

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

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

Debtor.

TRANSCRIPT OF PROCEEDINGS

Various motions before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 1:00 p.m., on Monday, September 21, 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.

- - -

STATEWIDE REPORTING SERVICE
233 East Bay Street, Suite 606
Jacksonville, Florida 32202
(904) 353-7706

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RUSSELL BLAIN, ESQUIRE
RICHARD PROSSER, ESQUIRE
DAVID DANTZLER, ESQUIRE
EDWARD PETERSON, ESQUIRE

Attorneys for Debtor.

PAUL SINGERMAN, ESQUIRE

Attorney for the Official Unsecured Creditors
Committee.

ROY KOBERT, ESQUIRE

Attorney for U.S. Bank and Bayview Loan
Servicing.

ANDREW ZARON, ESQUIRE
MIKE TESSITORE, ESQUIRE

Attorneys for Bank of America.

ROBERT SORIANO, ESQUIRE

Attorney for Sovereign Bank.

JASON JOHNSON, ESQUIRE
GEORGE KIELMAN, ESQUIRE (via telephone)

Attorneys for Freddie Mac.

A P P E A R A N C E S (CONTINUED)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANGELINA LIM, ESQUIRE,
Attorney for Nationwide Title Clearing, Inc.

KIT WEITNAUER, ESQUIRE
Attorney for Wells Fargo.

PHILIP MARTINO, ESQUIRE
Attorney for FDIC.

ELENA ESCAMILLA, ESQUIRE
Attorney for the U.S. Trustee.

- - -

T A B L E O F C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

Item 7, Motion for Reconsideration of Agreed Order Approving Procedure for Transfer	7
Item 8, Motion for Reconsideration and Clarification of Agreed Order Approving Procedure for Transfer	9
Item 5, Rescheduled Emergency Motion for Relief by Federal Home Loan Mortgage Corp.	10
Item 2, Emergency Motion to Compel Debtor to Assume or Reject Executory Contract with Nationwide Title Clearing, Inc.	31
Item 1, Application for Approval of Agreement with Navigant Capital Advisors	36
Item 3, Motion for Orders Authorizing Use of Cash Collateral	53
Item 4, Rescheduled Motion for Relief from Stay by Wells Fargo	63
Item 6, Limited Objections to Various Motions for Relief from Stay by Bayview	67

- - -

P R O C E E D I N G S

September 21, 2009

1:20 p.m.

- - -

THE COURT: Good afternoon. We're here today on the case of Taylor, Bean & Whitaker.

Mr. Blain, housekeeping?

MR. BLAIN: Good afternoon, Your Honor. May it please the Court.

Your Honor, just one thing as far as housekeeping or bringing the Court up to date that is relevant before we begin today's hearings.

Since the last hearings before the Court, which were on Friday, September 11th, the U.S. Trustee has appointed an official committee of unsecured creditors. The committee met last week, and we're informed that the committee has employed and there is pending an application to employ the firm of Berger Singerman. Mr. Singerman is here on behalf of the committee.

We have already had meetings with Mr. Singerman and with his colleagues and with members of the committee, both at the business and legal level, to try to bring them up to speed. One of the themes that will run through today's hearings are the fact that the committee has asked us to

1 give them adequate time to review some of the
2 matters that are before the Court.

3 Apart from that, I think we can proceed with
4 the calendar. We have attempted to sequence the
5 proposed calendar by those things that have been
6 resolved and those that are not.

7 There has been resolved the matter with the
8 Federal Home Loan Mortgage Corporation, otherwise
9 Freddie Mac, which is number 5 on the calendar that
10 is item 20 on the docket, and we have filed a
11 stipulation with the Court. That would be probably
12 the first thing to consider.

13 We would propose going from there to the
14 consideration of the employment of Navigant, from
15 there to cash collateral, from there to the
16 Nationwide matter, and winding up with the motion
17 for relief from stay by Wells Fargo.

18 Before taking those up, I have committed to
19 Mr. Tessitore and Mr. Kobert that we would ask the
20 Court to first consider item numbers 7 and 8 on the
21 calendar, which are two motions for reconsideration
22 which were filed with respect to an agreed order
23 that the debtor entered into with U.S. Bank as
24 trustee, Manufacturers and Traders Trust, and
25 Bayview Loan Servicing represented by Mr. Kobert.

1 Bank of America, represented by Mr. Zaron and Mr.
2 Tessitore, and Sovereign, represented by Mr.
3 Soriano, filed motions for reconsideration, and so
4 we would suggest that the Court take those up
5 first.

6 THE COURT: Very well. We'll take up item 7
7 on the agenda, motion for reconsideration of order
8 approving procedure for transfer of residential
9 consumer mortgage portfolio. Objection is by
10 Bayview and Bank of America.

11 MR. TESSITORE: Good morning, Judge. Mike
12 Tessitore as special counsel for Bank of America as
13 custodian, collateral agent and indentured trustee
14 on behalf of certain parties known as the Ocala
15 secured parties. I believe the motion you're
16 referring to is our motion.

17 Just for the record, there was an amended
18 motion for reconsideration filed as well over the
19 weekend at docket number 287.

20 THE COURT: I haven't had an opportunity to
21 see that.

22 MR. TESSITORE: No doubt, Your Honor.

23 The motion relates to an agreed order that Mr.
24 Kobert obtained at docket number 76 on August 31 on
25 an emergency motion for relief from stay. As I

1 understand it, that order resulted in partial stay
2 relief for his clients, M & T, U.S. Bank and
3 Bayview Servicing.

4 The Court at the last hearing set a continued
5 hearing to consider the request for additional stay
6 relief pursuant to that agreed order and Mr.
7 Kobert's motion, and what Mr. Kobert and I have
8 agreed is that it makes sense for this motion to
9 reconsider the order in total be set at the same
10 time as the other stay relief on that agreed order.

11 So what we would request is that that matter
12 be rolled over to October 8th at 9:30 a.m.

13 THE COURT: You agree to that, Mr. Kobert?

14 MR. KOBERT: Yes, Your Honor. If the bank
15 needs more time, we're happy to give the bank more
16 time.

17 Just two points. I did receive a courtesy
18 copy of the amended motion that was filed last
19 night from counsel in advance, so I knew it was
20 coming.

21 And also I want the Court to be aware that I
22 didn't ask to go first. I'm not using up any
23 favors that I wanted to go first today.

24 THE COURT: You've used up all your favors.

25 (General laughter.)

1 THE COURT: Is that item 7 on my docket?

2 MR. KOBERT: Yes, Your Honor.

3 THE COURT: That will be continued until
4 October 8th at 9:30 in the morning. Very well,
5 that will be done. The announcement is made in
6 open court, no further notice need be given.

7 Yes, sir.

8 MR. SORIANO: Yes, Your Honor. Robert Soriano
9 on behalf of Sovereign Bank.

10 We actually filed a very similar motion, which
11 I thought was scheduled. We worked with your
12 courtroom --

13 THE COURT: It is. That's number 8 on the
14 agenda.

15 MR. SORIANO: Okay. I have no objection,
16 since these are all somewhat related, to continue
17 it to that same date. It probably makes sense to
18 have it all heard on one day. I think the issues
19 are somewhat similar.

20 THE COURT: Mr. Kobert?

21 MR. KOBERT: They're a little different, but
22 again I'm not asking to go first or second. I'm
23 fine with that date.

24 THE COURT: All right. Both of these are
25 continued to October 8th at 9:30. The announcement

1 is made in open court, no further notice need be
2 given.

3 In between now and then, you guys talk and
4 make my job easier to get it resolved.

5 MR. SORIANO: Thank you, Your Honor.

6 MR. KOBERT: My phone is available and my door
7 is always open.

8 THE COURT: Good afternoon.

9 MR. DANTZLER: Good afternoon, Your Honor.
10 David Dantzler, Troutman Sanders, on behalf of the
11 debtor.

12 The Federal Home Loan Mortgage Corporation
13 filed a motion for relief from stay, which has
14 resulted in negotiations between the debtor and
15 Freddie Mac. A stipulation was filed over the
16 weekend which resolves a number of issues. They
17 are issues that we've agreed to disagree and keep
18 working on. I don't know if the Court's had a
19 chance to review it.

20 This deals principally with the continuing
21 transfer of information to Freddie Mac. Prior to
22 the petition being filed, Freddie gave notice to
23 the debtor of termination of Taylor Bean as the
24 seller servicer. I believe that that involved
25 300,000 -- 291,000 individual mortgage files.

1 Electronic transfers were begun. As you can
2 imagine, there's a lot of information, lots of hard
3 documents. And then as we've talked in the context
4 of FDIC, checks and payments in limbo.

5 The purpose of this stipulation is to
6 accomplish two things: make clear that that
7 transfer will continue, reserve each other's
8 rights, and then I think most importantly for the
9 assembled gathering, because of the issues of the
10 potential that there are conflicting ownership
11 claims with respect to some mortgages that may have
12 been transferred to Freddie Mac in this process
13 that is ongoing, we've made clear that, to the
14 extent one of Freddie's servicers has a mortgage
15 that Freddie doesn't own, we'll work together to
16 get it to the right place when the reconciliation
17 is done.

18 And, likewise, if there's a mortgage that
19 belongs to Freddie that's in the hands of somebody
20 else, we'll work together to get it to the right
21 place and the proceeds to follow those.

22 But it's basically an information and payment
23 processing stipulation, is the way I described it.

24 THE COURT: What you're saying is it's an
25 agreement between you and Freddie Mac, and it

1 doesn't affect any rights of anybody else.

2 MR. DANTZLER: That is our view.

3 THE COURT: Nobody's substantive rights are
4 affected, and their liens or interest travel
5 wherever the mortgage is that they have a claim on.

6 MR. DANTZLER: Right. That is the intention,
7 I believe, of us and Freddie Mac.

8 THE COURT: And I'm not make a ruling. This
9 is an agreement between you two.

10 MR. DANTZLER: That's right, a two-party
11 agreement.

12 THE COURT: This is America, you can make
13 agreements.

14 MR. JOHNSON: Freddie Mac is reasonable, Your
15 Honor.

16 (General laughter.)

17 MR. JOHNSON: Mr. Dantzler was correct. We
18 think this is just an agreement between us and the
19 debtor to allow them to complete the transfer of
20 the servicing to our interim servicers, and
21 basically to memorialize the agreement we've
22 already been operating under, which is their giving
23 us checks as they come in, they're being
24 transferred to our interim servicer to allow
25 T and I payments to go out.

1 Freddie Mac has already funded a number of
2 T and I payments that we haven't been reimbursed
3 for from amounts that were at Colonial, but this is
4 really just to allow us to continue servicing the
5 loans and to get the documents we need from them.

6 As he mentioned, we were 291,000 of the
7 debtor's loan servicing, which was about 60 to
8 70 percent of their total business. So it's a huge
9 undertaking. We've been on the ground since day
10 one trying to work with the debtor, and this is
11 just really to memorialize the substance of that
12 agreement, Your Honor.

13 THE COURT: And all the transactions will be
14 transparent so the committee can review them if
15 they need to, or any other party that is interested
16 can find out exactly which loans were transferred,
17 the balances and whatever else is involved.

18 MR. JOHNSON: That's correct, Your Honor.

19 THE COURT: You will cooperate with all the
20 interested parties.

21 MR. JOHNSON: Absolutely. We're not trying to
22 hide the ball from anybody here, Your Honor.

23 MR. SINGERMAN: Good afternoon, Your Honor.
24 May it please the Court. I'm Paul Singerman from
25 Berger Singerman, and our firm is the perspective

1 counsel to the official committee of unsecured
2 creditors.

3 Judge, you'll probably hear this a fair amount
4 today. We're working as hard as we possibly can,
5 with the cooperation of all the parties, to get up
6 to speed in order to do our job.

7 We reviewed the stipulation that was filed
8 yesterday, and we haven't seen a proposed order on
9 it. Paragraph 8 of the stipulation seems to
10 provide that the terms of it are binding on the
11 parties and their successors, and assigns a Chapter
12 11 trustee and a Chapter 7 trustee should the cases
13 convert.

14 We'd only request that in this instance, as
15 Your Honor has indicated, that an order approving
16 the stipulation, if Your Honor enters one, has the
17 reservation of rights to which the Court referred.

18 THE COURT: I didn't think I would be entering
19 an order, I thought it was just an agreement.

20 MR. SINGERMAN: I expect --

21 THE COURT: I'm not making a ruling on
22 anything.

23 MR. BLAIN: Your Honor, because this
24 stipulation was not entered into in a vacuum, it
25 was in connection with the resolution of a pending

1 motion for relief from stay, and because of the
2 fact that the motion for relief from stay has been
3 resolved by this order, there would be an order on
4 the motion for relief from stay.

5 We had anticipated that there would be an
6 order similar to the -- or a ruling by the Court
7 similar to that on the stipulation reached with the
8 Federal Deposit Insurance Corporation that
9 recognized -- that approved the stipulation but
10 recognized that it did not affect substantive
11 rights of the parties and said it is what it is.

12 In this particular instance, because the
13 committee has just come on board, we agreed with
14 Mr. Singerman that any order like that would give
15 the committee whatever time the committee needs in
16 order to review that to ensure that they too are
17 satisfied that the stipulation does not affect any
18 rights.

19 So what we would propose to the Court is that
20 the Court enter an order that in effect approves
21 the stipulation, states that it does not affect
22 substantive rights -- we have language that we've
23 worked on on the FDIC one as well -- that the
24 motion for relief from stay is granted to the
25 extent set forth in the stipulation and otherwise

1 denied, and it gives the committee whatever time
2 Mr. Singerman would like in order to review that to
3 ensure that there are no problems that would affect
4 the estate at large.

5 MR. SINGERMAN: Your Honor, in this instance I
6 think it's slightly different from the FDIC stip
7 and, if Your Honor is inclined to enter an order, I
8 think that the committee would be more than
9 satisfied with language that simply provided and
10 reiterated Your Honor's ruling that the stipulation
11 between the debtor and, in this case, Freddie does
12 not adversely affect the substantive rights of any
13 other parties and not impose any challenge period,
14 because we aren't sure yet what issues we may wish
15 to challenge.

16 THE COURT: How much time do you need? Like
17 45 days, 30 days?

18 MR. SINGERMAN: If Your Honor is inclined to
19 set a deadline, which we ask you not to but simply
20 let the parties agree as Your Honor indicated, then
21 45 days would be adequate.

22 THE COURT: I didn't know if you wanted days
23 in there or not.

24 MR. SINGERMAN: Your Honor, as I indicated, I
25 think this is qualitatively different from parts of

1 the FDIC stip in that, if Your Honor is inclined to
2 enter an order, the committee has no objection to
3 that provided that the order contain the admonition
4 that you offered from the bench.

5 THE COURT: Very well.

6 MR. BLAIN: And that's perfectly acceptable.
7 There may have a miscue between Mr. Singerman and
8 me, for which I apologize. I had thought that he
9 wanted additional time, but because of the fact
10 that the parties acknowledge, recognize, I think
11 the stipulation is clear on its face and because
12 they have not sought that, I think we can just
13 clarify it by saying that it does not affect the
14 substantive rights, all rights are reserved, and
15 the stipulation is approved as it is.

16 THE COURT: Prepare your order. Make sure
17 everybody sees it. If you have a problem with the
18 order, then I'll -- but whatever I said on the
19 record takes priority over the order, unless I say
20 to the contrary --

21 MR. BLAIN: Yes, Your Honor.

22 THE COURT: -- if there's any conflict.

23 MR. TESSITORE: Your Honor, if I could be
24 heard on this.

25 THE COURT: Sure.

1 MR. TESSITORE: The stipulation at issue --

2 THE COURT: For the record, you are?

3 MR. TESSITORE: I am Mike Tessitore, again on
4 behalf of Bank of America as collateral agent,
5 indentured trustee and custodian, appearing as
6 special counsel for the bank.

7 The stipulation not only has the effect of
8 resolving Freddie Mac's motion for relief from
9 stay, but also I guess would in effect overrule
10 objections to that motion for relief from stay that
11 we filed, including an amended objection that was
12 filed last week.

13 So we have a substantive problem with the
14 stipulation, and we'd like to argue against it
15 being approved and object to it on the record from,
16 like I said, a substantive basis.

17 Procedurally, the stipulation states in one of
18 its recitals that the parties wish to compromise
19 and settle certain controversies between them on
20 the terms and conditions hereinafter set forth.

21 This is more than an order granting relief
22 from stay. It's a compromise of controversy. The
23 stipulation was filed last evening. There's been
24 no notice to creditors or parties in interest.

25 Now, I guess Mr. Blain was filing his

1 stipulation probably at about the same time that I
2 was filing the amended objection to Mr. Kobert's
3 motion that I mentioned earlier. So I understand
4 that things are moving very quickly in this case
5 and things are getting filed at the last minute.

6 Your Honor may recall that at the last hearing
7 I got up and specifically requested that, with
8 respect to any agreement resolving a motion for
9 relief from stay, that I asked to be included in
10 the loop on that so I'd have the opportunity to
11 interject with comments and, most importantly,
12 objections, those objections as set forth in the
13 amended objection that's been filed with the Court.

14 I had the first chance to review this this
15 morning. I have not had any opportunity to discuss
16 the stipulation with my client. And while a 20-day
17 notice period might be excessive in this case, I do
18 think that the stipulation should be circulated for
19 notice to creditors and parties in interest, and
20 there should be some limited period, at least a few
21 days, to file objections.

22 So on the procedural basis, I would prefer
23 that we proceed in that manner.

24 As to the substance, I'd be happy to go into
25 my substantive problem with the objection.

1 THE COURT: What is it?

2 MR. TESSITORE: Your Honor, as Mr. Zaron
3 explained during the last hearing, Bank of America
4 acts as the collateral agent for certain Ocala
5 secured parties. Those parties have advanced funds
6 in excess of \$1.75 billion for the purposes of
7 acquiring loans from the debtor.

8 As part of that arrangement, Bank of America
9 had a bailment arrangement with Colonial Bank.
10 Under that bailment arrangement, loans were
11 delivered to Colonial Bank, who then either sold
12 the loans to Freddie Mac and remitted the proceeds
13 to Bank of America, or that Freddie Mac decided not
14 to purchase those loans and those loans were
15 returned to Bank of America.

16 The result of the debtor's financial problems
17 over the summer caused that bailment relationship
18 to be terminated. When Colonial Bank failed and
19 refused to return loans and loan proceeds, Bank of
20 America was forced to file an action in District
21 Court and obtain emergency injunctive relief.

22 And at the last hearing Your Honor heard, and
23 it's part of the record, that Bank of America
24 obtained an injunction which ultimately took the
25 form of an amended preliminary injunction which was

1 entered on September 8th. That injunction entered
2 by Judge Jordan in the Southern District has the
3 effect of freezing and preventing anybody at the
4 FDIC or anybody acting in concert with the FDIC
5 from exercising control over or disbursing any loan
6 or any loan proceeds that belong to Bank of
7 America.

8 In fact, that injunction specifically found
9 that those loans and those loan proceeds are not
10 the property of the receivership, they're not the
11 property of anybody other than Bank of America,
12 because they were being held by the bank pursuant
13 to the bailment arrangement.

14 So we have this class of loans and loan
15 proceeds over at Bank of America. We're concerned
16 that, if the Court grants stay relief to Freddie
17 Mac or to any of the other mortgage investors and
18 the effect of that stay relief is not just to lift
19 the stay but to allow the parties to exercise
20 whatever rights they might have under applicable
21 nonbankruptcy law, but specifically authorizes them
22 to start moving loans and moving money, then you
23 could be in a position, given the state of affairs
24 at the debtor -- we've heard a lot of folks talk
25 about the state of affairs at the debtor in terms

1 of the financial situation, that is, the concern
2 about the double pledging of loans, that is, a loan
3 that one person believes has been pledged to them
4 that has in effect been pledged to two people.
5 We've heard about commingling of funds or
6 intermingling of funds.

7 And so, with all of these concerns, it's very
8 possible that when money or loan files are moved,
9 you might be moving Bank of America's property.

10 And what we do not want is any order of this
11 Court that would authorize any mortgage investors,
12 in this case Freddie Mac, to move any of those
13 funds, which would be a direct violation of the
14 injunction issued by the Southern District Court.
15 That's one area of concern.

16 The other area, Judge, is that you're going to
17 have loans and loan files that, once again, might
18 be the property of Bank of America, and no one
19 knows for sure at this point because there has been
20 no complete reconciliation done. If those loans
21 are moved to a successor servicer, who then becomes
22 the agent of Freddie Mac, then the uncashed checks
23 that represent principal and interest payments are
24 going to travel with those loan files. New
25 principal and interest payments are going to come

1 in on those loan files, and you will have a party
2 potentially who doesn't own those funds receiving
3 those funds and doing who knows what with it,
4 perhaps disbursing them on down the stream to
5 somebody else who has an interest in the funds.

6 And the problem there, Judge, is that while
7 they say that Bank of America reserves its rights,
8 the reservation of rights is nothing more than a
9 claim. And a claim, as any litigator, as any
10 creditors rights lawyer knows, often turns out to
11 be worthless, because it puts the bank in a
12 position, Bank of America in the position, of then
13 having to track those funds, try to recover those
14 funds, and who knows what roadblocks they're going
15 to run into at the end of the day and who knows
16 what recovery they're going to have on that claim
17 at the end of the day.

18 So you're taking a situation for Bank of
19 America, who is in a position where it has been
20 determined to be the owner of certain assets, you
21 have other assets that may be owned by Bank of
22 America, and via a stay relief order, not via an
23 adversary proceeding, not via a full hearing on the
24 merits, but via a summary stay relief proceeding,
25 issuing an order that authorizes parties to move

1 that money and transfer loans and loan proceeds
2 into their possession.

3 If there's any relief that's appropriate under
4 these circumstances where there's confusion over
5 property interests, competing claims to property
6 and potentially the double pledging of loans and so
7 forth, the appropriate stay relief is what stay
8 relief is all about, and that is lifting the stay
9 to allow the parties to pursue whatever applicable
10 rights they may have in those loans and those loan
11 proceeds, but not to make a determination via
12 stipulation, a bi-party stipulation, that certain
13 parties have the rights to possession of those
14 funds.

15 So we object to the stipulation. We object
16 both procedurally on the lack of notice, and
17 substantively that you shouldn't do something via a
18 summary stay relief proceeding to affect Bank of
19 America's rights and its property and its funds.
20 And certainly we would not want to do anything here
21 that would implicitly or directly authorize anybody
22 to do anything that would violate the preliminary
23 injunction that's been entered.

24 THE COURT: Thank you.

25 Anybody want to respond?

1 MR. JOHNSON: Your Honor, once again Jason
2 Johnson for Freddie Mac.

3 I don't think Mr. Tessitore's intentionally
4 doing so, but I think he's muddying the water a
5 little bit here.

6 Nothing in this stipulation deals with
7 anything going on in the FDIC receivership.
8 They've got monies over there, they're protected by
9 their preliminary injunction issued by the District
10 Court in the Southern District.

11 This simply deals with loans that the debtor
12 believes belong to Freddie, that Freddie believes
13 belong to Freddie Mac, and we include a reservation
14 of rights specific language in our stipulation that
15 says: If it turns out these aren't ours, okay,
16 they get the loans, they get the money.

17 This doesn't affect in any way anything that's
18 going on with respect to their injunction down
19 there.

20 They talk about the stuff that everybody knows
21 is Bank of America's, that's in the receivership,
22 and then there might be assets of Bank of America's
23 at issue here.

24 Nobody's shown any evidence to the Court of
25 that. We believe they're Freddie Mac loans, the

1 debtor believes they're Freddie Mac loans, but,
2 like we said, we're giving them the protection if
3 it turns out that they're not. We don't believe
4 anybody's substantive rights are at issue here.

5 As far as the procedural argument goes, I
6 don't think he's going to, if you give him time to
7 file an objection, file an objection saying: Well,
8 we think these loans are ours, these ones shouldn't
9 go. I think he's going to say: This Court
10 shouldn't allow any of the monies to go, the
11 argument he just made.

12 So I think he's made his arguments to the
13 Court, and Bank of America's protected by the
14 provisions of the stipulation, Your Honor.

15 MR. KIELMAN: Your Honor, this is George
16 Kielman, also for Freddie Mac. May I be heard for
17 one second?

18 THE COURT: Very briefly.

19 MR. KIELMAN: If I may just augment Mr.
20 Johnson's remarks, there's 291,000 loan files here
21 which need to be serviced by a servicer. Unless
22 the files are transferred, the servicing won't take
23 place, T and I payments won't be made, and the
24 individuals that Your Honor has indicated need to
25 be protected here, namely the various borrowers,

1 won't be protected because no one will be
2 adequately servicing the loans.

3 And in terms of checks coming in, if the
4 checks aren't cashed, eventually they will go stale
5 and we will have thousands and thousands of
6 delinquent borrowers.

7 This relief preserves all of B of A's rights.
8 And certainly, if it is determined that there is a
9 loan or 10 loans and the money that's attributable
10 to those loans which properly belong to B of A,
11 then we will certainly hand those loans over and we
12 will hand over all of the proceeds.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Dantzler.

16 MR. DANTZLER: Just one point, Your Honor.
17 Somebody reminded me I'm probably admitting
18 malpractice every time I say I'm not a bankruptcy
19 lawyer, but I do understand one thing.

20 This transfer occurred, with maybe a straggler
21 here or there that got missed. All the servicing
22 was transferred prepetition. This is the follow-on
23 information that goes with it.

24 So, if the horses are out of the barn, as Mr.
25 Johnson said, the intention is for this to focus on

1 loans about which there's not any real dispute, but
2 we've put a carve-out in there in case something
3 fell through the crack. But to the extent the
4 horses are out of the barn, they were gone before
5 the petition was filed. And this just gets the
6 rest of the information the subsequent servicers
7 need in order to do exactly what Mr. Kielman was
8 saying, and that is to not impose further harm on
9 these individual borrowers, which you've heard
10 plenty about.

11 I just want to make sure the Court is clear
12 that we're not asking permission to move 291,000
13 files. They're gone. This is just the rest of the
14 stuff that's in the debtor's possession.

15 THE COURT: Thank you.

16 Yes.

17 MR. BLAIN: Just briefly, Your Honor.

18 One thing that might clear up one issue that
19 was raised by Mr. Tessitore.

20 As we did with the FDIC, we made clear on the
21 record, and Mr. Johnson agreed to this also, that
22 it is clear that the approval of the stipulation is
23 without prejudice to the -- there's no attempt by
24 this to affect the preliminary injunction that was
25 issued by Judge Jordan, and the order will say that

1 -- we have language that we used in the FDIC
2 instance -- to make it clear that this Court is in
3 no way doing anything that would affect that
4 ruling.

5 THE COURT: Thank you.

6 MR. SINGERMAN: Very briefly, Your Honor.

7 There's been argument today before the Court
8 and a substantial number of references in the
9 pleadings to the action BOA brought against
10 Colonial Bank in the Southern District of Florida
11 before Judge Jordan, and counsel for BOA argued as
12 if the determination was made and preliminary
13 orders were binding and a fait accompli for the
14 creditors of this estate.

15 I just point out to the Court that those
16 orders are preliminary in nature. There are no
17 final orders there. The debtor wasn't a party. No
18 representative of the debtor's estate was a party.

19 And we would ask Your Honor, when you hear
20 this argument that likely will be repeated by Bank
21 of America in its arguments and pleadings, that the
22 Court keep in mind that the estate hasn't weighed
23 in, and whatever Judge Jordan has done, he has not
24 made any determinations in respect of 541 rights of
25 this estate.

1 THE COURT: Thank you.

2 The Court finds that the matters that were
3 objected to by Bank of America are being handled
4 appropriately in the stipulation. All rights are
5 reserved. Nobody's substantive rights are being
6 stepped on.

7 The Court is not directing or finding
8 ownership in any assets that are being transferred
9 or that have already been transferred, and the
10 parties are free, once the funds are transferred
11 and the mortgages are no longer property of the
12 estate, to go in any appropriate court and take
13 whatever action to recover their property.

14 I don't think it's generally, unless the
15 debtor has a dog in the hunt, for the Court to be
16 involved in two other creditors fighting among
17 assets that are no longer in the estate.

18 That being said, the Court will overrule that
19 objection. I think time is of the essence. I'm
20 concerned about all these big boys here, but I'm
21 more concerned about the little borrowers out there
22 that are sending their money in. If those checks
23 don't get deposited and they see some extra money
24 in their checking account -- I know human nature --
25 and now they're going to find themselves in default

1 in a couple of months that they can't ever make up.

2 So you've got to cash those checks and you've
3 got to keep those mortgages properly serviced so
4 they don't end up before me or some of my
5 colleagues trying to figure out how much is really
6 owed.

7 That being said, the objection is overruled,
8 and the stipulation is the stipulation subject to
9 what's been agreed upon or indicated in open court.

10 Next item.

11 MR. PETERSON: Afternoon, Your Honor. Edward
12 Peterson on behalf of the debtor.

13 Your Honor, if it pleases the Court, I'd like
14 to handle number 2 on the docket, which is the
15 motion filed by Nationwide Title Clearing to compel
16 the debtor to assume or reject, or, in the
17 alternative, motion for relief from the automatic
18 stay.

19 This relates, Your Honor, to an executory
20 contract between the debtor and Nationwide pursuant
21 to which Nationwide would file lien releases for
22 loans in exchange for a fee for each loan.

23 There are currently approximately 3,000 loans
24 that Nationwide is holding that they haven't filed
25 lien releases for, and it's because the debtor

1 hasn't paid for the lien release fees.

2 We obviously consider this a serious issue on
3 behalf of the debtor, and we want to get those lien
4 release fees paid so that the recordings can be
5 made so that the borrowers can be protected.

6 What we would propose -- and I've spoken with
7 counsel for Nationwide, Ms. Lim -- is to give us a
8 little time to work through a process to figure out
9 the best way to deal with these lien release fees.

10 The debtor has been processing lien release
11 fees for some of these borrowers where it's brought
12 to their attention. Some of the monies that were
13 paid by the borrowers when the loans were paid off,
14 actually the majority of them from what I
15 understand, are sitting in accounts at Colonial.

16 So some of this has to do with how we deal
17 with that issue. And I've spoken with counsel for
18 the FDIC, and we need to get our arms around where
19 those monies are and how we can get them released
20 to pay these lien release fees.

21 But I think with just a little bit of time we
22 can work through a process to get this done. We
23 understand the urgency of this. There are
24 potential penalties for both the debtor and the
25 ultimate investor. About 80 percent of these loans

1 that are currently being held, the investors are
2 Freddie Mac or Ginnie Mae.

3 I've spoken with Mr. Johnson about perhaps
4 trying to work out an arrangement where Freddie
5 fronts the monies and then is repaid through the
6 reconciliation from the monies in the Colonial
7 accounts.

8 But I think that's a process we can get done,
9 and we'll work as quickly as we can to get this
10 resolved. In the meantime, the debtor is aware of
11 the issue and, when things are brought to their
12 attention, they have been recording the lien
13 releases and paying for it. But we need to look at
14 this and figure out is it cheaper for the debtor to
15 do it.

16 But I think the goal here would be to reach an
17 agreed order with Nationwide to resolve all these
18 issues as quickly as possible, perhaps push this to
19 October 8th so that our feet are kept to the fire
20 so that we can get it resolved.

21 I've spoken with Ms. Lim about this, and
22 that's how we'd like to proceed. I'll let Ms. Lim
23 speak. But we are aware of the seriousness of the
24 issue. It's \$144,000 that Nationwide is owed for
25 these loans that they're holding postpetition, and

1 we need to work through how that's going to get
2 paid, who is going to pay it.

3 It may be that it's better to reject the
4 contract and have the debtor do it. It may be
5 quicker to do that. But that's something we're
6 trying to get our arms around and we'll work
7 through that as quickly as we can.

8 Part of the problem is their money is sitting
9 in Colonial that were earmarked for these closing
10 fees that have been frozen, so it's caught up in
11 some of the issues with the FDIC.

12 THE COURT: Thank you.

13 Ms. Lim?

14 MS. LIM: Your Honor, Angelina Lim on behalf
15 of Nationwide Title Clearing, Inc.

16 What Mr. Peterson said is correct, Your Honor.
17 There is in our possession, in the client's
18 possession, approximately 3,700 loans that we're
19 holding that have not been recorded. They're lien
20 releases, and there are serious penalties attended
21 to that for failure to file the lien release.

22 What we're trying to do, Your Honor, is just
23 to get this matter resolved as soon as possible.
24 And we are trying to speak with Freddie Mac and
25 Ginnie Mae. We have actually spoken to them

1 prepetition and tried to get our arms around this
2 matter before filing this motion. And we agree
3 that if you could continue this to October 8th,
4 hopefully we'll have a stipulation with all the
5 parties, Your Honor.

6 THE COURT: What kind of releases are we
7 talking about? You mean mortgages that were paid
8 off at closing?

9 MS. LIM: That's correct. My understanding is
10 that the debtor has been paid out of escrow from
11 the closing or the payoff of these loans, and my
12 client is out \$300,000, Your Honor, of fronting
13 these fees prepetition to record these mortgage
14 lien releases, and we had stopped prepetition and
15 we're holding approximately 4,000 loans, Your
16 Honor, that need to be dealt with.

17 THE COURT: Very well. We'll continue that
18 hearing to October 8th at 9:30. The announcement
19 is made in open court, no further notice need be
20 given.

21 MR. PETERSON: Thank you, Your Honor.

22 MS. LIM: Thank you, Your Honor.

23 THE COURT: Mr. Blain, next?

24 MR. BLAIN: Your Honor, I believe it would be
25 appropriate to take up the first item on the

1 calendar, which is docket number 13. That is the
2 debtor's application for approval of the agreement
3 with Navigant Capital Advisors to provide the
4 services of the chief restructuring officer, Neil
5 Luria.

6 This matter was filed and was considered by
7 the Court at the hearing on August 27th. There
8 were some issues that were raised at that time.
9 Those were dealt with and incorporated into an
10 order that approved this application on an interim
11 basis, and the matter was rolled forward to today
12 for a final hearing.

13 I have not heard from any of the parties that
14 we have any unresolved issues, with the exception
15 of the committee that has just come on board that
16 is looking at the application.

17 So unless there are other matters to resolve,
18 what we would propose as a disposition of this is
19 for the Court out of today's hearing to enter a
20 second interim order that approves the application,
21 reserving only to the committee the right further
22 to consider any aspects of the application that it
23 would like to review and ask questions about and to
24 meet with the Navigant people over.

25 As soon as the committee is satisfied that its

1 concerns have been met, there can either be
2 amendments made if those are agreed to between the
3 committee and Navigant Capital Advisors and the
4 debtor. Or, alternatively, if there are no changes
5 to be made, then a final order could be submitted
6 to the Court approving Navigant on a final basis
7 without a further hearing.

8 That is the provision we have worked out with
9 the committee as a way of assuring the committee
10 has the opportunity to look at this fully without
11 keeping this matter needlessly on the Court's
12 calendar and without putting anybody in the
13 position of having to file an objection just to
14 preserve rights.

15 So there would be two matters that would --
16 essentially we would submit an interim order out of
17 today's hearing. The Navigant people have one
18 amendment to their affidavit that needs to be filed
19 to disclose another potential matter just to
20 provide disclosure of a prior relationship with a
21 potential party in the case, and then the committee
22 can review it.

23 And after the committee is satisfied of the
24 position, we could submit to the Court a final
25 order approving the application and permitting the

1 retention of the Navigant people and Mr. Luria as
2 the chief restructuring officer on a going-forward
3 basis.

4 THE COURT: Thank you.

5 MR. SINGERMAN: Your Honor, Mr. Blain
6 correctly states the arrangement reached with the
7 committee, and we appreciate the debtor's and
8 Navigant's accommodating the committee in this
9 regard.

10 MR. JOHNSON: Your Honor, Jason Johnson for
11 Freddie Mac.

12 Mr. Blain and I spoke last night, and I told
13 him we would likely be taking an adverse position,
14 but in his defense I don't think he knows that we
15 filed formal objection late this morning.

16 Our objection is based on a number of factors.
17 We don't think a final order should be entered
18 right now.

19 But the basis of our argument is they're
20 burning through, quickly, the debtor's only
21 available cash. They've burned through \$750,000 so
22 far. If you extrapolate it out, it's about a
23 million dollars a month. And I will point out to
24 the Court that I am not the rocket scientist my
25 father is, so my math in my objection is wrong. I

1 stated that the debtor only had \$4.2 million in
2 cash. I think it's more like \$7.3, \$7.4 million,
3 but still that's 10 percent of the debtor's
4 available cash that's gone in the first three weeks
5 of the case.

6 This isn't a true restructuring case, this is
7 essentially a liquidating 11, and we've got a
8 company burning through the debtor's cash at a
9 quick rate just to make sure we have an orderly
10 liquidation.

11 I think the Court required Navigant to file
12 invoices on a weekly basis and serve those invoices
13 on various parties in interest to give those
14 parties an opportunity to review Navigant's
15 services and what they're billing, and to make the
16 determination of whether it was appropriate and
17 whether it should file an objection to those
18 amounts.

19 And the invoices that have been filed and
20 served on the parties in interest block bill for
21 15 hours at a time in some cases with a 15-word
22 narrative, and I don't think that is sufficient
23 information to give the parties in interest an
24 opportunity to determine whether the estate is
25 getting the services that are necessary or

1 appropriate.

2 We don't think that the application should be
3 approved. We think at a minimum, to the extent the
4 Court does approve it, there should be a
5 significant holdback of funds so that there's
6 something to go after at the end of the day if the
7 Court determines that they've been paid too much.

8 THE COURT: Thank you.

9 MR. ZARON: Good afternoon, Your Honor. Andy
10 Zaron on behalf of Bank of America as indentured
11 trustee and collateral agent for various secured
12 parties.

13 I've spoken to Mr. Blain about a couple of
14 issues that we have with the application, and I
15 believe they've been resolved, but I would like to
16 state what they are.

17 The first is that the engagement letter that's
18 attached to the Navigant application provides that
19 Navigant will not serve in the role of a fiduciary.
20 That was largely cleared up by the interim order,
21 and we want to make sure that any final order
22 likewise addresses that concern.

23 The second issue, Your Honor, is with regard
24 to document sharing. There is some language in the
25 engagement letter that suggests that there won't be

1 the full transparency that we're told there will be
2 without the course of this proceeding. And we
3 think that we need to be assured that there will be
4 transparency and that there will be document
5 sharing.

6 One of the concerns that Bank of America has
7 is that, especially in light of the stipulation
8 between the FDIC and the debtor, is that there will
9 be these reconciliations to occur and that we're
10 not going to get documents until the end of October
11 or sometime thereafter, after the reconciliations
12 are done.

13 We believe we need to be part of the process.
14 We need to see documents early on in the process,
15 preferably within the next several days. And we
16 also would like to be part of the process in
17 determining how the reconciliations are determined.

18 And so we believe that, given all the money
19 that Navigant is seeking during the course of this
20 case or that they've already sought, that creditors
21 should be included. I heard Your Honor make that
22 statement in connection with the Freddie Mac
23 stipulation. We believe the same statement should
24 be included in any order approving the Navigant
25 application.

1 And we have spoken to both Mr. Blain and Mr.
2 Luria about setting up meetings to make sure this
3 happens, and we're hopeful that that will happen,
4 but, again, we think it's appropriate that it be
5 included in an order.

6 Finally, Your Honor, we agree with the
7 comments of Freddie Mac about the filing of
8 invoices so that we have an opportunity to review
9 the time that Navigant is spending in this case as
10 a check to make sure that they are doing the
11 appropriate things. And we don't think that that's
12 anything extraordinary for professionals to do,
13 it's something that professionals do 99 percent of
14 the time in these types of cases.

15 THE COURT: Thank you.

16 U.S. Trustee?

17 MS. ESCAMILLA: Elena Escamilla on behalf of
18 the United States Trustee.

19 Your Honor, the only thing that we would
20 request is that we would be able to look at the
21 amended affidavit that's going to be filed, have an
22 opportunity to object and keep our objection time
23 alive as well as the creditors committee's.

24 THE COURT: What about this billing amount of
25 money they're being paid? You've been getting

1 copies of all that, have you not?

2 MS. ESCAMILLA: I have not received any from
3 debtor's counsel. I was forwarded a copy, I
4 believe on Friday, of some of the billing, and I
5 believe it is accurate that they have gone through
6 approximately \$750,000 since the filing, Your
7 Honor.

8 THE COURT: You're not on the list to get
9 monthly billings? I always expected that in every
10 professional situation.

11 MS. ESCAMILLA: We just didn't get them this
12 time, Your Honor.

13 MR. BLAIN: Your Honor, these just came
14 through on Friday, and there's been a lot going on.
15 I don't believe we distributed them to the general
16 -- Ms. Escamilla would get anything that was served
17 on anybody, including these invoices above all, and
18 I don't think they've gone to her from our office
19 as yet. They came out and were generally
20 distributed among other people, and someone
21 apparently sent her a copy.

22 But she'll get copies of all of these as
23 they're submitted.

24 THE COURT: Did you have a chance to look at
25 the bills, other than the totals?

1 MS. ESCAMILLA: I did not, Your Honor.

2 THE COURT: The format and the breakdown of
3 what was done to establish that, you didn't --

4 MS. ESCAMILLA: What I did notice, Your Honor,
5 was that, if you recall, the CRO and our getting a
6 flat fee for their monthly services, and I did not
7 see billings for them, so we couldn't necessarily
8 see what they were doing, and I don't know whether
9 they're not actually doing billings, Mr. Luria.
10 That's the only question I have.

11 The other individuals that are employed by
12 Navigant that are working for the debtor, their
13 hourly duties are being described. I did not note
14 a 15-hour block time. I didn't spend as much time
15 to see that, Your Honor.

16 THE COURT: Well, I want you to look at all
17 that, and any more detail that you need, they will
18 furnish it. And, if not, bring it to my attention.
19 As long as the U.S. Trustee is satisfied with the
20 -- I'm not talking about the money, I'm just
21 talking about the disclosure of the time spent and
22 so forth so they can make a reasonable assessment.
23 That has to be done.

24 Thank you.

25 MS. ESCAMILLA: Thank you, Your Honor.

1 THE COURT: All right, Mr. Blain.

2 MR. BLAIN: Thank you, Your Honor.

3 Your Honor, with respect to providing copies
4 of invoices, they will be circulated to what we
5 call the general circulation list of parties who
6 requested that in this case, and that will be done
7 on a regular basis. If Ms. Escamilla did not get
8 the current one, I apologize to her for that.

9 First of all, if I can deal with Mr. Zaron's
10 comments, I believe it was cleared up at the first
11 hearing, and we would certainly make it clear, that
12 Navigant is certainly acting as a fiduciary. And
13 I'm not quite sure where that language came from,
14 but that was discussed, and we will make --

15 THE COURT: Are, or are not?

16 MR. BLAIN: They are, yes, sir. They're the
17 chief restructuring officer. They're in the
18 position of any officer. This was filed as a
19 Section 363 motion. Nonetheless, Mr. Luria is the
20 chief restructuring officer of the company. He
21 understands the fiduciary duties of an officer of
22 the company, and they are acting and have acted in
23 that role, and we have seen example after example
24 of their understanding of what that means.

25 Secondly, with regard to document sharing and

1 transparency, as has been made clear to this Court
2 in the hearings on August 27th and September 11th,
3 it is the mantra of this case that there is
4 complete transparency on anything that is going on.
5 And we have had numerous discussions with Mr. Zaron
6 and Mr. Tessitore and their co-counsel on this.
7 There are no secrets and there is no information
8 that cannot be shared fully.

9 There are so many pages, I can't even come up
10 with the right count for the amount of material and
11 the amount of computer data that is being dealt
12 with here.

13 But, as was indicated in the arguments
14 presented to the Court on September 11th with
15 regard to the FDIC reconciliation, that is one of
16 the primary jobs that Navigant has undertaken to go
17 through all of this material and all this
18 documentation and to come up with information that
19 can be shared with parties and that that
20 information can form the basis for the
21 reconciliation.

22 And I think we just merely have to come up
23 with a procedure to satisfy Mr. Zaron and other
24 counsel that they have will access to that
25 information. And I think he and I as counsel have

1 an understanding that we are going to develop a way
2 for that to happen with respect to him. We've even
3 agreed to a specific meeting with him and his
4 client to deal with their particular issues since
5 their issues have been raised a number of times.

6 With regard to the amounts and the services, I
7 can just say this: Navigant had a very limited
8 prior involvement with Taylor, Bean & Whitaker that
9 did not deal with their daily operations.

10 On August 4th, as Mr. Dantzler articulately
11 told the Court at the September 11th hearing, on
12 that same day the Federal Housing Administration
13 terminated Taylor, Bean & Whitaker as a federal
14 insured issuer of mortgages, the National Mortgage
15 Association terminated them as a seller of
16 mortgage-backed securities, and Federal Home Loan
17 Mortgage Corporation terminated Taylor, Bean &
18 Whitaker as a seller servicer. That all happened
19 on one day.

20 The following day, as a result of the
21 inability of the company to reverse those
22 decisions, the company had to let go literally
23 thousands of employees. By the last count I know,
24 there were 5,000 employees of Taylor, Bean &
25 Whitaker across the nation, 1200 or 1500 of those

1 at its Ocala headquarters.

2 There are now something like 280 employees
3 left. Those 280 employees are left with the
4 on-the-ground responsibility for doing what
5 formerly 5,000 people did.

6 I cannot overemphasize the absolute essential
7 nature of what Navigant is doing for this company.
8 Navigant essentially stepped in, the board of
9 directors of this company resigned, the former
10 management resigned, a new professional board of
11 directors were appointed, took control of the board
12 of this debtor and appointed Mr. Luria as the chief
13 restructuring officer.

14 That occurred, and as a result of those
15 actions, although we have had many issues to deal
16 with, we are moving in the direction of getting
17 these problems solved.

18 All of this has gone on in not only a case
19 that has gone on for less than a month, but a
20 circumstance and situation that is less than six
21 weeks old.

22 So we are very still in the infancy of this
23 and, as a result of the needs of this debtor, not
24 only is Mr. Luria as the chief restructuring
25 officer, Mr. Casas to whom this Court has been

1 introduced as the chief strategic officer, there
2 are at least 10 Navigant people on the ground
3 literally at all times. These people have
4 literally moved to Ocala. They are there literally
5 around the clock, are working very long days, and
6 their sole goal is to do those things that this
7 Court has heard about, to go through, to figure out
8 where all the pieces are, to get servicing
9 transferred that has not been transferred, to get
10 checks resolved, to get monies resolved.

11 As the Court has heard, in the short time in
12 which everyone has been involved there have been
13 deals worked out with the Federal Deposit Insurance
14 Corporation and with the Federal Home Loan Mortgage
15 Corporation, and those deals are proceeding with
16 other parties as well. Those could not have been
17 done without the involvement of Navigant.

18 The lawyers and other professionals in this
19 case are doing their job and are doing what they
20 need to do, but this is not a case where lawyers
21 can come in and solve all the problems. And we
22 can't go out and just hire someone to take over a
23 mortgage company of this size.

24 So I think that what Navigant has done and
25 what they have been called upon to do is fairly

1 self-evident to the Court and to all of us involved
2 in this.

3 And I will have to say that of all of the
4 professional firms and all of the chief
5 restructuring officers I have worked for, this is
6 one of the best. Their individuals are
7 professionals. They have not only experience in
8 restructuring but also in this industry. Their
9 knowledge of the mortgage business, their ability
10 to come in and study information before them and to
11 make decisions and to steer this debtor on the
12 right course cannot be overstated.

13 And the fees, what are paid are what are
14 determined in the market. The board of directors
15 of this company looked at those very carefully.
16 This was a negotiated transaction. We did the best
17 we could to get the terms to be those such that
18 they would be acceptable to the parties in this
19 case, and under the circumstances they are at a
20 prevailing market rate for a national company of
21 the size and scope of Navigant.

22 So, with that in mind, we would ask the Court
23 to approve this on a final basis, subject only to
24 the committee's right to go in and review anything
25 the committee wants to. If there are issues that

1 need to be brought to this Court's attention, I am
2 certain that the committee will do so. If there
3 are issues that need to be discussed with Navigant
4 that have not been discussed, I am certain the
5 committee will do that, and that is one of the
6 primary roles of the committee on a going-forward
7 basis.

8 But the problem we have is Navigant has so
9 much invested in this, the debtor needs them so
10 badly, that we can't keep this in a situation where
11 this particular matter is up in the air.

12 So we would ask the Court to approve this with
13 the clarifications I've made. We're happy to
14 include in the proposed order on both an interim
15 and final basis that with respect to Mr. Luria's
16 actions as a fiduciary as the chief restructuring
17 officer and with regard to document sharing and the
18 other matters that have been discussed in the
19 preliminary order on this.

20 So I do want to clarify that Mr. Luria
21 personally is serving as chief restructuring
22 officer, and it is his role as the chief
23 restructuring officer that has the fiduciary
24 obligation of this estate, and it is in that
25 capacity that we filed this application with the

1 Court and seek the Court's approval on a going-
2 forward basis.

3 THE COURT: They still have to furnish a final
4 application at the end of the case, right? I
5 approve their fees.

6 MR. BLAIN: I'm sorry, Your Honor, I didn't --

7 THE COURT: I still have jurisdiction to
8 approve their fees at the end of the case.

9 MR. BLAIN: Yes, Your Honor. The Court is
10 approving the contract that was reached with the
11 debtor prepetition at the end of the case. This is
12 certainly subject to the Court's ultimate review.
13 There are provisions of it that specifically would
14 be subjected to the filing of an application, but
15 the Court can certainly come back and look at it.

16 THE COURT: Thanks.

17 Based on the recommendation of the United
18 States Trustee, the Court will approve the final
19 application, subject only to the right to object --
20 file an objection by the creditors committee, and
21 upon objection the Court will schedule a hearing on
22 that in due course if any objection is filed. And
23 it's subject to any agreements or modifications
24 made by the Court that Mr. Blain indicated to clear
25 up any wording in the interim order.

1 Look to you for that order, Mr. Blain, and the
2 hearing is concluded.

3 MR. BLAIN: Yes, Your Honor.

4 THE COURT: Next item, cash collateral.

5 MR. BLAIN: Your Honor, the next matter would
6 be the final hearing on a motion for authorization
7 to use cash collateral.

8 The debtor filed a motion for authorization to
9 use cash collateral at the commencement of the
10 case. That motion was considered at the initial
11 hearing on August 27th. At that time the Court
12 approved the expenditure of funds from the debtor's
13 cash as necessary to prevent immediate and
14 irreparable harm to the debtor's estate, and
15 scheduled a final hearing for today.

16 We have circulated among parties -- this was
17 done just prior to the hearing, so the parties may
18 not have had sufficient time to review this. This
19 has been a document that has been in flux, and we
20 have been negotiating with various constituencies
21 of the debtor some of the matters that affect the
22 numbers in this.

23 But the budget that we have provided to the
24 Court and to the various parties that had
25 previously been budgeted through this week, this

1 particular budget takes the case through the week
2 ending October 9th and sets forth the anticipated
3 revenues during that time period and the
4 disbursements that the debtor expects to make
5 during that same time period.

6 Inasmuch as the creditors committee has just
7 come on board during the past week, we have
8 proposed to the committee, and I believe the
9 committee finds it preferable, that rather than
10 treating today as the final hearing on use of cash
11 collateral, that cash collateral be approved on an
12 interim basis for the second time.

13 We would anticipate submitting to the Court a
14 second order authorizing interim use of cash
15 collateral that would approve the budget that we
16 have provided to the Court and the parties through
17 October 9th, and that the final hearing on cash
18 collateral be scheduled for October 8th at 9:30,
19 which is the time that the Court has set for other
20 matters in this case.

21 I believe that the receipts and disbursements
22 are self-evident. We can go through those and
23 discuss those as appropriate. There is attached to
24 the budget a number of footnotes that set forth
25 various information with regard to the budget.

1 There is one clarification. There is a
2 footnote that relates to bankruptcy related fees
3 and expenses and talks about a procedure for paying
4 fees on a going basis. We have not filed with the
5 Court a motion that seeks authorization to do that
6 and, as the Court will see, there are no
7 professional fees called for to be paid during this
8 period of time.

9 So that footnote relates to what will be
10 coming at a later time and we're not asking the
11 Court to rule on that today, nor does this budget
12 include the payment of any professional fees.

13 With that, we would ask the Court to authorize
14 the use of cash collateral on an interim basis
15 going forward, with the final hearing to be
16 scheduled on October 8th.

17 At the prior hearing on cash collateral, there
18 were issues raised by various parties who might
19 claim liens or security interest in cash of the
20 debtor, but there was a greater concern with
21 respect to the fact that the debtor might be
22 seeking to expend funds that we would call borrower
23 funds, funds that were paid by borrowers for taxes
24 and insurance and for principal and interest.

25 And I want to clarify with the Court, as we

1 did before, that it is not the debtor's intent to
2 spend any funds that are deposited for those
3 purposes.

4 At the hearing on August 27th when we came
5 before the Court, we were dealing with a difficult
6 banking situation and we were depositing funds into
7 an account at Wachovia Bank in which we were self-
8 segregating between borrower funds and other funds.

9 The debtor has begun a process of opening a
10 series of bank accounts at Regions Bank that are
11 roughly intended to match up to the bank accounts
12 that the debtor formerly had at Colonial Bank
13 before it ceased its operations as a mortgage
14 lender and ultimately went into Chapter 11.

15 With these Regions Bank accounts, they are set
16 up in many cases with respect to a particular
17 investor. The accounts are set up in the name of
18 the debtor on behalf of whichever investor. And
19 there are a number of these accounts that are set
20 up and, as I indicated, they roughly match those to
21 the extent necessary that were held at Colonial.

22 We would be using monies not in those accounts
23 but in monies that are designated as operating
24 accounts or accounts that are set up containing the
25 debtor's money in the Regions accounts and in the

1 former Wachovia, and there were several other
2 accounts that had small amounts in them.

3 But, with those qualifications, we would ask
4 the Court to enter the interim order and to
5 authorize cash collateral on a going-forward basis
6 continuum, and we would have a final hearing on
7 October 8th.

8 THE COURT: Mr. Singerman, on behalf of the
9 committee?

10 MR. SINGERMAN: Thank you, Your Honor.

11 Your Honor, Mr. Blain again correctly states
12 the accommodation that the debtors have offered,
13 and we appreciate their agreement to adjourn the
14 final hearing until October 8th. We will be
15 working hard with the debtors, Navigant and the
16 parties that will claim an interest in cash
17 collateral in order to be before you in an orderly
18 manner on October 8th, if in fact that's when we
19 will proceed.

20 As Your Honor has no doubt gleaned from the
21 pleadings, there are a number of issues that
22 present themselves at first blush to the committee,
23 allegations on one hand of double financing and
24 commingling of funds. We're going to do our best
25 to work through that in an orderly manner and work

1 with the secured creditors to elicit from them the
2 proof that they would adduce at the hearing on the
3 8th pursuant to 363(p), putting statutorily the
4 burden on the secured parties to establish their
5 perfected interest in the cash collateral they
6 claim.

7 THE COURT: Thank you.

8 MR. ZARON: Andy Zaron for Bank of America.

9 Your Honor, just a couple of minor points.
10 One is, at the preliminary hearing on the use of
11 cash collateral, I believe Mr. Blain made the
12 statement that none of the funds that the debtor
13 was seeking to use were funds that were subject to
14 the preliminary injunction or funds that belonged
15 to Bank of America, and I believe you had made the
16 same statement today, I just didn't hear it when he
17 was going through his recitation.

18 So we want to clarify that for the record, and
19 to the extent, at the risk of sounding like a
20 broken record, that if the funds are subject to the
21 preliminary injunction, we object to their use.

22 THE COURT: Thank you.

23 MR. JOHNSON: Jason Johnson for Freddie Mac.
24 Very briefly, Your Honor.

25 At the earlier hearing, Your Honor said that

1 the debtor would be required to cooperate with
2 parties in interest to give us some assurance that
3 the monies that they claimed were non-borrower
4 funds actually were non-borrower funds. We've made
5 the request to the debtor. We've gotten one
6 receipt for an electronic funds transfer that shows
7 that a certain chunk of funds came from a certain
8 account, but we really don't think we've gotten an
9 adequate basis to get to a comfort level that these
10 actually are non-borrower funds.

11 And we would just request the Court require
12 some language in the order requiring the debtor to
13 provide us with a accounting, to provide the Court
14 with an accounting of the non-borrower funds to
15 show where they came from.

16 THE COURT: Mr. Blain, as to the last matter?

17 MR. BLAIN: The next-to-the-last matter, Your
18 Honor. There's a matter of the motion filed by
19 Wells Fargo that is the --

20 THE COURT: No, no. I hadn't finished. You
21 need to respond to Mr. Zaron. He said you hadn't
22 been giving him all the information that you were
23 supposed to.

24 MR. BLAIN: Yes, Your Honor. I don't know
25 about the information. First of all, as to Mr.

1 Zaron's comments -- you mean Mr. Johnson's
2 comments.

3 THE COURT: Yes.

4 MR. BLAIN: We provided Mr. Johnson with a
5 reconciliation which was a Navigant-produced
6 document that set forth item by item the source of
7 the funds that were in the Wachovia account that
8 the debtor was seeking to use. Most of the
9 transfers into that account were wire transfers,
10 and we were able to provide Mr. Johnson with the
11 wire transfer information as to, I believe, \$5
12 million of the \$7 million sum that had come from
13 Citibank, which was a wire transfer confirmation.

14 As to the others, we have provided him with
15 all that we have been provided at this point.

16 I will be happy to sit down with Mr. Johnson
17 and we can look at bank statements, look at
18 whatever information is necessary. And I think
19 what he said is he'd just like a little higher
20 comfort level, and we're happy to provide that.

21 THE COURT: That's all I wanted to hear you
22 say.

23 MR. BLAIN: And while I'm standing, Your
24 Honor, if I could deal with Mr. Zaron's comments,
25 all of the money -- to my knowledge, all of the

1 money that Bank of America is asserting it might
2 have an interest in is money that is on deposit in
3 one or the more of the accounts at Colonial Bank.
4 And the preliminary injunction that Judge Jordan
5 entered in the Southern District was started as a
6 lawsuit filed by Colonial Bank against -- I'm sorry
7 -- filed by Bank of America against Colonial Bank.
8 After the Colonial Bank was closed by the
9 Department of Banking at the state of Alabama and
10 the FDIC was appointed as the receiver, the FDIC
11 receiver stepped in in Colonial Bank's stead in
12 that action.

13 None of the funds that we have the possession
14 of, the right to use or are seeking the
15 authorization to use are funds that are at Colonial
16 Bank. Colonial Bank funds are dealt with in the
17 FDIC stipulation. The FDIC receiver has possession
18 of those funds. We have no access to them and are
19 not seeking authorization to use them.

20 THE COURT: Thank you.

21 The Court will grant the continued use of cash
22 collateral on an interim basis through October 9th,
23 2009. All objections to the use of cash collateral
24 are overruled. Anybody that wants to file an
25 objection or renew a previously made objection must

1 file it and serve it on or before October 2nd at
2 midnight. Since there's electronic filing, I don't
3 want to limit somebody to 5:00 o'clock.

4 And those are the objections the Court will
5 review and consider at the hearing, if there are
6 any objections for the use of cash collateral.
7 That's all I'm dealing with.

8 Yes, sir.

9 MR. SINGERMAN: Your Honor, I may have
10 misheard Your Honor. If I did, I apologize. I
11 thought you indicated the hearing was on the 9th.

12 THE COURT: The hearing is on the 8th. The
13 cash collateral order goes through the 9th --
14 that's what you asked for -- and the hearing's on
15 the 8th. And the day to file objections is
16 October 2nd at midnight. That's about a week
17 before the hearing.

18 MR. SINGERMAN: Yes, sir.

19 THE COURT: So we don't get objections filed
20 the morning of the hearing and expect me to know
21 all the law and everything that you cited in the
22 there. I'm not that quick.

23 That concludes that matter.

24 You got something new here?

25 MR. PROSSER: No, sir.

1 THE COURT: I'm already finished with cash
2 collateral. You're slow.

3 MR. PROSSER: I was moving through the crowd,
4 Your Honor.

5 Your Honor, this brings us to the last matter,
6 Wells Fargo's motion.

7 THE COURT: You are?

8 MR. PROSSER: I am Richard Prosser, Stichter,
9 Riedel. Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MR. PROSSER: The last matter on today's
12 calendar is a motion for relief from the automatic
13 stay by Wells Fargo. I believe we have reached an
14 agreement with respect to setting the matter for
15 trial, but I'll let Mr. Weitnauer proceed. It's
16 his motion.

17 THE COURT: Very well.

18 MR. WEITNAUER: May it please the Court. My
19 name is Kit Weitnauer, I'm with Alston & Bird,
20 Atlanta, Georgia, and I represent Wells Fargo as
21 master servicer on 12 trusts.

22 The Court may recall we filed a motion to lift
23 stay with respect to those trusts. Wells Fargo had
24 given notices of termination of TBW's rights as a
25 servicer, and Wells Fargo wanted to have the

1 servicing transferred.

2 At the last hearing we reported to the Court
3 we had made progress towards a potential
4 settlement, and since that time we've exchanged
5 drafts, we exchanged big and small deal points
6 still to be resolved.

7 We met in person this morning for a number of
8 hours trying to resolve those and narrow our
9 differences. We have a new list to take back to
10 our respective clients to see if we can work
11 something out, but so far we haven't reached a
12 final agreement.

13 If we do so, we'll file it as soon as it is
14 ready for the Court's review and other parties as
15 well. If not, we would like to come back to this
16 Court on October 8th and begin our evidentiary
17 hearing and, if we can't finish, to continue it to
18 the next available time, which we understand is
19 October 15.

20 That's our report.

21 THE COURT: How long do you think the
22 evidentiary hearing is going to last?

23 MR. WEITNAUER: It depends, Your Honor. I
24 will certainly work with the debtor to try to
25 stipulate some of the heavy lifting on the

1 documents and the exhibits and the like so that we
2 wouldn't have to go through the laborious process
3 of putting a witness up to just get that into
4 evidence. So I think we could probably prepare for
5 you an affidavit that sets forth some of the basic
6 things that I doubt the parties would disagree with
7 as a factual matter. We might disagree about the
8 legal consequences of all those.

9 In light of that, I would say that probably
10 it's going to take us a couple of hours.

11 THE COURT: You think two to three hours?

12 MR. WEITNAUER: Yes, sir.

13 THE COURT: How about let me find a
14 three-hour slot and just schedule it away from all
15 this mass stuff so nobody feels anxious we're
16 trying to get through a calendar, and you'll have
17 your day set. I'm sure we can find three hours
18 sometime in the next 30 or 45 days to set it and
19 give you time to get all your settlement stuff
20 done.

21 MR. WEITNAUER: Well, Your Honor, we're
22 obviously subject to your calendar, but I would ask
23 the Court actually let us start, even though it may
24 only be for 45 minutes, on the first day you have
25 available.

1 The reason is, because we haven't worked
2 something out, all those borrower checks are
3 stacking up, and this is impacting borrowers, too,
4 not just Wells Fargo, not just the investors and
5 the like. That's the reason we've asked you
6 consider to start --

7 THE COURT: We'll put you last on the calendar
8 on October 8th at 9:30, and whatever time we have
9 left for that day, you can use as much of it as you
10 need. Bring your witnesses and your stipulation.

11 MR. WEITNAUER: We'll do it. Thank you, Your
12 Honor.

13 THE COURT: I appreciate it.

14 Is that satisfactory to the debtor?

15 MR. PROSSER: Yes, Your Honor. I guess as an
16 additional matter -- this is Rich Prosser again on
17 behalf of the debtor.

18 It probably makes some sense to move this
19 forward for Mr. Weitnauer and I to develop a cash
20 management order -- I'm sorry -- a case management
21 order, and see if we can agree to some of these
22 aspects of witnesses and affidavits and what have
23 you and submit that to Your Honor and let you take
24 a look at it.

25 THE COURT: That will be fine. I'll look

1 forward to it. Just don't send it over at 5:00
2 o'clock in the morning before the hearing.

3 (General laughter.)

4 MR. PROSSER: Your Honor, I would add that
5 this is a significant issue for the debtor, a \$3-
6 billion portfolio of Wells Fargo. In addition to
7 the mortgage servicing rights, the debtor is owed
8 about \$100 million in servicing advances.

9 Thank you.

10 THE COURT: Apparently that concludes the
11 calendar. Oh, one more item. The limited
12 objection to various motions for relief from stay.
13 I thought that was resolved.

14 MR. KOBERT: Your Honor, I think that can be
15 continued and rolled with the hearings on relief
16 from stay.

17 THE COURT: That's what I thought. Okay.
18 Anything else?

19 MR. KOBERT: There is one more item, Your
20 Honor, just for clarification purposes of the
21 calendar. Roy Kobert on behalf of U.S. Bank, M & T
22 Bank and Bayview.

23 At the last hearing, September 11th, Your
24 Honor, at docket 222, approved the stipulation
25 between the FDIC and the debtor on a preliminary

1 basis, entered an oral ruling announcing to us your
2 approval of that on an interim basis, and shortened
3 the time for objections to September 17th, last
4 week, the parties to object last Thursday.

5 And parties did object, docket 258, 257, 256,
6 255 from the committee.

7 THE COURT: I got it.

8 MR. KOBERT: And then Your Honor, I thought,
9 announced that all objections that are timely filed
10 would be heard today.

11 THE COURT: No, sir, I never did. Never did.

12 MR. KOBERT: I apologize.

13 THE COURT: Matter of fact, I haven't signed
14 the order yet, so you can't object. I mean, the
15 objection is there, but there's nothing to object
16 to until we get an order.

17 And then you have to understand, there's a
18 difference between a hearing and oral argument.
19 You understand that.

20 MR. KOBERT: Yes, Your Honor.

21 THE COURT: So once I get the order, I'll have
22 a hearing. Now, whether I invite people to come to
23 it or not is a different matter.

24 (General laughter.)

25 THE COURT: Unless I feel there needs to be

1 evidence.

2 MR. KOBERT: Your Honor, that's fine. The
3 objections are filed. I thought since FDIC's
4 counsel's not here, it would be a wonderful
5 opportunity to take it up.

6 (General laughter.)

7 MR. MARTINO: FDIC counsel's here, Your Honor.

8 THE COURT: Mr. Martino is sneaking over
9 there. He was waiting for you to pull something.

10 All right, I think that takes care of
11 everything. Always a pleasure, good to see you,
12 and good luck.

13 (Thereupon, at 2:35 p.m., the hearing was
14 concluded.)

15 - - -

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Cindy Danese, Notary Public, State of Florida at Large, do hereby certify that the attached represents the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Jerry A. Funk, Bankruptcy Judge, in the matter of In Re: Taylor, Bean & Whitaker; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on September 25, 2009.

STATEWIDE REPORTING SERVICE

CINDY DANESE