early August, Bank of America decided to
23 terminate that bailee letter and sent a demand
24 letter over to Colonial Bank to demand the return
25 of all of the loans and all of the proceeds of

1 those loans that were sold to Freddie Mac.
2 Colonial Bank didn't respond.
3 So Bank of America the next day filed a
4 complaint in the United States District Court for
5 the Southern District of Florida, and Judge Jordan
6 was the judge that got the case, seeking to enjoin
7 Colonial Bank from doing anything with those bailed
8 assets, the loans and the loan proceeds.
9 Along with the complaint, they filed an
10 emergency motion for a temporary restraining order.
11 Judge Jordan saw what happened, and he found
12 merit in the allegations raised by Bank of America
13 that, by the way, were supported by various
14 declarations, and he entered this emergency
15 temporary restraining order preventing Colonial
16 Bank from essentially disbursing any of the loans
17 or the loan proceeds.
18 A day or two later, the FDIC was appointed as
19 the receiver for Colonial Bank, and the FDIC came
20 in to the lawsuit, basically substituting
21 themselves in for Colonial Bank, and said to Judge
22 Jordan: Judge Jordan, you should dissolve this
23 TRO, because we're the FDIC and we have exclusive
24 jurisdiction over these monies.
25 And from what Mr. Califano said, in our view,

1 they were trying to hide behind this jurisdiction.
2 We opposed the motion to dissolve, because we
3 wanted to make sure that our monies were protected,
4 and so we moved forward and contested the motion to
5 dissolve, and Judge Jordan held several hearings.
6 And as a result of those hearings, after
7 considering all of the arguments and all of the
8 evidence that was before him, Judge Jordan issued a
9 preliminary injunction on September 4th, and he
10 amended the preliminary injunction, I believe, on
11 September 8th, that effectively continued the TRO
12 and prevented now the FDIC from disbursing any of
13 the loans or the loan proceeds that Colonial Bank
14 was bailee for.
15 And that preliminary injunction is still in
16 place as we sit here today, although the FDIC did
17 attempt to -- or has appealed the order and the
18 amended order.
19 Now, with that as a backdrop, the Court now
20 knows that we are dealing with a situation where
21 Bank of America is the indentured trustee and
22 collateral agent for lenders that loaned $1.75
23 billion, and that those loans are collateralized or
24 supposed to be collateralized by close to $2
25 billion of mortgage loans.

1 Yesterday, at 12:30, for the first time, Mr.
2 Califano met with us for lunch and handed us a copy
3 of a draft stipulation that was not in final form,
4 that had a few comments on it that were still going
5 to be incorporated into the stipulation. We didn't
6 have a chance to even read the stipulation in full,
7 but we had assurances that this was for the good of
8 the order, this is in the best interest of
9 everybody, everybody's rights are preserved, and it
10 all sounded good.
11 And over the period of the day, we were in
12 various meetings. There was a 2:00 p.m. meeting
13 that was scheduled for a group of investors. I
14 don't think it got started 'til 3:00. There were
15 discussions about the stipulation, there were
16 revisions made to the stipulation, and by about
17 6:00 o'clock we got another version of the
18 stipulation.
19 And we still hadn't had a chance to review it
20 with our client, Bank of America, or with the
21 investors that are out the $1.75 billion at this
22 point in time, who by the way include a couple of
23 European banks.
24 Now we're here today, less than 24 hours
25 later, and we're hearing that this stipulation

1 needs to get approved today.
2 We do not agree with that, Your Honor. We
3 have a serious issue of due process here that we
4 need an opportunity to talk to our client about the
5 stipulation to make sure that they're comfortable
6 with it. So that even if we were comfortable with
7 the terms of stipulation, which we're not for a few
8 reason that I'll explain in a minute or two, we
9 should have the opportunity to talk to our client
10 about the stipulation, they should have an
11 opportunity to read it and digest it, as should the
12 bigger investors that are part of that group. They
13 haven't had an opportunity to review it, they
14 haven't had an opportunity to talk to their counsel
15 about it, and yet we're being told this has to get
16 approved today.
17 Your Honor, under Rule 9019, as you're aware,
18 and 2002, stipulations like this require 20 days'
19 notice. And while the Court is authorized to
20 shorten that time period under Rule 9006, I believe
21 it's (c), to shorten to less than 24 hours notice,
22 in a situation where various entities are owed
23 $1.75 billion just is not fair, and it shouldn't be
24 rammed down our throats and for us to be forced to
25 accept every provision of this stipulation without

1 an opportunity to discuss it with the clients.
2 Now, taking it a step further, when we met
3 with Mr. Califano at about 6:30 last night, we told
4 him we had a problem with a couple of the
5 provisions and we wanted some revisions made before
6 we could even consider going forward. And the
7 response was: No, no revisions. The most I'll do
8 is announce something on the record, but we're not
9 changing this document.
10 So while it's all good and well to hear the
11 statements that nobody's rights are being harmed,
12 everybody's rights are preserved, everybody had a
13 chance to review this and everybody had adequate
14 notice under these circumstances, the reality is we
15 weren't involved in drafting this stipulation and,
16 when we asked to make just a couple of small
17 changes -- and, by with way, even with those
18 changes we would have objected -- we were told no.
19 Under these circumstances, Your Honor, we
20 can't see how you can enter this order today. I
21 believe you said you got it last night while you
22 were trying to sleep. I don't know how much of a
23 chance you've even had to digest all of the terms
24 here. But it's just simply not fair, it doesn't
25 comply with the bankruptcy rules and it doesn't

1 comply with constitutional notions of due process.
2 So before I even get to any other issues
3 regarding the stipulation, we think that for due
4 process reasons this stipulation should not be
5 approved today.
6 Now, if we were to look at certain provisions
7 of the stipulation -- and I don't know even know
8 that it should be necessary for us to comment
9 without actually talking to the client, but certain
10 things just stick out like a sore thumb that
11 contradict the statements of Mr. Dantzler and Mr.
12 Califano that they do not intend to impact
13 substantive rights of parties, and that all rights
14 of all parties should be reserved.
15 I'll start with Paragraph 10 of the
16 stipulation. It's Paragraph 10 on Page 9.
17 The last sentence of that paragraph says that
18 to the extent that funds are agreed to by the FDIC
19 receiver and TBW to be property of Colonial Bank,
20 they shall be turned over to the FDIC receiver
21 without further order of this Court.
22 So to say that parties' rights aren't
23 substantively affected here is simply not true
24 based on this provision, because apparently now
25 what they're saying is that they can just agree

1 amongst themselves what belongs to Colonial Bank,
2 even if another party would come in and say: No,
3 that money belongs to us, and just turn it over to
4 Colonial Bank. That's not protecting the
5 substantive rights of parties.
6 Now, I'm going to get to Paragraph 13 in a
7 second, but I do want to go to Paragraph 14, which
8 Mr. Califano alluded to. He said that the FDIC
9 needs this release. It's important for them to get
10 the release because they're giving up certain
11 rights.
12 The fact is, Your Honor, this stipulation is
13 between the debtor and the FDIC, yet the release
14 provides a release to all parties with any interest
15 in the mortgage loans and all parties that received
16 notice of this stipulation.
17 So while Bank of America or other parties in
18 this courtroom are not parties to this stipulation,
19 they're supposed to give a release to the FDIC.
20 And I might add this stipulation doesn't give a
21 general release to everybody else from the FDIC or
22 from the debtor.
23 That's simply not fair, and, again, that
24 doesn't comport with due process. In fact, in
25 other bankruptcy cases where I've been involved

1 where broad bar orders like this are involved, a
2 separate notice for this bar order itself has gone
3 out in addition to just a notice of the
4 stipulation.
5 So, again, for Mr. Califano and Mr. Dantzler
6 to come in here today and tell you that this
7 stipulation doesn't affect the substantive rights
8 of the parties is simply not true.
9 Now, with regard to Paragraph 13, as I
10 mentioned before, there is a preliminary injunction
11 in place that was issued by Judge Jordan that
12 prevents the disbursement of any monies out of
13 Colonial Bank that were bailed assets, namely the
14 loans and the loan proceeds that were turned over
15 to Colonial as the bailee under the agreement with
16 Bank of America.
17 And this provision -- we're not comfortable
18 that this provision doesn't affect the preliminary
19 injunction, because it apparently gives the FDIC
20 receiver the final right to approve each and every
21 decision relating to servicing and asset
22 reconciliations of Colonial Bank accounts, which is
23 broadly defined.
24 Now, Judge Jordan's order basically says that
25 Bank of America assets at Colonial Bank are not

1 under their jurisdiction and they don't have the
2 final say. And we, from reading this provision,
3 aren't comfortable that they're not trying to pull
4 an end run on that preliminary injunction.
5 Now, they've told us they're not going to do
6 that, but they didn't give us an opportunity to
7 revise the language to give us comfort. So until
8 we have comfort with this, again, we shouldn't be
9 compelled to accept the terms of this stipulation.
10 Now, again, they're saying substantive rights
11 will not be affected, but if you turn to Paragraph
12 2 of the stipulation, Paragraph 2 essentially
13 addresses the FDIC's motion for stay relief, which
14 Bank of America has objected to.
15 The basis of our objection to the FDIC's stay
16 relief motion was basically twofold: One, we
17 wanted to make sure that the terms of the
18 preliminary injunction were not impacted at all and
19 we wanted to make sure that they wouldn't violate
20 the terms of the preliminary injunction by
21 releasing any of those funds, but, two, Your Honor,
22 we're concerned that there is confusion over who
23 owns what loans now, and the confusion is
24 reiterated consistently by the FDIC in its filings.
25 The FDIC has said that there has been kiting

1 of mortgage loans so that it's not clear who owns
2 what loans with regard to particular investors in
3 the loans, including Ocala. He has also stated, or
4 the FDIC has also stated, that $866 million of
5 loans were double pledged, and that that number may
6 be higher. And that number, by the way, was set
7 out in the FDIC's objection to the debtor's motion
8 for turnover.
9 So the FDIC itself is saying: We don't really
10 know who owns what loans. And we've also been told
11 that Bank of America is the poster child because it
12 may be that our loans are the ones that were double
13 pledged, but we just don't have the information at
14 this point.
15 And our concern with the stay relief being
16 granted to the FDIC is that, if certain loans are
17 currently booked as Colonial Bank loans and the
18 FDIC has the right to the Colonial Bank loans, but
19 it turns out that those loans are in fact Ocala
20 loans which are essentially the Bank of America
21 loans, and principal and interest payments are made
22 on those loans to their successor servicer,
23 RoundPoint, who in turn would turn over those
24 monies to the FDIC, that we're going to be left
25 without recourse, because the FDIC has a

1 receivership at stake and, if it turns out they get
2 money that belongs to us, it may turn out that
3 we're just left as an unsecured creditor or even an
4 administrative creditor that receives less than a
5 hundred cents on the dollar.
6 So before the FDIC should get any of that
7 principal and interest money, we should have the
8 right to make sure that Colonial Bank loans aren't
9 in fact Bank of America loans.
10 Now, if you look at Paragraph 2, they
11 apparently are trying to give us some assurances
12 that our concerns regarding the principal and
13 interest are covered, and they've told us that
14 RoundPoint, who is the successor servicer, won't
15 turn over principal and interest payments to the
16 FDIC receiver and, therefore, we're protected.
17 But if you look at the specific language of
18 Paragraph 2, it simply says that: With respect to
19 any mortgages about which there are questions or
20 disputes regarding ownership, the parties will work
21 in good faith with the applicable investors and
22 claimants to develop a mutually agreeable method
23 for RoundPoint to provide servicing.
24 So they're telling us that we're protected,
25 the money is going to be set apart, RoundPoint

1 won't distribute it to the FDIC. But what's
2 written in the stipulation, which they're asking
3 you to approve on less than 24 hours notice, is
4 something different. To say that the parties will
5 work in good faith doesn't really give us a lot of
6 comfort, especially from what we've heard about the
7 lack of cooperation as between the FDIC and the
8 debtor today.
9 Now, what are they telling you as to why this
10 has to be approved right away? They're telling you
11 that there are exigent circumstances. And what
12 I've heard about the exigent circumstances is that
13 there has been a lack of cooperation between the
14 parties, and taxes and insurance need to get paid.
15 Now, with regard to the lack of cooperation
16 between the parties, if cooperation is that
17 important, they shouldn't have to have a
18 stipulation that they ram down everybody's throat
19 to cooperate. We have professionals here, you have
20 the government and what was the largest apparently
21 nondepository mortgage originator and servicer in
22 the country. They should be able to work together
23 to share information without this stipulation. And
24 if they want to enter a stipulation that just
25 provides for cooperation, that's fine with us. But

1 that's not all that this stipulation provides.
2 The other thing I heard about exigency is the
3 need to pay taxes and insurance because homeowners
4 could be harmed.
5 Well, under 12 CFR 330.7(d), the FDIC is
6 required to cover these taxes and insurance
7 payments. So if it's really that important to pay
8 the T and I for the homeowners, the FDIC could do
9 that. They're authorized to do it under federal
10 regulations.
11 So, Your Honor, as far as Bank of America is
12 concerned, this stipulation should not be approved.
13 There has been no notice. I shouldn't say no
14 notice. There's been less than 24 hours notice
15 given. And, frankly, I don't know that I have a
16 copy of the latest stipulation. I have a copy of
17 the stipulation that we received at 6:00 p.m. last
18 night.
19 There are clearly, just at first glance,
20 issues with the stipulation that do affect the
21 substantive rights of parties, and the exigent
22 circumstances that they're concerned about
23 apparently can be resolved without approval of this
24 stipulation, namely the cooperation between the
25 parties that would allow reconciliations to occur

1 and the payment of T and I.
2 So for these reasons, Your Honor, we would
3 respectfully request that you not grant this motion
4 today -- or this stipulation. No motion was
5 actually filed.
6 THE COURT: Hold on, Mr. Califano.
7 Does anybody else have any comments? I
8 shouldn't have asked that. Anybody else besides --
9 (General laughter.)
10 THE COURT: Briefly, Mr. Kobert.
11 MR. KOBERT: Roy Kobert for the record.
12 Your Honor, I don't want to disappoint, so I
13 must come to the podium. I was marking off things
14 I'm not going to talk about since they were
15 addressed by Bank of America, so it will be short.
16 And, Your Honor, I think the meeting yesterday
17 was very helpful, and I do appreciate the FDIC and
18 the debtor organizing that, and I have a better
19 understanding now of their urgency and why they're
20 here. And I'm in favor of a process. I think we
21 all are.
22 The theme I want Your Honor to focus on is
23 those three things we kept hearing about:
24 Reconciliation -- and I'm glad to hear they've
25 decided that the FDIC is going to do the Colonial

1 Bank reconciliation and Taylor Bean's professionals
2 will do the rest. Great.
3 Two, transparency and sharing of information
4 -- that's great -- between the two parties, and
5 they'll hopefully share with the other lenders as
6 well.
7 And three, Your Honor, allowing you to
8 continue to be the gatekeeper of due process, so
9 there's some organization here.
10 Your Honor, we're here really -- remember why
11 we're here. We're here on docket 3 and 4 on the
12 calendar. If you look at, very quickly, Judge, the
13 relief sought by these competing parties, I think
14 it works.
15 If you look at docket entry, Judge, 64, which
16 is the FDIC's emergency motion, what do they want
17 this Court to do? They've asked Your Honor for the
18 following in docket entry 64:
19 They want, Your Honor, to transfer documents
20 and records relating to their mortgage loans that
21 are owned by Colonial Bank. Your Honor, great
22 idea. We got that relief, they should get that
23 relief.
24 They want the debtor to provide documents and
25 records that the FDIC servicer requires. Great,

1 let's do that.
2 They want the debtor do an accounting. We
3 agree.
4 And they want the debtor to transfer to
5 Colonial Bank all funds held by the debtor which
6 are property of Colonial Bank. Well, we just don't
7 know that yet because we haven't gotten the
8 reconciliation, and that's where the due process
9 issue comes in.
10 The FDIC wants the agreement that their
11 servicing was terminated prepetition. None of us
12 got that, but the debtor in its business judgment
13 is agreeing to that in this stipulation. That's a
14 substantive right, which may have value, may have
15 no value, but I'll defer to the debtor that they
16 want to agree that FDIC or Colonial Bank servicing
17 was terminated prepetition.
18 Your Honor, the only thing I would add as a
19 footnote is we called -- we don't have a committee
20 yet. I've learn from Mr. Meeker, the U.S. Trustee,
21 that at 9:50 this morning uploaded was a committee
22 that was selected. So as long as there's some
23 reservation for the committee to weigh in, truly
24 the voice of the unsecured creditors, I think that
25 would be appropriate as long as there's a

1 reservation for a committee.
2 But everything else they want -- the FDIC
3 wants access to records. I think that's a great
4 idea.
5 And the FDIC is asking you to permit them, but
6 not requiring them, to transfer funds to mortgage
7 investors and third parties. I think that's great
8 as well.
9 I think all the relief the FDIC seeks is
10 perfectly fine except obviously for the transfer of
11 funds until we know who belongs to who and what
12 until the reconciliation is done.
13 The other matter before Your Honor is the
14 debtor's emergency motion, docket entry 83. What
15 do they ask for? They ask for the following,
16 Judge, in their prayer:
17 They want the Court to exercise jurisdiction
18 over certain assets, and they have resolved that
19 between the two competing estates.
20 They want the Court to provide information
21 from the FDIC -- or want the FDIC to provide them
22 information, and the FDIC has indicated their
23 willingness to do that, if I read it correctly.
24 And they want to permit -- the debtor wants
25 permission to make tax and insurance payments as

1 soon as possible. I think that's a great idea.
2 FDIC agrees that the tax and insurance issue is
3 paramount. But let's finish the reconciliation,
4 share that information, and let's get people's
5 taxes and insurance paid as quickly as possible.
6 And also the debtor wants authorization to
7 reconcile -- we agree -- account for -- we agree --
8 additional information and information on other
9 accounts.
10 I think all that's fine, Judge, and my client
11 supports all of that. And we support the fact that
12 the debtor and the FDIC have reached an agreement
13 on a process. I think that's very helpful.
14 But, again, Judge, focus on the three themes:
15 reconciliation, transparency, due process.
16 I'm just going to close, Judge, with the fact
17 of what the debtor and the FDIC told us. The
18 debtor's counsel tells us that the settlement
19 brings order. I'm in favor of order. It preserves
20 rights of all parties. Fine by me. It protects
21 rights. Love that. And it gets the process going.
22 I'm in favor of all those things.
23 The FDIC tells us that it won't affect
24 substantive rights. I agree, I'm in favor of that.
25 No determination of issues, I'm in favor of that.

1 Not a global resolution, that's fine for now. And
2 it doesn't determine ownership. Great.
3 If that's what this settlement did, all those
4 things, and I'm told it only does, then that's
5 great. And whenever we do anything on a emergency
6 basis, we should always be careful to do no harm.
7 And as long as it does all those things and nothing
8 else, then I have, Judge, absolutely no problem
9 with the settlement.
10 I think Bank of America highlighted a few
11 things that it doesn't do beyond the parameters,
12 but what we have here is a two-party resolution of
13 their dispute which has morphed into a global
14 resolution that affects the rights of other parties
15 whether they were at the hotel last night or not.
16 But I want them to they work together, I
17 encourage them to work together, but I think they
18 can work together and meet all of these criteria in
19 both their prayers for relief as well as what
20 they've told you without modifying other people's
21 rights or responsibilities.
22 I'm just going to highlight two or three that
23 were not covered by Bank of America, Judge, to
24 avoid duplication of effort.
25 But I'd also point out, Judge, that we have a

1 court order, the only order entered in the case so
2 far, at docket entry 76, where Your Honor turned
3 over servicing by agreement to my client, and we
4 agreed as part of docket entry 76 that no
5 substantive rights will be affected, et cetera.
6 And I think that's the same balance or the template
7 that should be followed for all parties, including
8 Bank of America as well as the FDIC.
9 Your Honor's order preserves all those issues,
10 all rights, everything the FDIC and the debtor told
11 you is in docket entry 76.
12 What's not in docket entry 76 and the order on
13 purpose is any issues regarding transfer of money.
14 We recognize, Judge, that we need
15 transparency, we need reconciliation, we need due
16 process. That's what we've agreed to come back in
17 late October and deal with that issue.
18 We raise, Judge, also at docket entry 189 in
19 our response and objection -- who knew it would be
20 so applicable here today -- but in docket entry
21 189, our objection to all the relief sought by
22 everybody is very simple. We ask for the
23 following:
24 One, we just want a detailed reconciliation.
25 We got that. The FDIC and the debtor are going to

1 do it.
2 Number two, we want an order preventing any
3 party from obtaining funds until the reconciliation
4 is done and there's some due process, whether it's
5 negative notice or an opportunity to be heard by
6 the Court.
7 So we stand on our limited objection, and we
8 think it's appropriate to this matter.
9 Last, Your Honor, in the stipulation itself
10 that you have this morning, I'm just going to point
11 out two other paragraphs not raised by Bank of
12 America.
13 It says, Your Honor, on Page 6, near the end
14 of Paragraph 5, the last sentence, it talks about
15 any funds currently held in the Regions
16 reconciliation accounts, which the debtor has,
17 related to loans owned by Colonial Bank that are
18 not claimed or disputed by any party shall be
19 turned over immediately to the FDIC receiver.
20 I presume that dispute would encourage some
21 sort of due process, that if we have a dispute,
22 we'd have to be notified of what they're doing.
23 We'd be able to either resolve it with the debtor
24 or bring it before this Court. So I think it's
25 hinted at a process in there.

1 The other issue I want to alert you to, Your
2 Honor, is -- let me make sure it wasn't covered by
3 -- no, I think Bank of America covered my other
4 issues.
5 I would just close, Judge, by saying to the
6 Court that you expect litigants and parties to
7 cooperate, to be transparent, to allow due process.
8 We can do it without an agreement. If the parties
9 feel more comfortable with an agreement, I'm in
10 favor of those things. I love things in writing, I
11 love transparency, I love processes. Let's do it,
12 but as long as we maintain the themes of
13 transparency and due process.
14 Unfortunately, transparency and due process
15 are not embodied in this agreement. But for those
16 representations that the debtor and the FDIC made,
17 I'm in favor of it, as long as it sticks to those
18 themes, and it does not, unfortunately.
19 THE COURT: Thank you very much.
20 MR. LAURIA: Hello again, Your Honor. Tom
21 Lauria with White & Case for Assured Guaranty.
22 Your Honor, before I make my comments on the
23 stipulation, I want to make sure that the Court
24 understands where my client is in this black box.
25 As I presume the Court is aware, the mortgage

1 bank securitization business has taken what
2 historically has been the relatively simple
3 business of somebody wanting to buy a house that
4 costs more money than they have on hand, going to a
5 bank and getting a mortgage, and then making
6 payments over a period of time to pay for the
7 house.
8 We now have the people on the end who own the
9 house and have the mortgage who have no idea who's
10 getting the payments on the back end, because it's
11 not the bank anymore. It goes through the hands of
12 a whole bunch of people and ends up going to people
13 who bought what in effect were annuities backed by
14 the securities. In other words, they paid the full
15 amount of the mortgage debt up front in exchange
16 for getting a payout over time.
17 And what my client does is provide insurance
18 that allows these securities to have a rating such
19 that these programs can in fact be marketed to
20 people who want to buy these certificates or
21 securities. We provide credit support and
22 guarantee that, if payments are not made by the
23 people who mortgage their homes, that we will step
24 in and make those payments.
25 We, as a consequence of the events here

1 between the Colonial failure and the Taylor Bean
2 bankruptcy, received a claim under our insurance
3 policy in August that made the full amount of the
4 August payment that was due under our
5 securitization and are preparing to receive a
6 similar claim for the month of September and so on,
7 and are very anxious that there be a resolution
8 that allows the money that's being paid by the
9 mortgagors to get through to the security holders
10 at the other end.
11 What's happened at this point is, because of
12 the two failures, the money's coming in the one end
13 but it's not going out the other end, so we're
14 having to step in.
15 It's entirely inappropriate that the failure
16 of these institutions should be having that effect,
17 because we think the case law is absolutely clear
18 that both institutions, whether it's Colonial or
19 Taylor Bean, are in effect only custodians.
20 They're, in effect, conduits for the money to pass
21 from one end to the other, and the fact that they
22 have failed shouldn't be impacting that flow.
23 But people have arguments they want to make,
24 there are issues that have to be addressed, and
25 we're anxious for them to be addressed either by

1 agreement or by Court determination.
2 So turning to this settlement, we've got a bit
3 of a dilemma on our hands. We received no advance
4 notice of the settlement. We knew of the hearings
5 today and we came and intend to be heard. But I
6 first got the stipulation only moments before Your
7 Honor took the bench.
8 The debtor's advisors and counsel were very
9 kind to try to help me walk me through it very
10 quickly and explain to me how this would work, and
11 of course they focused my attention on Paragraph 18
12 which purports to say that the rights of all
13 parties are preserved, including with respect to
14 jurisdiction, which I presume this Court has
15 started to get a flavor could be a very difficult
16 issue for the parties in this one that has been
17 addressed in a number of other forums, both with
18 respect to Colonial and with respect to other
19 financial institution failures.
20 So on the one hand we are very anxious for a
21 prompt resolution for any steps or measures that
22 can be taken that will facilitate parties reaching
23 a understanding of what the facts are and allowing
24 the pipeline to get unclogged again, so that as
25 people pay their mortgages, as they're doing right

1 now as we speak, those monies flow through the
2 pipeline as they're supposed to and get to security
3 holders on the other end so we don't have to write
4 the check.
5 And, as a consequence, unfortunately, as a
6 consequence of our insurance policy, we really are
7 the economic party in interest here with respect to
8 those transactions. We are the ones who at the end
9 of the day have to write the checks if the pipeline
10 stays clogged. So we're very anxious for a prompt
11 resolution.
12 On the other hand, I haven't even had a chance
13 to show this to my client. I'm not going to be in
14 a position to express concerns, reservations or
15 objections to the terms and provisions of this
16 stipulation because I haven't had a chance to sit
17 down and read it, I haven't had a chance to send it
18 to my client and let them read it and have a
19 discussion with them over whether or not we have
20 issues or objections to this.
21 And I think the principles of due process,
22 even in the face of exigency, have to be applied.
23 There has to be some notice and some opportunity
24 for people to be heard and to protect their rights.
25 And I don't think that that means that we have

1 to blow up the world here. You know, notice can be
2 very short, but to the extent that this has morphed
3 from a lift stay motion and a turnover motion to
4 what is in effect or would properly, I think, be
5 characterized as a motion for a settlement under
6 Bankruptcy Rule 9019, there should be some notice.
7 I mean, it could be a number of days, but there
8 should be some notice period where parties have the
9 opportunity -- everybody who may be affected, and
10 I'm sure my client is not the only one -- has an
11 opportunity to review in a thoughtful fashion and
12 come in and be heard before this Court before we
13 move on to the next stage.
14 And together with that, I would also suggest
15 that, you know, 9019 is not an automatic. We walk
16 around saying that a 9019 approval is the so-called
17 idiot test, that a settlement to be approved under
18 9019 has to meet the lowest point under range of
19 reasonableness, but there have been settlements
20 that don't get approved.
21 And there is a burden that a debtor assumes,
22 when it seeks to have a settlement approved under
23 Bankruptcy Rule 9019, which has not been met here.
24 No record has been made.
25 So, as a consequence, as anxious as I'm sure

1 my client is to see the resolutions be achieved and
2 understandings be reached, we just can't throw due
3 process out the door and we can't ignore the
4 requirements for approval of a settlement as is
5 proposed here.
6 So we would ask that there be in effect a
7 compromise, that rather than blasting this thing
8 through today, that the Court set a hearing on
9 whatever notice the Court feels is appropriate
10 under the circumstances so that everybody has an
11 opportunity to review, to discuss, to comment, and
12 hopefully we can narrow any issues or concerns the
13 parties have. And, in the event there are concerns
14 that remain, we'll have an opportunity on a record
15 to put the Court in a position to resolve them.
16 So we would ask that the Court basically
17 adjourn this matter and provide some mechanism for
18 notice and hearing.
19 Thank you.
20 MS. LAUKITIS: Good morning, Your Honor, Lisa
21 Laukitis from Jones Day on behalf of MBIA
22 Insurance.
23 We are similarly situated to Assured Guaranty
24 in this case. We are eager for there to be
25 cooperation and sharing of information and flow of

1 funds to start, but we share the concerns raised by
2 the parties about due process here and the
3 opportunity to review and comment on the
4 stipulation.
5 I also wanted to raise an additional concern
6 that we have that hasn't been raised by other
7 parties.
8 In Paragraph 5 on Page 5, there's reference to
9 bank accounts that are going to be established at
10 Regions Bank that have been established. Our
11 understanding based on conversations with the
12 debtor is that there's currently only one account
13 at Regions Bank and then there will be additional
14 accounts established.
15 The detail on what is going to be established
16 is very vague, and the debtor has an obligation
17 under the documents to have custodial accounts in
18 place to protect the interests of parties in the
19 case, and we would like it to be made clear that
20 the accounts that will be set up at Regions will
21 include custodial accounts that are meant to mirror
22 that that are currently in place at Colonial, and
23 we think that's necessary to protect the interests
24 of parties and to prevent leakage from those
25 accounts.

1 THE COURT: Thank you.
2 Anybody else want to have an objection to the
3 stipulation or comment?
4 MR. WEITNAUER: Your Honor, Kit Weitnauer
5 again on behalf of Wells Fargo with respect to 12
6 trusts.
7 We think the last suggestion is one that
8 should be made clear about making those payable
9 accounts specific, not just something generally
10 stated.
11 MR. CALIFANO: Your Honor, I just want to
12 address some of these concerns and comments.
13 I think I'd like to remind the Court of
14 something Mr. Zaron said and some things he didn't
15 say.
16 First he said, even if we made the changes,
17 B of A would still object. So even if we had
18 agreed to make the changes he wants and he asked
19 for last night, they'd still be here objecting. I
20 don't know what the purpose of that is, Your Honor.
21 Everybody here agrees that something needs to
22 be done.
23 What Mr. Zaron is not telling the Court is
24 that we agreed and acknowledged that nothing here
25 -- as a matter of law, nothing that happens here

1 can affect the preliminary injunction in District
2 Court in the Southern District of Florida. And I
3 offered to make a reservation of rights and I
4 offered for him to give me the language to make a
5 reservation of rights statement today that this
6 wasn't intended to impact it, because, as a matter
7 of law, I don't know how it could impact it. He
8 declined to do that, Your Honor.
9 He also, when he talks about Paragraph 2 with
10 the reservations of rights where we'd said it was
11 without prejudice, he fails to inform the Court
12 that the FDIC receiver offered to segregate and to
13 get a written agreement to segregate any funds that
14 B of A made a claim to in the receivership to
15 assure that they got hundred cent dollars and not
16 any diluted dollars through the receivership. So
17 he failed to inform the Court of that.
18 And the reason why it's not in this
19 stipulation, Your Honor, is the very jurisdictional
20 issue.
21 It is our position that the conduct of the
22 receivership and the receiver's efforts are not the
23 proper subject of this Court and this Court's
24 jurisdiction, that there is a statutory scheme.
25 What I want to make very clear is we're not

1 looking to impact anybody's rights that they have
2 in that receivership. And we did put it in the
3 stipulation because we didn't think it was
4 appropriate here, but as late as this morning I
5 informed Mr. Zaron that I had authority to tell him
6 that the receiver would give them a written
7 agreement from the receivership that they would
8 segregate those funds.
9 I don't know why he didn't inform the Court of
10 that, but I think that shows there's no impact on
11 the substantive rights.
12 And what really we're talking about here, Your
13 Honor, is the interplay. Everybody's rights are
14 not going to get resolved here, and everybody's
15 rights in the receivership don't belong here, but
16 we're not looking to impact anybody's rights in the
17 receivership.
18 When we're talking about separating funds,
19 funds going to the receivership, funds going to
20 TBW, we're just trying to get things in the right
21 estates, Your Honor. So, if we talk about funds
22 where the debtor doesn't object or the debtor
23 agrees they're Colonial funds and no other party's
24 laid a claim to them, they belong with the FDIC
25 receiver. We're not going to pocket those funds.

1 They go and are administered in the receivership.
2 So what we're intending to do here, Your
3 Honor, is divide the two estates, apportion things
4 appropriately and then they'll both be administered
5 in their own regime.
6 About the T and I payments that the FDIC can
7 make under the Code of Federal Regulations, we know
8 we can make them. The issue is not whether the
9 FDIC has the money to make these payments, Your
10 Honor. That's a disingenuous statement. What we
11 have said from the very first day we showed up here
12 is that the payments can't be made because you need
13 both sides of the ledger, and you need both sides
14 talking to each other.
15 We need the TBW Navigant people talking to the
16 Colonial FDIC receiver people to find out what
17 these payments are to properly account for them.
18 That's why things are frozen, Your Honor. The two
19 estates have to work hand in hand.
20 So it's not that we can't make the payments.
21 The fact is, we can't make them practically because
22 we don't know what payments need to be made. So I
23 was surprised by B of A's statement to that effect.
24 I can walk through their specific comments,
25 Your Honor.

1 Their comment with respect to Paragraph 2,
2 once again, it is not to affect substantive rights.
3 It talks about division between the two estates,
4 and we offered -- as I said, we offered B of A a
5 written agreement from the receivership that those
6 funds would be segregated.
7 With respect to Paragraph 5, we believe once
8 again -- I'm not sure where people believe that the
9 substantive rights are being impacted. To the
10 extent the debtor has an obligation to set up
11 custodial accounts, no one is looking to change
12 that. They need to set up these accounts and they
13 need our agreement to get the accounts open with
14 Regions. If they have an obligation to open
15 certain types of accounts, that's their issue with
16 other people, and we're not looking to change their
17 obligations.
18 With respect to Paragraph 10 where Mr. Zaron
19 had a concern, that's not a substantive provision,
20 Your Honor. That provision simply determines which
21 insolvency regime determines those funds.
22 So, if Mr. Zaron's client, they have an
23 preliminary injunction, obviously we're not
24 affecting the preliminary injunction. The
25 preliminary injunction's on appeal, but they have

1 their rights.
2 So, if the money goes to the receivership
3 because the debtor and the receiver determined that
4 that's where it belongs, their rights follow. They
5 have rights as a creditor of the receivership and
6 they have rights in their preliminary injunction.
7 This doesn't impact that. This doesn't prejudice
8 it. And, as I said, I offered last night to give
9 the most comprehensive reservation of rights
10 language that they wanted.
11 With respect to Paragraph 14, Your Honor, I
12 think that we've given the justification for that
13 release. It is important to my client and it is
14 important, Your Honor, to get this moving. I think
15 we've created a justification for it. It is so
16 that we know that going forward, in operating with
17 this estate, not in the past, but if we cooperate
18 with this estate under the terms of the
19 stipulation, we're not going to be attacked by some
20 other creditor.
21 Now, Mr. Lauria referenced the fact that the
22 FDIC and TBW are conduits and funds should go
23 through. We're not disagreeing. But the problem
24 is the conduit can't get flowing unless there's
25 information starts going. This is a necessary

1 step.
2 The alternative to this is the litigation that
3 was teed up in the lift stay motion and the
4 turnover motion. This gets that conduit going.
5 And Mr. Lauria's clients will benefit, because
6 right now they don't know what they have and where
7 it is, and at least this process will figure that
8 out.
9 He said he had no notice of the stipulation.
10 He did have notice of the motion for relief from
11 stay and from the turnover motion. If he had an
12 issue with the relief requested in either of those
13 motions, or he had a concern, he had an ability to
14 object.
15 There is nothing in the stipulation, Your
16 Honor, that is outside the scope, and there is
17 nothing in this stipulation -- I've asked people to
18 point to a provision that affects their substantive
19 rights. There isn't one, other than arguably the
20 release language. And that release language is
21 what we need going forward, it's not anything past.
22 So, Your Honor, I don't see the due process
23 issue here. What we don't need is a bunch of
24 parties coming in who have another agenda, who are
25 looking at this stipulation as an opportunity to

1 get something that they want. That's not
2 appropriate at this point.
3 And that's what my concern is, Your Honor. We
4 can't have people objecting for their own agendas
5 to prevent the administration of both these estates
6 and the administration of both these estates that
7 will benefit the other people in this room and
8 people outside of this room.
9 The problem is, Your Honor, the pressure is
10 now. This is something that we'd hoped would be
11 done on the first day of this case. I told Your
12 Honor on the first day that we were here on the
13 first days. We had worked toward the stipulation
14 and we were hopeful we would get one done.
15 Unfortunately we couldn't get it done; we've had
16 motion practice.
17 But throughout that time, the debtor and the
18 FDIC were negotiating for this, to get both these
19 cases going, to get the information flowing. And
20 we were able to resolve it, Your Honor.
21 This is overdue. This should have been done
22 on the first days. We couldn't reach agreement,
23 but we have the agreement now. There is no more
24 time for this thing to be put off, and no one can
25 actually point to any substantive rights that are

1 impacted.
2 Thank you, Your Honor.
3 MR. WORKMAN: Your Honor?
4 MR. DANTZLER: Somebody's on the phone, Judge.
5 THE COURT: Somebody's on the telephone?
6 MR. WORKMAN: Yes, Your Honor. This is Don
7 Workman from Baker Hostetler, counsel for Lender
8 Processing Services.
9 THE COURT: Wait a minute. Can you raise the
10 volume for that?
11 Start over, please.
12 MR. WORKMAN: Yes, Your Honor. Thank you.
13 This is Don Workman from Baker Hostetler, counsel
14 for Lender Processing Services. Can you hear me
15 all right now, Your Honor?
16 THE COURT: We hear you fine.
17 MR. WORKMAN: Good. Thank you.
18 I just wondered if I could have a minute. I
19 find myself in an unusual position of being counsel
20 for a member of the committee, a committee which
21 was just appointed and for which there is no
22 counsel presently.
23 I heard earlier, but it wasn't clear to me in
24 this stipulation whether the rights of the
25 committee have been preserved. And that's my

1 concern, that if the Court were to approve this
2 stipulation, that there be protection for the
3 committee, since I have not had a chance to look at
4 it. I did participate yesterday, but I was not
5 there for whatever was the almost final version.
6 So I have not seen the stipulation and, of
7 course, committee counsel, being nonexistent, has
8 not reviewed it yet. So I want to be sure, as best
9 I can, that a reservation of rights and certainly
10 preservation of the committee's rights are
11 contained in any stipulation that might be
12 approved.
13 THE COURT: Thank you.
14 MR. WORKMAN: Thank you.
15 MR. DANTZLER: Your Honor, on behalf of the
16 debtor, I'd just like to say a couple of things.
17 We really do not view ourselves fighting with
18 the stakeholders, and understand the concerns,
19 believing that some are misplaced, but I want to
20 say a couple of things to the Court.
21 First a couple of the easy things.
22 Paragraph 16 provides -- going to Mr.
23 Workman's and some of the other concerns addressed
24 here -- that the debtor, the FDIC receiver and any
25 other party may at any time seek relief from or

1 modification of this order on 10 business days'
2 notice. Anybody can come back if a real problem
3 bubbles up.
4 With respect to 14 and some of the issues --
5 and I ask the Court to remember that this estate is
6 now in the hands of professionals, people who are
7 very familiar with distressed companies and will
8 understand their fiduciary duties, the release from
9 the debtor's perspective of the FDIC receiver is
10 very limited. It's limited to acts done in
11 furtherance of the stipulation.
12 The only act in the stipulation that the FDIC
13 receiver absolutely controls is the reconciliation
14 of the accounts at Colonial Bank, which I don't
15 think anybody can argue are within the jurisdiction
16 of that proceeding. You can argue about who owns
17 the money, but as opposed to this proceeding or
18 that, who is the party ultimately responsible.
19 With respect to the release, you will notice
20 that it's not mutual, as much as we would love
21 that. We understand that we're fiduciaries. These
22 things that allow the debtor to agree, this debtor
23 is not operating in a vacuum. It is inconceivable
24 that this debtor as configured is going to agree in
25 the dark with anything, and we've given assurances

1 in that regard, and, as well we can, I'm giving
2 them again here today.
3 The issue that makes many of the things raised
4 here that is so difficult is drawing this line
5 between the two jurisdictions. And the intent from
6 the debtor's perspective here is you have absolute
7 jurisdiction over us, absolutely, and nobody
8 disputes that. And we're well aware that any
9 action that we take is subject to ultimate review
10 by this Court.
11 So it's intentional, but it is an intentional
12 way to navigate what is a very difficult issue
13 rather than litigating it for the next year.
14 So I just wanted to make that point to the
15 Court, that we are not going to just willy-nilly be
16 turning money over to the FDIC in bags of cash in
17 the dark. I mean, people are going to know. It's
18 the way that this is going to operate.
19 THE COURT: Thank you.
20 MR. DANTZLER: But it can't be in the
21 stipulation.
22 THE COURT: Thank you.
23 MR. ZARON: Your Honor, if I could be heard
24 just for one minute.
25 I wanted to comment on what Mr. Califano said,

1 which is basically that he made certain offers to
2 us to resolve issues we had with the stipulation.
3 And I think what he's saying is exactly why these
4 types of settlements need some notice.
5 If we have the opportunity to work out an
6 agreement as to the proper language in this
7 stipulation, or even if we could have agreement on
8 the terms of the side agreement, maybe you could
9 approve the stipulation and we wouldn't object.
10 The problem is we just don't have enough notice.
11 And when I told him last night that even if he
12 made the changes I suggested that we couldn't go
13 forward, it was because we wouldn't have had the
14 opportunity to run it by our client or the
15 constituents, which again goes to the due process
16 issues.
17 So the real point here to be made is a point
18 that a number of other lawyers here also made,
19 which is: Give us some time to work it out. It
20 doesn't have to be the full 20 days. We can
21 shorten the notice on it. Maybe it can be the 21st
22 of September. But give us time to talk to the
23 clients that have a lot of money at stake.
24 MR. KOBERT: 45 seconds, Your Honor.
25 THE COURT: That's too long.

1 (General laughter.)
2 MR. KOBERT: Just focusing on the tax and
3 insurance payments, which I know is important to
4 this Court and important to the public, the FDIC
5 froze the money on August 6, 2009, six weeks ago,
6 and I agree with the FDIC that this is an issue
7 they would love to have dealt with on day one, and
8 we can't go backwards.
9 But the FDIC tells us two things: One, quote,
10 we can't release the money because we need both
11 sides of the ledger, we need the Taylor Bean side
12 of the ledger.
13 Your Honor, please, I beg of you, order the
14 FDIC and the debtor to talk to each other. Order
15 the FDIC and the debtor to be transparent. Order
16 them to share both sides of the ledger between the
17 two parties, whatever it takes to get that process
18 going.
19 My only concern is before they write a check
20 and send it out the door for tax or insurance
21 payments, just tell us a list of who and why and
22 how you came to this conclusion, and provide a
23 little bit of due process before the rubber hits
24 the road.
25 The FDIC tells us the second point is they

1 can't have people objecting. That's an honest
2 statement. Why can't we have people objecting if
3 we truly have an objection? Your Honor is here to
4 call balls and strikes. We can do it on a short
5 basis. Your Honor can tell us that we're all full
6 of hot air, sit down and we're going to do it the
7 way the FDIC and the debtor want. That's fine, but
8 at least have small checks and balances and some
9 transparency to the process and an ability to
10 participate. Even if it's short, if it's on
11 negative notice, a day or two, or whatever it
12 takes, we want to get the money out, too. We want
13 to unclog the clog.
14 But the fact that people can't be allowed to
15 object, I think, is not the right approach for this
16 Court, and I think we can fix those problems and
17 make it seamless.
18 I think once we get the first checks out the
19 door things will go faster, but whatever it takes
20 to get the FDIC to get both sides of the ledger and
21 be comfortable enough to be ready to say I'm ready
22 to make tax and insurance payments, we need to go
23 ahead and do that. But before they send the checks
24 out the door, whatever short process Your Honor
25 wants, just to give it one look would be wonderful.

1 We don't have a Chapter 11 trustee here. We
2 have two parties participating in the process. We
3 just want that due process.
4 THE COURT: Thank you very much.
5 All right. What's the next item on the
6 agenda, or is that it?
7 MR. BLAIN: Your Honor, there is a motion that
8 is entitled a motion to pay some prepetition wages
9 and benefits. It doesn't relate to any of these
10 issues, and that's the only thing on the agenda
11 that's remaining.
12 THE COURT: Anybody opposing that?
13 (No response.)
14 THE COURT: U.S. Trustee, what's your position
15 on that? Assuming they have funds available that
16 don't belong to anybody else, obviously.
17 MR. MEEKER: Correct, Your Honor, but it's
18 much more complicated and much more extensive than
19 our usual somebody got caught up with three or
20 four days before payroll and they filed.
21 Again, we would like to have more time. We
22 were not --
23 THE COURT: You got all the time in the world.
24 That's what I want to know. You've got a long --
25 MR. MEEKER: No, no. What I'm saying, Your

1 Honor, is we would like to have more time to really
2 look at this and investigate this. I'm sure the
3 debtor will say it has to be out the door today.
4 THE COURT: No, no. I'm asking you about the
5 prepetition wages.
6 MR. MEEKER: That's what I'm talking about.
7 This is about a half million dollar charge that
8 involves workman's comp and involves medical
9 insurance, all sorts of things.
10 THE COURT: You haven't discussed it with the
11 debtor?
12 MR. MEEKER: Ms. Escamilla and Mr. Peterson on
13 behalf of the debtor have had discussions, and in
14 an effort to make the arrangement work, I
15 understand that they will put language in the order
16 that allows for an effort to take back or seek to
17 take back money if it appears to have been
18 improvidently paid.
19 With that, we could probably live with that,
20 Your Honor.
21 THE COURT: Mr. Blain, have y'all worked out
22 some special wording for the United States Trustee?
23 MR. BLAIN: Your Honor, we are certainly
24 willing to do that before we submit an order, and
25 we'll deal with Mr. Meeker and Ms. Escamilla on

1 that issue, and there's been some discussion on it.
2 As the Court can tell, there are a lot of things on
3 our plate.
4 What we'll do is to do that and submit an
5 order that will have language that is satisfactory
6 to the U.S. Trustee.
7 THE COURT: If you do that and, if you come to
8 an impasse, let me know and we can have a
9 telephonic hearing to see if we can resolve it.
10 MR. BLAIN: Thank you, Your Honor.
11 THE COURT: Obviously this Court is extremely
12 concerned about the borrowers, because those are
13 the people that will end up in my court, or courts
14 of some of my colleagues, trying to save their
15 house when they claim they made the payment and
16 they paid the taxes, and now they want a late
17 charge or they're charging interest even though
18 they paid the taxes, and then we won't know who to
19 bring in, which we're having problems without
20 Taylor Bean & Whitaker and other servicers getting
21 the proper accountings on mortgages. So the longer
22 this goes, the worse that situation is going to
23 arise and affect more and more people, and it could
24 take some of those debtors years to get that
25 straightened out.

1 I obviously believe in due process. I want
2 everybody, as you know, to have an opportunity to
3 be heard. I'm happy to resolve disputes. That's
4 what I get paid the big bucks for. But sometimes
5 it takes me a long time.
6 We can litigate some of this stuff. It'll
7 take you eight hours, though, to litigate some of
8 these issues, and it will take me about 60 days to
9 come up with an academic analysis and ruling, and
10 that is not going to help the situation, but I'm
11 happy to spend that time and try to make the
12 appropriate decisions. The issues that are raised
13 are not simple, necessarily.
14 Obviously each side thinks theirs is simple,
15 but, when you're sitting where I am, you got two
16 smart guys over there and you have to respect them
17 and look at it, so it takes time.
18 For the purpose of the stipulation, the Court
19 finds it is appropriate to approve it on a
20 preliminary basis. We're here on emergency
21 hearings. I'm going to approve it on a preliminary
22 basis. It will become final, unless objections are
23 filed, by September 17, 2009. And, if they are,
24 then the Court will deal with those in due course.
25 The order approving this will include language

1 that specifically states that this order and any
2 final order does not affect the substantive rights
3 of any of the parties, that the release merely
4 releases the FDIC from its actions in accordance
5 with this stipulation, and that all accountings and
6 so forth will be furnished, copies of which will be
7 furnished to any person requesting a copy, unless
8 the Court orders otherwise. And that the Court
9 will resolve any disputes if there's a question as
10 to ownership of any of the assets in the
11 depository.
12 Somebody prepare that order and send it in.
13 Anything else you want me to stick in there,
14 anything else that was agreed upon on the record
15 whether it's mentioned in the order or not?
16 MR. DANTZLER: One thing that we will give
17 assurance on, the accounts at Regions, to the
18 extent necessary, are custodial accounts by
19 investor. But we appreciate that.
20 THE COURT: I interpreted that. In the order
21 it said the same accounts they had at Colonial,
22 which I assume is by investor, but it's spelled
23 out.
24 MR. ZARON: Your Honor, just a couple of other
25 things we'd like in the order that were stated on

1 the record, which is that everything is subject to
2 the preliminary injunction entered by Judge Jordan.
3 Also, that the offer of Mr. Califano relating to
4 the principal and interest --
5 MR. CALIFANO: Your Honor, as I explained to
6 Mr. Zaron several times, that is a problem.
7 THE COURT: Which is the problem?
8 MR. CALIFANO: The problem of segregating the
9 funds. And he knows why it's a problem. It's a
10 jurisdictional issue. And what I told him I would
11 do was get an agreement with the receivership. But
12 it's not a -- we would have to fight the
13 jurisdictional issues --
14 THE COURT: First of all, Colonial Bank is not
15 in bankruptcy.
16 MR. CALIFANO: No.
17 THE COURT: Your client is not in bankruptcy.
18 MR. ZARON: Right.
19 THE COURT: I don't think I have to get into
20 that fight. That's between the two of you. Get it
21 through your injunction order or get whatever you
22 need. You go get it there. That way you don't
23 have to come back here --
24 MR. ZARON: We believe that it does relate to
25 the bankruptcy, because --

1 THE COURT: File your objection then.
2 MR. ZARON: Okay, we'll file an objection.
3 Thank you, Your Honor.
4 MR. CALIFANO: Thank you, Your Honor.
5 THE COURT: If Mr. Kobert has nothing to say,
6 we're adjourned.
7 (General laughter.)
8 THE COURT: Hearing's concluded.
9 (Thereupon, at 12:40 p.m., the hearing was
10 concluded.)
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1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 COUNTY OF DUVAL)

4 I, Cindy Danese, Notary Public, State of
5 Florida at Large, do hereby certify that the attached
6 represents the proceedings before the United States
7 Bankruptcy Court, Middle District of Florida,
8 Jacksonville Division, before the Honorable Jerry A.
9 Funk, Bankruptcy Judge, in the matter of In Re:
10 Taylor, Bean & Whitaker; such transcript is an accurate
11 recordation of the proceedings which took place. A
12 transcript of this proceeding has been produced on
13 September 14, 2009.
14
15
16 STATEWIDE REPORTING SERVICE
17
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20 _____
CINDY DANESE
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