

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

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In re: : Case No. 3:09-bk-07047-JAF  
: Chapter 11  
Taylor, Bean & Whitaker Mortgage Corp. :  
: Debtor. :

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**LIMITED OBJECTION OF ACE AMERICAN INSURANCE COMPANY  
TO THE SECOND AMENDED AND RESTATED JOINT PLAN OF LIQUIDATION  
OF THE DEBTOR, TAYLOR, BEAN & WHITAKER MORTGAGE CO. AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Creditor ACE American Insurance Company, together with its affiliated insurers and re-insurers (collectively, “ACE”), hereby objects to the motion to confirm the second amended and restated joint plan of liquidation of the debtor Taylor, Bean & Whitaker Mortgage Co. (“TBW”) and the official committee of unsecured creditors (“the Plan”), as follows:

**I. SUMMARY OF THE OBJECTION**

1. ACE is a group of insurance and reinsurance companies.
2. ACE and the Debtor were parties to a pre-petition agreement under which the duties of the Debtor included collecting premiums for certain homeowner-related insurance policies issued by ACE and remitting those premiums to ACE on a monthly basis.
3. The Debtor failed to remit to ACE the premiums for the months of July 2009 and for any subsequent period.
4. Pursuant to a Consent Order dated August 16, 2010, the Debtor performed an accounting of the premiums owed to, but not remitted to ACE (hereinafter, the “ACE Premiums”). The accounting showed that the Estate was holding at least a portion of the ACE Premiums.

5. The ACE Premiums are not property of the Estate, but belong to ACE.

6. The Estate has failed and refused ACE's demands to remit the ACE Premiums to ACE.

7. The Debtor has submitted a Plan of Liquidation for confirmation by the Court. ACE objects to the Plan for the following reasons:

a. The Plan fails to disclose that the Estate holds the ACE Premiums.

b. The Plan fails to make any provision for the return of the ACE Premiums and, moreover, contains provisions that purport to abrogate or waive ACE's right to recover the ACE Premiums.

c. The Plan consummates the REMIC Settlement Agreements. ACE objects to that consummation of that Settlement Agreement because it purports to distribute the ACE Premiums to others who have no right to those Premiums. *See* Docket #2285, ACE's Objection to Motion to Approve Settlement Agreements Related to Mortgage Pools Held by 12 Separate Mortgage-backed Securities Trusts with Respect to which Debtor Taylor, Bean & Whitaker Mortgage Co. Served as Servicer and Wells Fargo Bank, N.A. Served as Master Servicer, which is incorporated by reference herein.

## II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

8. ACE provided a form of mortgage insurance called “Disaster Recovery Plan” (“DRP”) insurance to certain mortgagors that were serviced by the Debtor TBW. For purposes of this Motion, this insurance program shall be referred to as the “ACE/TBW Program.”

9. DRP insurance typically pays a policyholder’s mortgage for periods when the mortgaged property is temporarily or permanently uninhabitable as a result of certain causes, as outlined in the DRP policy.

10. Under the ACE/TBW Program, TBW collected the premiums for the DRP policies from the mortgagors it serviced. The premiums were included in the mortgagor’s monthly mortgage payments to the Debtor.

11. Once a month, TBW would remit those premiums to ACE.

12. These arrangements were governed by a three-way agreement, known as the “Administrative Agreement,” between ACE, TBW, and an insurance agency named Maslow Insurance Agency, LLC (“Maslow”). Maslow was a subsidiary of TBW. A copy of the Administrative Agreement is attached hereto as Exhibit A.

13. Under the Administrative Agreement, it was the duty of TBW and/or Maslow to remit the premiums received from the policyholders no later than 30 days after the end of the month in which the premiums were received. Agreement, §3(b). In practice, this task was performed by TBW.

14. TBW’s duty to timely remit to ACE the premiums that it collected from ACE’s policyholders survived the termination of the Agreement. *See* Agreement, § 9(d).

15. The Agreement further provided that the premiums TBW collected were the “property of [ACE].” *See* Agreement, § 2(c).

16. Under this arrangement, TBW served merely as a conduit for the premiums it collected, and TBW held those monies in trust for ACE.

17. TBW's last monthly remittance of the premiums consisted of the premiums that TBW had collected during the month of June 2009.

18. None of the premiums collected by TBW during the months of July and August, and in the following months of 2009, has been remitted to ACE.

19. By letter dated August 7, 2009, ACE terminated the Administrative Agreement. A copy of the Termination Letter is attached as Exhibit B.

20. In the Termination Letter, ACE demanded that TBW pay all the premiums currently owed from July 2009 forward (*i.e.*, the ACE Premiums), and reminded TBW of its obligation under the Administrative Agreement to continue to remit such premiums to ACE.

21. TBW has failed to remit the ACE Premiums for July 2009, or any subsequent period.

22. Several weeks after ACE's termination of the Administrative Agreement, on August 7, 2009, TBW filed a voluntary petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code in this Court.

23. On May 5, 2010, ACE filed a motion for relief from the automatic stay for recovery of property not belonging to the debtor's estate and for an accounting. (Docket # 1410).

24. On August 16, 2010, the court signed an agreed order between ACE and TBW that provided, *inter alia*, that TBW perform an accounting of the premiums owed to ACE that were never remitted by TBW (Docket # 1822).

25. The accounting demonstrated that the Debtor was holding the ACE Premiums, or a portion thereof.

26. The parties have been unable to agree on the amount of the ACE Premiums held by the Debtor and none of those Premiums have been returned to ACE.

27. On November 17, 2010, the Debtor filed a Motion to Approve Settlement Agreements Related to Mortgage Pools Held by 12 Separate Mortgage-backed Securities Trusts with Respect to which Debtor Taylor, Bean & Whitaker Mortgage Co. Served as Servicer and Wells Fargo Bank, N.A. Served as Master Servicer (“Motion to Approve the Wells Fargo Settlement”) (Docket #2157).

28. ACE objected to the Motion to Approve the Wells Fargo Settlement because the settlement purported to distribute to others funds that belong to ACE and which are not property of the debtor’s estate. (*See* Docket # 2285, ACE’s Objection to the Motion to Approve the Wells Fargo Settlement).

29. ACE further objected to the Motion to Approve the Wells Fargo Settlement because it purported to release ACE’s rights to make any claims against Wells Fargo for the return of funds belonging to ACE. (*See id.*)

30. ACE’s objection to the Motion to Approve the Wells Fargo Settlement is currently pending before the Court.

### **III. THE SECOND AMENDED RESTATED PLAN OF LIQUIDATION**

31. On November 10, 2010, the Court approved the Disclosure Statement with respect to the Plan.

32. The Plan is a plan for liquidation.

33. The Plan provides that on the Plan Effective Date all assets of the estate will vest in the Plan Trust and will constitute Plan Trust Assets. (Plan, Article 6, ¶G, at p. 19). The Plan Trustee will then liquidate the Plan Trust Assets. (*Id.*)

34. The Plan fails to disclose that the Estate is holding the ACE Premiums, which are not the property of the Estate. Nor does the Plan make any provisions for the return of the ACE Premiums.

35. Moreover, the Plan contains broad releases that purport to enjoin ACE from bringing an action to recover the ACE Premiums. (*See, e.g.*, Plan, Articles 10 and 11).

36. The Plan also seeks consummation of the REMIC Settlement Agreements, which includes the Wells Fargo Settlement to which ACE has objected. (Plan, Article 6, ¶E).

**IV. ACE'S OBJECTIONS TO THE SECOND AMENDED RESTATED PLAN OF LIQUIDATION**

37. The ACE Premiums are not property of the Estate. *See* 11 U.S.C. §541(d) (debtor does not have any equitable interest in property in which debtor holds only legal title at the commencement of the bankruptcy); *see also Hayim v. Goetz*, 419 B.R. 498, 505 (S.D. Fla. 2009) (property that a debtor holds in escrow or trust is not property of the estate under 11 U.S.C. § 541).

38. ACE objects to the Plan as it makes no provision for returning to ACE the ACE Premium.

39. ACE further objects to the Plan because it contains provisions that purport to preclude ACE from recovering the ACE Premiums.

40. Finally, Article 6 ¶E 2 of the Plan seeks consummation of the settlement agreement that was the subject of the Motion to Approve the Wells Fargo Settlement Agreement (referred to in the Plan as the REMIC Settlement Agreement). ACE's objections to the REMIC Settlement Agreement are pending before the Court (*see* Docket # 2285) and are incorporated as though fully set forth herein.

**V. PROPOSED RESOLUTION OF ACE'S LIMITED OBJECTIONS**

41. ACE proposes that Article 4, ¶H of the Plan be amended to include the following language to address its objections pertaining to its claims for the ACE Premiums:

ACE American Insurance Company ("ACE") has asserted a claim against the Estate for certain insurance premiums collected by the Debtor on ACE's behalf pre-Petition (the "ACE Premiums"). ACE asserts that the ACE Premiums are not the property of the Estate. Nothing in the Plan, the Confirmation Order, any exhibit to the Plan and any other Plan document shall be construed as a waiver of ACE's rights to bring an adversary proceeding for recovery of the ACE Premiums against the debtor or any other party, and this Court shall have continuing, post-confirmation jurisdiction over such adversary proceeding.

**VI. RESERVATION OF RIGHTS**

42. ACE expressly reserves and does not waive any and all of its rights, defenses, limitations and/or exclusions under the policies issued by ACE (the "ACE Policies") and applicable law. ACE further reserves all rights to assert any and all such rights, defenses, limitations and/or exclusions in any appropriate manner or forum whatsoever (including without limitation arbitration, the United States District Courts or any state court).

43. Nothing in this Objection shall be construed as an acknowledgment that any of the ACE Policies cover or otherwise apply to any claims, losses or damages on account of any claims or otherwise, or that any such claims or causes of action are eligible for payment. ACE reserves all of its rights to object to any claim for coverage under any of the ACE Policies and/or any claim for payment under any settlement agreements

44. Nothing contained in this Motion shall be deemed to expand any coverage that may otherwise be available under any ACE Policies or any rights to payment under any settlements.



WHEREFORE, for the foregoing reasons, confirmation of the debtor's second amended restated plan of liquidation should be denied unless the limited objections raised herein are addressed, together with such further relief as the Court deems appropriate.

Dated: January 11, 2011

s/ Valerie Shea  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on January 11th 2011 a true copy of the foregoing was filed electronically using the Court's CM-ECF and served pursuant to CM-ECF and via Federal Express for overnight priority delivery to: The Debtors, c/o Taylor, Bean & Whitaker Mortgage Corp., Debtor, 315 N.E. 14<sup>th</sup> St., Ocala, FL 34470 (Attn: Neil Luria); special counsel for the Debtors, Troutman Sanders LLP, 600 Peachtree Street NE, Suite 5200, Atlanta, Georgia 30308 (Attn: Jeffrey W. Kelley and J David Dantzler); counsel for the Debtors, Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602 (Attn: Russell M. Blain and Edward J. Peterson, III); the Office of the United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, Florida 32801; counsel to the Official Committee of Unsecured Creditors, Berger Singerman PA, 200 South Biscayne Blvd., 10<sup>th</sup> Floor, Miami, Florida 33131 (Attn: Paul Steven Singerman and Arthur J. Spector).

/s/ Valerie Shea  
Valerie Shea