

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR BEAN &  
WHITAKER MORTGAGE  
CORP.,  
et al.

Chapter 11  
Case No 09-bk-07047-JAF

Debtors

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY, TO THE EXTENT  
APPLICABLE, TO PERMIT INSURER TO ADVANCE DEFENSE COSTS AND  
PAYMENT OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION CLAIM**

Lloyds of London ("Lloyds of London") hereby moves for entry of an order granting relief from the automatic stay pursuant to Section 362(b)(1) of the Bankruptcy Code, to the extent applicable, to permit Lloyds of London, as Debtor's insurer, to follow the express terms of Debtor's insurance policy and advance Defense Costs (as defined in the subject policy) and pay an employment discrimination claim on behalf of the Debtors. In support of this motion, Lloyds of London respectfully represents as follows:

**Background**

1. Prior to the Petition Date, Lloyds of London issued an Employment Practices Liability Insurance Policy ("the Policy") to Taylor, Bean & Whitaker Mortgage Corp. ("Debtor"), covering the Policy Period from September 1, 2008, through September 1, 2009. Attached hereto as **Exhibit "A"** is a true and correct copy of the Policy.

2. The Policy provides for a maximum of \$5 million in insurance coverage for Claims (as defined in the Policy) asserted against the Debtor for, among other things, a "Wrongful Employment Practice" or "Third Party Discrimination".

3. Prior to the Petition Date, Kimberly Kelly ("Kelly"), a former employee of the Debtor, filed a Complaint (the "Discrimination Complaint") against the Debtor for, among other things, "Disability Discrimination" with the Massachusetts Commission Against Discrimination ("MCAD"). A true and correct copy of the Complaint is attached hereto as **Exhibit "B"**.

4. The Discrimination Complaint asserts claims that are covered by the Policy.

5. As the claims set forth in the Discrimination Complaint were covered by the Policy, Lloyds of London, as the Insurer, had a duty to defend the Claims and, as such, retained Littler P.C. as counsel to defend the Claims. A true and correct copy of the Rebuttal Statement filed by the Debtor is attached hereto as **Exhibit "C"**.

6. On August 19, 2010, MCAD issued a "Probable Cause Finding" requiring Kelly and the Debtor to appear on November 15, 2010 for a "Conciliation Conference" in Massachusetts. A true and correct copy of the Probable Cause Finding is attached hereto as **Exhibit "D"**.

7. The undersigned understands that the MCAD would not stay the Discrimination Complaint notwithstanding the filing of the Debtor's Chapter 11 case.<sup>1</sup>

8. As a result of negotiations between the parties, a settlement agreement was reached which requires the Debtor, through Lloyds of London as Insurer, to pay \$40,000 (the "Settlement Amount") to Kelly in complete and full satisfaction of any claims made through the Discrimination Complaint or otherwise against the Debtor. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit "E"**.

9. While Lloyds of London does not believe the Policy proceeds are technically property of the Estate, the Settlement Agreement is expressly subject to approval of the

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<sup>1</sup> In addition, the docket does not reflect that a motion for relief from stay was filed by any party to the Discrimination Complaint.

Bankruptcy Court and Lloyds of London files this motion in the abundance of caution seeking relief from the automatic stay to permit Lloyds of London to pay Defense Costs and the Settlement Amount based on the terms of the Policy.

### **Jurisdiction**

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

11. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The relief requested in this motion may be granted under §§ 105(a), 362(d)( I ), and 541 of title 11 of the United States Code (the "Bankruptcy Code").

### **Argument**

#### **Cause Exists to Grant Relief from the Stay to Permit Lloyds of London to Advance Defense Costs and Pay the Settlement Amount**

Under 11 U.S.C. § 362(d)(1), an automatic stay may be modified "for cause." "Cause" is not defined under the Code. *See In re Bogdanovich*, 292 F.3d 104, 110 (2d Cir. 2002). Accordingly, courts determine whether "cause" exists on a case-by-case basis, examining the totality of the circumstances. *See, e.g., In re Mack*, No. 6:06-CV-1782ORL-19, 2007 WL 1222575, at \*2 (M.D. Fla. Apr. 24, 2007). When deciding whether to lift the automatic stay, courts will take into consideration the impact of the stay on the parties, and the balance of harm that may result if the stay is lifted. *See In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001). "In determining whether to lift the automatic stay, the courts have generally considered the prejudice to the debtor's reorganization efforts, conservation of judicial resources, and prejudice to the movant." *Murray Indus.*, 121 B.R. at 636-37 (citations omitted).

Here, a consideration of all of the pertinent factors militates in favor of granting stay relief. First, granting stay relief will not impact on the Debtor's ability to reorganize or liquidate

as the Debtor is not the one paying the defense costs or settlement amount, its Lloyds of London through the Policy. Thus, the Debtor is getting what it paid for from its premium payments to Lloyds of London, ie. insurance coverage. Second, the resolution of this claim will save on judicial resources by not having the Bankruptcy Court get involved with an employment practices claim, which claim is not normally adjudicated in a bankruptcy court anyway. Last, there will be finality in Ms. Kelly's claim against the Debtor as based on the Settlement Agreement, she waives any other claims against the Debtor other than the \$40,000 settlement payment. Thus, Lloyds of London believes that "cause" exists to allow for the payment of Defense Costs and the Settlement Amount.

**WHEREFORE**, the Lloyds of London, respectfully request this Honorable Court to enter an order granting the relief sought in this Motion, and such other and further relief as this Court deems just and proper.

Respectfully submitted,

AKERMAN SENTERFITT

By: /s/ Steven R. Wirth

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Attorneys for Lloyds of London

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished either by electronic notification or by United States Mail, postage prepaid and properly addressed, this 20th day of December, 2010, to:

Taylor, Bean & Whitaker Mortgage Corp.  
315 N.E. 14th St.  
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and the parties listed on the attached Local Rule 1007-2 Parties in Interest List.

*/s/ Steven R. Wirth*  
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Attorney

Label Matrix for local noticing  
113A-3  
Case 3:09-bk-07047-JAF  
Middle District of Florida  
Jacksonville  
Mon Dec 20 14:14:23 EST 2010

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End of Label Matrix  
Mailable recipients 9  
Bypassed recipients 0  
Total 9

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