UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Joni Cox-Tanner and Charles Tanner,)
Sandy S. Smith,)
Michael R. Elliot and Dianna L. Elliot,)
Jay D. Oyler,)
Larry W. Stout and Tammy Stout,)
Linda Bacon)
Mark A. Armour)
Katina Duran

Creditors/Defendants

VS.

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP:

Debtors/Plaintiffs

_____)

A Class Action Complaint and Request for a Jury Trial

Chapter 11

CASE NO. 3:09-BK-7047-JAF

CLASS ACTION COMPLAINT

Comes now, Creditor/Defendant Katina Duran, and other named borrowers files this complaint against Taylor Bean and Whitaker, their past and present directors and other connected employees in support thereof states as follows:

THE CLASS

The Class Members have the following in common:

1. Each owns and or owned real property in the United States which was encumbered by a mortgage listing of Taylor Bean and Whitaker and "MERS" as "mortgagee".
2. Each suffered the loss of monetary amounts by which the Debtor embezzled from accounts in which Debtor held.
3. Members suffered major physical as well as emotional devastation which was at fault of the Debtor.

NATURE OF THE ACTION

1. The Creditors/Defendants bring this action on behalf of themselves and all other homeowners nation-wide who have been and continue to be devastated financially, physically and emotionally by the Debtors abusive, fraudulent, deceptive, and unfair schemes to transfer loans which were fractured by theft, systematically fabricating evidence in the form of fraudulent instruments utilized for loan modifications and/or foreclosure proceedings against homeowners. Debtor's representatives, after being instructed to do so by this court, cannot provide proof of any originating loan documentation nor can they provide a complete payment history or any supporting documentation of illegal foreclosures. The falsification of thousands of affidavits and or other documents filed throughout multi-states served as a systematic effort to defraud courts and the public in order to improperly and artificially rush foreclosure proceedings to their conclusions and to fraudulently obtain title for holders of notes or mortgages over residential properties, to the benefit of the Debtor and to the detriment of the Creditors and class members.

2. The Creditors/Defendants bring this action for triple damages and costs under 18 U.S.C. §§ 1962 and 1964, otherwise known as the "Racketeer Influenced and Corrupt Organizations Act" or "RICO".

3. The Creditors/Defendants bring this action alleging violation of their constitutional rights under color of state law, abuse of process, Florida unfair and deceptive trade practices, and relief from funds and properties stolen from them by the said Debtor.

4. The Creditors/Defendants seek nominal damages, compensatory damages, actual damages, special damages, and punitive damages where appropriate, restitution, declaratory relief, and all other relief this Court deems necessary and proper.

JURISDICTION AND VENUE

Jurisdiction over this class action is proper under the Class Action Fairness Act, 28 U.S.C. Section 1332(d), duly because class members and Creditors/Defendants are citizens of different states, the amount in controversy exceeds $5,000,000.00, and no exceptions to jurisdiction under Section 1332(d) apply. The venue is proper pursuant to 28 U.S.C § 1409. See *Harris vs. Ben-Ezra and Katz, P.A., Lender Processing Services, U.S. Bankruptcy Court, Northern District of Florida.*

This Court has personal jurisdiction over the parties because Debtors submit to the jurisdiction of the Court, Debtors principal place of business is in the State of Florida and by virtue of the fact that Debtors systematically and continually are allowed to conduct business throughout the state.

HISTORY

In April of 2009 Taylor Bean and Whitaker signed an agreement to put up half of a $300 million equity investment to help infuse the troubled Colonial BancGroup, holding company of Colonial Bank, with headquarters in Montgomery, Ala., and help the bank meet a regulatory deadline. At the time of the agreement, Colonial, which has suffered from heavy loan losses, had applied for funding under the U.S. Treasury's TARP. To be eligible for TARP funds, Colonial was required to come up with $300 million in private equity. In June of 2009 Taylor Bean and

Whitaker was forced, as part of a settlement agreement with the Florida Office of Financial Regulation and 13 other states, to pay $9 million after an investigation of the company's 2006 and 2007 nontraditional loans found irregularities in the company's loan applications that involved such items as applicants' income and asset information being changed in order for loans to be approved by the lender. On July 27, 2009, Colonial Banc Group consented to a Cease and Desist order by the Board of Governors of the Federal Reserve System and the Alabama State Banking Department.

On August 31, 2009, Taylor Bean and Whitaker Mortgage Corp. (the Debtor or "TBW"), by and through its counsel, filed an Emergency Motion for Turnover, Approval of Procedures for Maintenance and use of Borrower Payments, and Immediate Resolution of Related Issues (the "Motion"), and requested the entry of an order requiring the Federal Deposit Insurance corporation ("FDIC") to turn over certain TBW assets to the Debtor estate and approve procedures and represented their case to the court. Prior to the filing *The FHA acknowledged Taylor Bean failed to submit its required annual financial report and failed to inform the FHA that TBW's independent auditors ended their examination of the company when they found* ***"certain irregular transactions that raised concerns of fraud."*** The FHA alleged that TBW President Ray Bowman and Taylor Bean and Whitaker Chief Executive Officer Paul Allen submitted false or misleading documents to the U.S. Department of Housing and Urban Development. Taylor Bean and Whitaker oversaw more than $30 billion worth of business annually and was the third-largest lender underwriting Federal Housing Administration-insured loans. That alone meant processing 49,000 FHA-insured mortgages during 2009, which accounted for $8 billion in federally insured loans, according to the U.S. Department of Housing and Urban Development, which includes the FHA. HUD officials noticed that FHA-insured loans underwritten by Taylor, Bean & Whitaker were defaulting at a significantly greater rate than those of FHA's other borrowers which led HUD to meet with TBW's independent auditors and to review the company's FHA financial reports. Auditors told HUD they found ***"irregular transactions that raised concerns of fraud."*** That led FHA investigators to scour Taylor Bean and Whitaker's reports, which it submitted to the agency. What the agency found was the lender omitted information it should have shared with the FHA, and gave information that was at least misleading according to HUD.

Banks and mortgage brokers would process loan applications and bring those applications to Taylor Bean and Whitaker. The company was approved by the FHA to underwrite the federal agency's insured loans. That meant Taylor Bean and Whitaker would ensure for the FHA that the applications were complete and the information that made up the application, about the buyer for example, was accurate and met FHA loan insurance standards according to HUD.

When FHA insures a loan, it means that if the borrower stops making mortgage payments, FHA will cover the loan amount, thus ***Taylor Bean and Whitaker kept Homeowners payments and attempted to receive FHA monies as well.***

Taylor Bean and Whitaker (Debtor) would buy loans from banks, underwrite them, and sell them in groups (commonly called bundles) as Government National Mortgage Association (Ginnie Mae)-backed securities in the secondary mortgage market. The money from Ginnie Mae securities fund a variety of bonds, making up retirement plans and investments around the world.

Taylor Bean and Whitaker also made money by servicing mortgages - collecting payments and holding money in accounts at Colonial Bank and not processing them to payment histories of Homeowners.

Ginnie Mae guarantees investors the payment on federally insured mortgage-backed securities. Those loans are mostly insured by the FHA or guaranteed by the Department of Veterans Affairs. Taylor Bean and Whitaker was banned, thus couldn't bundle loans and sell them as securities any longer, thus, they retreated to file for Bankruptcy, an act which covered their fraud to Homeowners.

On April 19, 2011, a jury found Lee Bentley Farkas, the former chairman and majority shareholder of Taylor, Bean & Whitaker Mortgage Corp., guilty on 14 counts of bank, wire and securities fraud for his role in a two billion-dollar fraud scheme that toppled the mortgage company and a major bank. The government's case featured testimony from 23 witnesses, including six co-conspirators, Freddie Mac and Ginnie Mae representatives and officials from major financial institutions that once invested in Taylor Bean. In what the government has called "one of the largest and longest-running fraud schemes in the country," Farkas, with the help of

co-conspirators, was accused of selling fake loan assets to Colonial Bank to the tune of $1.4 billion while diverting up to $1.5 billion in funds from financing vehicle Ocala Funding LLC to help cover the company's operating expenses.

The scheme, which ran from December 2003 to August 2009, evolved to target federal bailout money when Taylor Bean led a failed effort to raise $300 million in capital so Colonial BancGroup Inc. could receive $553 million in Troubled Assets Relief Program (TARP) funds. As the deal unraveled over accounting irregularities, Taylor Bean's Ocala headquarters and Colonial's Mortgage Warehouse Lending Division in Orlando were raided by federal agents. Both institutions filed for bankruptcy in August 2009.

Farkas was convicted on April 19, 2011, on 14 counts of fraud for his role in masterminding the scheme, which was one of the largest bank frauds in the country. Farkas is scheduled to be sentenced on June 27, 2011. The Securities and Exchange Commission (SEC) has a civil action pending against Farkas in the Eastern District of Virginia.

On April 21, 2011, a Notice of Filing Guilty Verdict along with the "Exhibit A (Verdict)" in Lee Farkas Criminal Action was filed by Hywel Leonard on behalf of Interested Party National Union Fire Insurance Company of Pittsburg, Pennsylvania in this respective court.

On June 10, 2011 the former treasurer and the former president of Taylor, Bean & Whitaker (TBW) were sentenced to 72 months in prison and 30 months in prison, respectively, for their roles in a more than $2.9 billion fraud scheme that contributed to the failures of TBW and Colonial Bank.

Brown pleaded guilty in February 2011 to one count of conspiracy to commit bank, wire and securities fraud. Bowman pleaded guilty in March 2011 to one count of conspiracy to commit bank, wire and securities fraud and one count of making false statements to federal agents. Both admitted to conspiring with Lee Bentley Farkas, the former chairman of Taylor Bean and Whitaker, and others, to fraudulently obtain funding for Taylor Bean and Whitaker to cover expenses related to operations and servicing payments owed to third-party purchasers of loans and/or mortgage-backed securities.

Co-conspirators Paul Allen, the former chief executive officer of Taylor Bean and Whitaker; Catherine Kissick, a former senior vice president of Colonial Bank and head of its Mortgage Warehouse Lending Division (MWLD); Teresa Kelly, a former operations supervisor for Colonial Bank's MWLD; and Sean Ragland, a former senior financial analyst at Taylor Bean and Whitaker, have also pleaded guilty for their participation in the scheme.

Ray Bowman and Desiree Brown participated in the scheme from 2003 through August 2009. The fraud scheme caused Colonial Bank and Colonial BancGroup to purchase tens of millions of dollars of worthless assets, caused Colonial BancGroup to report false information in its financial statements, and artificially inflated the value of Taylor Bean and Whitaker's mortgage servicing rights.

Taylor Bean and Whitaker began running overdrafts in its master bank account at Colonial Bank because of Taylor Bean and Whitaker's inability to meet its operating expenses, which included payroll, servicing payments owed to third-party purchasers of loans and/or mortgage-backed securities and other obligations. In or about 2002, Lee Farkas, Ray Bowman and other co-conspirators, engaged in a series of fraudulent actions to cover up the overdrafts, first by sweeping overnight money from one TBW account with excess funds into another, and later through the fictitious "sales" of mortgage loans to Colonial Bank, a fraud scheme the conspirators dubbed "Plan B." Desiree Brown joined the conspiracy in late 2003 shortly after Plan B commenced. The conspirators accomplished Plan B by selling Colonial Bank mortgage loans that did not exist or that Taylor Bean and Whitaker had already committed or sold to other third-party investors.

As Plan B evolved, co-conspirators at Taylor Bean and Whitaker also caused Taylor Bean and Whitaker to engage in sham sales of groups of mortgage loans, known as "pools," to Colonial Bank that other entities already owned. As a result, false information was entered on Colonial Bank's books and records, giving the appearance that the bank owned interests in legitimate pools of mortgage loans, when in fact the pools had no value and could not be securitized or sold. Additionally, the conspirators, including Brown, caused Taylor Bean and Whitaker to misappropriate more than $1.5 billion in collateral from Ocala Funding LLC, a mortgage lending facility owned by Taylor Bean and Whitaker. The misappropriation caused

Colonial Bank and the Federal Home Loan Mortgage Corporation (Freddie Mac) to falsely believe that they each had an undivided ownership interest in thousands of the same loans worth hundreds of millions of dollars. The loans were grouped into "pools" and sold multiple times, thereby increasing profits for the Debtors. These securitized debt pools were sold on the stock market and elsewhere, and in this manner affected interstate commerce. The Debtors also in many instances collected mortgage insurance upon "default".

The fraud scheme also included an effort by certain conspirators in the fall of 2008 to obtain $570 million in taxpayer funding through the Capital Purchase Program (CPP), a sub-program of the U.S. Treasury Department's TARP. In connection with the application, Colonial BancGroup submitted financial data and filings that included materially false information related to mortgage loan and securities assets held by Colonial Bank as a result of the fraudulent activity at TBW.

The Debtors did not want there to be any documentation which could later potentially be used as evidence of their crimes. They did not want to pay the fees associated with recording mortgages and they did not want to be bothered with the trouble of keeping track of the originals. The Debtors made over the American judicial system's long honored requirements for mortgages and foreclosures to serve their own selfish interests and to minimize the possibilities of the victims obtaining any meaningful redress through this and other courts. They undermined rights and sabotaged the judicial process by de-emphasizing the importance of "troublesome" documentation and instruments.

Chapter 11 Filing

On August 24, 2009, (the "Petition Date"), TBW filed a voluntary petition for relief under Chapter 11 of the Bankruptcy code.

Prior to filing, Taylor Bean and Whitaker restructured its board of directors and management so that the affairs and ongoing operations of the Company under the direction in control a new directors and a Chief Restructuring Officer.

As more fully described in TBW's case management summary, TBW was not in financial distress prior to August 3, 2009. As a result of actions taken by various agencies of the Federal

Government and others, however, much of TBW's ability to function as a business was destroyed over the course of a very few days, resulting in the filing of this bankruptcy case.

Taylor Bean and Whitaker continues to operate its remaining business and manage its properties as a debtor-in-possession pursuant to Section 1107 (a) and 1108 of the Bankruptcy code. No trustee or Examiner has been appointed in this case and no official committee has been appointed pursuant to Section 1102 of the Bankruptcy code. § 1348.

As per History, we have reason to believe their summary was indeed filed in error, as information post-filing has provided verification that the acts of fraud and mismanagement occurred as early as 2003. Therefore, the Company illegally filed for Bankruptcy on the belief they had been covering up losses for several years of application. This is not an assumption, this is factual evidence provided in Court by the Federal Bureau of Investigations.

FROM TRANSCRIPT OF PROCEEDINGS
DOCKET NO. 1417 DATED 5/13/2010

MR. TESSITORE: "No one has ever suggested that the debtor in case had good records. In fact, just the opposite suggestion has been made, that the records are suspect. And it's also been suggested that possibly the best source of information to verify and crosscheck those records is Freddie Mac, because of its extended relationship, its prolonged business relationship with the debtor. Two and a half months ago when that motion was filed and over a month ago when we had a hearing, Your Honor issued the bucket ruling of the three buckets, and we thought -- I think everybody thought at that time that there would be buckets of nonprivileged documents that were going to be produced and shared because there was no privilege which could attach to them. For example, documents that went from Taylor, Bean & Whitaker to Freddie Mac. Obviously those shouldn't be privileged. There was going to be bucket number two, which is that category of, quote, confidential documents that Freddie Mac would designate as confidential, and those would go to the debtor but couldn't be shared with the joining parties. And then there was bucket three, the traditional privileged documents which Freddie Mac would not produce at all and that somebody was going to have to challenge to have access to. Going along with that, there was to be privilege logs so that joining parties could look at those privilege logs and decide if they wanted to challenge the confidentiality designation so they, too, could have access to the documents. Those buckets are empty, Judge, as we sit here today, at least until last night. Certainly with respect to Bank of America those buckets are empty. We don't even have a privilege log yet of the initial set of documents that were produced. We are literally at square one, if not – not even to square one yet, because it appears, based on the initial production, everything is going to be designated as confidential. So we are at square one in a discovery process that relates directly to the asset reconciliation. How can a creditor verify,

analyze, test and challenge, if necessary, that asset reconciliation if it doesn't have Freddie Mac's documents? How can a creditor assess whether the estate has claims, assets, that it needs to bring if it doesn't have that information?"

"So this is not some fishing expedition for discovery in another case. This is not an attempt to impose an additional burden on Freddie Mac. This is simply an effort to get on a timely basis the same documents that were going to fill up those buckets that we discussed at a hearing over a month ago. Now, discretely, let's take off one slice of that, that hopefully we can at least deal with today, and that is that the Court said that when those documents go into the confidential bucket and they go to the debtor and its counsel, it seems to make sense that those documents should be at least shared with the lawyers involved whose clients have a huge stake in this matter. That's the issue on that one motion: Should there be an order which allows attorneys eyes access only to those documents that are produced by Freddie Mac and designated as confidential if the lawyers sign a nondisclosure agreement. How in the world could the conservator testify and that testimony have relevance to that question? Your Honor has already ruled that those documents are to be produced, that they're the proper subject of a 2004 Exam, the production has begun, the bucket is starting to fill up. The debtor has access to the information, and committee counsel and Bank of America counsel with a $1.75-billion stake in this case cannot have access to those documents."

MR. KIELMAN: "Your Honor, this is George Kielman again for Freddie Mac. If I may be heard for one more minute, and then I will simply turn this back over to Mr. Johnson. Freddie Mac definitely takes issue, I take issue, Mr. Johnson takes issue with the suggestion that we have dreamed up this continuance motion. We have done this because we have been directed to do so by the conservator. And the reason the conservator has done this is because the conservator is concerned and wants to look at the question of whether this is indeed a fishing expedition related to solely to the – related largely to the New York litigation between the very three parties who are seeking this separate discovery, which are Bank of America, Deutsche Bank and BNPP. Deutsche Bank and BNP have sued Bank of America for several billion dollars directly related to the actions of TBW and its subsidiary, Ocala Funding, prior to this bankruptcy, and those three parties have not obtained any discovery amongst themselves in that case, and the conservator seriously wishes to consider its view whether that what's really potentially going on here is they are seeking to get that discovery all from Freddie Mac and using this forum conveniently for that. And the conservator is very concerned that there will be an enormous additional burden on him. And the suggestion that the discovery is the same is laughable Your Honor, because the debtor has not issued any subpoena regarding depositions. Initially at least it is satisfied with documentary discovery. The Bank of America, BNP and Deutsche Bank want to initiate their own depositions immediately and perhaps subject to three separate subpoenas at three separate times so that they can schedule their own depositions when they want to. And this is a serious additional burden on a third party to this case, Freddie Mac. We're not the debtor in this case. And the debtor needs time to assess its position on what it believes is potentially a serious enormous additional burden on it."

MR. WEISS: "There are documents in their possession that they have previously delivered to Taylor, Bean & Whitaker. Taylor, Bean & Whitaker has said from the first day they set foot in this court that their documents are a mess. The only way to sort through this is to get

Freddie's documents that were previously delivered to the debtor so a reconciliation can be done".

"Everybody from the beginning of this case, Your Honor, has stood before Your Honor and said: We recognize there are problems. There may be double, triple pledging. There are issues as to ownership".

JUDGE: "This is what it's on: these motions for their own 2004 and whether the other creditors' counsel eyes only will be able to look at any of the discovery, I mean, if there is any confidential discovery that's not public. Of course they can look anything in the public bucket, which is supposedly empty at this point."

"Now, hopefully once the conservator gets into place and gets his own counsel and gets comfortable, some of this stuff can be resolved, and I would hope that they would work to that end. I'm not ordering that, I can't order him yet to do it, nobody's asked me to, but I really think some of this should be able to be resolved once the dust settles over there at Freddie Mac maybe."

FROM TRANSCRIPT OF PROCEEDINGS
DOCKET NO. 1908 DATED 9/8/2010

MR. DANTZLER: "I'm David Dantzler. I'm with Troutman Sanders, special counsel to the debtor. Judge, a year ago, when this case was in its earliest days, it was inconceivable that we'd be here today asking you to approve a settlement and a compromise that could create as much as $200 million in value for this estate. As the Court may recall, a year ago this case was running on fumes in what could be charitably described as an atmosphere of controlled chaos. Federal law enforcement agents had executed a search warrant at TBW's headquarters in Ocala, which was followed quickly by more than 40 state enforcement actions being filed against the company. Taylor Bean's accounts at its primary bank, Colonial Bank, had been frozen as a result of an administrative hold. Mortgage investors were aggressively attempting to terminate Taylor Bean as their mortgage servicer and taking efforts to take control of their mortgage portfolios, sometimes through self-help. Literally overnight Taylor Bean's business had collapsed. 512,000 individual borrowers were left in a lurch."

"A year ago, the debtor was preparing budgets a week or two at the time which were the exclusive focus of the hearings in front of this Court. As you may recall, some stakeholders were questioning at that time whether this case should proceed as a Chapter 11. This agreement will create substantial value for the estate and sets the course and foundation for the confirmation of a plan. Judge, there have been a few limited objections filed. But I think it's fair to say that most objections are limited and are directed regarding reserving rights that some believe they have or may have with respect to individual loans. As we go forward now and lay the factual foundation for Judge, as we got into that asset reconciliation, which was focused on loans and cash, as you may recall, even in the very early days last fall, the debtor began to identify issues

regarding the relationship between Taylor Bean and Colonial and their various financing arrangements that required attention and likely resolution with the FDIC-Receiver. So very early on we identified some basic issues. I think you've heard me say before that certain records of the company were not usable or just nonexistence, and this was one of those places where the company's records were really difficult, because on a paper basis there was no way to distinguish between Taylor Bean-owned loans and loans that had been assigned to Colonial Bank. All of those loans, because they were serviced and managed by Taylor Bean, were titled in the name of Taylor Bean. With respect to the servicing investor code, how borrower payments were treated and allocated, there was no distinction between Taylor Bean and Colonial Bank. And the course of conduct between the parties, as best we could divine it from the documents available to us, really did create some confusion about how that issue might be resolved. Early in the case and throughout, we had questions about the conduct of some Colonial employees in their dealing with Taylor Bean, which we thought might affect or be an issue we needed to address with the FDIC. And then it was absolutely essential that the FDIC work with us to clear title, for lack of a better word, on the loans that were titled in Taylor Bean's name against which they had no lien, on those TB-owned loans. Not surprisingly, the FDIC-Receiver didn't bite on that, and they came back and said that in fact in their view the COLB was a true sale, that the bank had acquired a 99-percent participation interest in the loans financed on the COLB. And, by the way, because Taylor Bean is in default, we have the right to foreclose on your one-percent interest. And then, as they had done since the beginning of the case, they continued to assert and educate and in some ways pound us with those Superman powers and the issues that Congress has bestowed upon the FDIC as receiver of failed banks under FIRREA and those jurisdictional issues. So they continued to make clear that, from their perspective, these issues had to be resolved in the receivership. And, by the way, debtor, given that case, we think there are all kinds of problems with your claim that you did file in the receivership, you didn't touch on all these issues, so, you know, tough. And they continued to remind us, as they had throughout, that we had to overcome the D'Oenche Duhme doctrine, that the FDIC-Receiver had the right to set off cash and assets that might otherwise be available to Taylor Bean against losses sustained by the bank. And this business about the bad acts of management, regardless, we were not able to impute those to Colonial's conduct with respect to how we might adjust rights under these lines. And then they also made clear that, in effect, the burden was on the debtor to establish its ownership in anything, in any of those loans, because on the face of it, as I said, it was credible to say that everything belonged to the bank. So after getting those papers, we had to undertake some analysis. And our initial view -- and this is the part of this that always makes me uncomfortable, Judge, and that is telling you how bad our case is. But I think it's only fair that you have to understand this in order to approve this settlement. There were no participation certificates, there were no, or at least very few, recorded mortgages with respect to the real estate assets. And then -- we've been here a number of times on the borrower issues -- there's $13.8 million on deposit in some of those escrow accounts, the tax and insurance kind of escrow accounts, at Colonial Bank. For some period of time the receiver, probably in consultation, but the receiver and the debtor will together figure out how that money might be used to either solve an individual borrower's problem, or under certain circumstances it may be appropriate to reimburse an investor who has solved a specific problem. And that $13 million will be available to do that. And after a period of time, I think about eight months, that money comes to the debtor or the post confirmation trust for these very same purposes. And then at some point in the future, if it's not used up in the solution of borrower problems or related kind of investor reimbursement, the money is available

to go into the corpus of what will be distributed to creditors. We don't know today -- it's hard to estimate -- exactly how much of the $13.8 million will be used up, but I think it's our expectation there will be some left at the end of the day to go into the estate.

"In the agreement, it provides Witnesses, to the extent they are available, willing and able to testify, have now scattered and are located throughout the country. It would likely take years to resolve this litigation, and we're convinced that if the debtor was successful, there would very likely be an appeal by the receiver. And then there was the gray area in the middle where there was overlap because of the complex and close banking relationship that Colonial and Taylor Bean had."

MR. CALIFANO: "The FDIC-Receiver believes and has believed throughout this case that the trade creditors and the homeowners are victims who were caught up in this fraud and who should be treated differently, which is why one of the important elements of the settlement is the $13.8 million in BB&T funds that's referenced at Section 1.7(d) of the settlement agreement, Your Honor. We made it very clear that we wanted to make sure that homeowners and consumers who were somehow harmed by this insolvency process have a fund that can pay for them".

PARTIES

Creditors/Defendants Joni Cox-Tanner and Charles Tanner are residents of Texas, with a residence in Midland, Midland County, Texas. Ms. Cox-Tanner and Mr. Tanner purchased property at 2403 Terrace Ave., Midland, Texas, 79705, in Midland County.

Creditor/Defendant Sandy S. Smith is a resident of Texas, with a residence in Stephenville, Erath County, Texas. Ms. Smith purchased property at 1427 Wild Horse Land, Stephenville, Texas, 76401, in Erath County.

Creditors/Defendants Michael R. Elliott and Diana L. Elliot are residents of Kentucky, with a residence in Lewis County, Kentucky. Mr. and Mrs. Elliot purchased property at 133 Elliot Lane, Tollesboro, Kentucky, 41187, in Lewis County.

Creditor/Defendant Jay D. Oyler is a resident of Georgia, is a resident of Bartow County, Georgia. Mr. Oyler purchased property at 16 Bamblewood Place SW, Cartersville, Georgia, 30120, in Bartow County.

Creditors/Defendants Larry W. Stout and Tammy Stout are residents of North Carolina, with a residence of Alexander County, North Carolina. Mr. and Mrs. Stout purchased property at 145 Stout Farm Road, Taylorsville, North Carolina, 28681, in Alexander County.

Creditor/Defendant Linda Bacon is a resident of Georgia, with a residence of Clayton County, Georgia. Ms. Bacon purchased property at 217 Kipling Way, Riversdale, Georgia, 30274, in Clayton County.

Creditor/Defendant Mark A. Armour is a resident of Oklahoma, with a residence in Canadian County, Oklahoma. Mr. Armour purchased property at 5519 S. Barnes Ave., Oklahoma City, Oklahoma, 73119, in Canadian County.

Creditor/Defendant Katina Duran is a resident of the United States in Ohio, Lucas County. Ms. Katina Duran purchased property at 7346 Hill Ave. Holland, Ohio 43528, in Lucas County.

CLASS ACTION ALLEGATIONS

The Creditors/Defendants bring this action as a multi-state jurisdictional class action pursuant to Rule of Civil Procedure, 23, on their own behalf and on behalf of all other similarly-situated Homeowners who have been obligors on notes or mortgages on properties located in multi-states, serviced by Debtors within three (3) years of the date of this complaint. This class is so wide-spread from at least 2006 through 2009, that joinder of all members is unimaginable. Upon information and belief, Creditors/Defendants estimate the Class has (at least) tens of thousands of members. With information provided by Court, it is believed the amount for just 2009 is approximately 49,000.

These predicate acts are related. They share a common purpose: defrauding the Class Members and other borrowers of their money and or property. They share the common theme of concealment of the real parties of interest.

The acts satisfy RICO continuity requirement. They extend from a substantial period of time to present, which meets the definition of "open-ended" continuity. As the result of the RICO enterprise, in which the Debtor was engaged, the Class Members have suffered damages, in that they have all lost money and or property.

There are questions of law and fact that are common to the Class and that predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

1. Whether Taylor Bean and Whitaker (Debtor) is liable for a violation of 18 U.S.C. § 1962;
2. Whether Taylor Bean and Whitaker (Debtor) is liable for abuse of process and funds;
3. Whether Taylor Bean and Whitaker (Debtor) has violated the Unfair and Deceptive Trade Practices Act according to the FDIC and or FTC of the United States.
4. Whether Creditors/Defendants and Class members are entitled to assert the affirmative defense of unclean hands 28 U.S.C. 2201-2202.
5. Whether there is common law fraud, deceit, or manipulation in the connection with any sales or transfers of loans.
6. Whether Taylor Bean and Whitaker's (the Debtors) actions constitute a wrongful tort.

A class action will permit a large number of similarly situated people to prosecute their Common claims in a single forum simultaneously without the duplication of effort and expense that numerous individual actions would create. Addressing the issues raised in this Complaint on a class basis will create a final resolution for the Class. Moreover, the members of this Class would be unable to afford counsel to litigate the issues raised in this Complaint, leading to injustice and discrepancies in the administration of law. Without the Class action, the members will continue to have their rights violated and will continue to suffer monetary as well as physical and emotional damages. The relief sought is appropriate in respect to the entire Class.

VIOLATION OF 18 U.S.C. § 1962 (a), (b), (c)

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Taylor Bean and Whitaker has had quite a plethora of involvement with many Federal programs as well as financial institutions, while selling its loans and servicing rights to many entities at the same time, creating a financial ruin on homeowners and banking institutions. For example, TBW had relationships with MERS, or Mortgage Electronic Registration System, who is now under investigation for fraudulent acts, Lender Processing Services, First American Title, Bank of America who is under high scrutiny, JP Morgan Chase, Wells Fargo, Freddie Mac and Fannie Mae, BNP Paribas, Ocwen, American Home Mortgage, et al. The Debtors by working in concert through the use of the MERS artifice, succeeded in obtaining fraudulent realms of

modifications as well as foreclosures. Debtors maintained a relationship with the MERSCORP Firm including written contracts and alleged corporate resolutions designed to assist the Debtors in effectuating the goals of the criminal enterprise through use of assignments. In all instances, an employee from Taylor Bean and Whitaker signed off on legal instruments as the "President" or "Vice President" of MERS and filed these documents fraudulently in the respective County Courthouses of the Class members. Thus, it is not only assignments which Taylor Bean and Whitaker and MERSCORP, Inc., had authorized others to sign legal instruments without any factual or legal basis; Taylor Bean and Whitaker as well as MERSCORP, Inc., granted *carte blanche* to sign and file any and all sworn instruments necessary to facilitate illegal foreclosure measures. "A legal title to real property cannot be established by parol". *See Allen v. Allen, 51 N.W. 473,474, (1982).*

ABUSE OF PROCESS AND FUNDS

The history of Creditor's/Defendant's discovery responses in this case reveals a clear pattern of delay, stonewalling, deception, obfuscation and pretense. Taylor Bean and Whitaker has intentionally withheld critical documents, ignored court orders, and misrepresented facts to opposing counsel and the court. The Debtor, through its employees, its house counsel and its engaged litigation counsel participated in an intentional campaign to hide critical facts and documents. At every stage of discovery, reasonable and relevant requests have been met by incomplete responses, unreasonable objections, unfounded claims of privilege and intentionally incomplete documentation. Whenever Creditor sought court intervention additional documentation was not found. Amidst hundreds of such insignificant, nonsensical or unintelligible pages, are material and significant submissions that demonstrate that the Debtor engaged in an intentional effort to obstruct legitimate discovery by using the claim of privilege. Debtor has attempted to hide discoverable documents, and used an overly broad, clearly untenable, theory of "privilege" to conceal the knowledge, activity and intent which form the very basis of this bad faith lawsuit. The purportedly privileged material demonstrates a strategy antagonistic to their insured including discussion of bad faith, delaying payment, and admissions of fiduciary obligations.

UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

The Federal Trade Commission Act (FTC Act) declares that unfair or deceptive trade practices are illegal. **See** 15 USC § 45(a) (FTC Act Section 5). The Federal Deposit Insurance Corporation (FDIC) intends to cite state nonmember banks and their institution-affiliated parties for violations of FTC Act Section 5 and will take appropriate action pursuant to its authority under Section 8 of the Federal Deposit Insurance Act (FDI Act) when unfair or deceptive trade practices are discovered. FDIC enforcement action against entities other than banks will be coordinated with the Federal Trade Commission, which also has authority to take action against nonbank parties that engage in unfair or deceptive trade practices. The said Class of members all are victims of unfair and deceptive trade practices by Taylor Bean and Whitaker and their counterparts. Taylor Bean and Whitaker sold their loans and servicing rights on numerous accounts, leaving the Homeowners in a predicament in which we pray of this court to understand and to defend.

UNCLEAN HANDS

Taylor Bean and Witaker's CEO, president, secretary, et. al, have been charged with fraud, embezzlement, in the billions of dollars from their company throughout 2003 to 2009. The Debtors filed for Chapter 11 bankruptcy in this court stating they had not had any financial difficulties prior to their filing. The court nonetheless should have refused any relief under the automatic stay because of the conduct of the Debtor's predecessors – Lee Farkas, Ray Bowman, Desiree Brown, et al. *See Richman v. Bank of Perris.* We do know that monies were taken from accounts which held payments by the Class, which, were never posted and which were taken in a blink of an eye, leaving Homeowners to be in significant harm.

COMMON LAW FRAUD – DECEIT

Taylor Bean and Whitaker, The Debtors, acted intentionally, willfully, wantonly, maliciously, for profit, and without just cause or excuse while the Creditors and or victim homeowners have suffered irreversible damages as a result of the Debtor's wrongful actions. This complaint comes as a result of Taylor Bean and Whitaker's refusal to accept their wrong doings by illegal transfers of Class' loans, illegal modifications, and illegal foreclosures. The members of this Class will forever be changed in a horrendous way by the deceit of Debtors. On many attempts, to no avail, Creditors/Homeowner victims have requested review of documentation by the said court providing factual information and documentation which proved the deceit of the Debtors.

WRONGFUL TORT

Taylor Bean and Whitaker's actions constitute the tort of wrongful misconduct by irregular instruments and foreclosures under law entitling the Creditors/Homeowners to recover from Taylor Bean and Whitaker all damages that were caused by Taylor Bean and Whitaker's tortuous conduct, including damages for severe emotional and physical distress and for punitive damages and any other costs associated. Initial Loan modification as well as foreclosure actions that Taylor Bean and Whitaker along with MERS took that made up the subject matter of this Complaint resulted in the wrongful acts of loss of payment and or foreclosure with respect to the Creditor/Homeowners property and that declares that all deeds under power that were prepared as a result of the invalid instruments that were recorded on the land records of the Creditors counties wherein the land lies are VOID and which restores title as it existed just prior to the invalid modification and or foreclosure instruments, thus reversing said documents and returning the Creditors/Homeowners to their respective positions and holding their respective interests in the Property as they existed prior to the illegal instruments were filed.

The Debtors have committed numerous acts in furtherance of this wrong doing. As a direct and proximate result of Taylor Bean and Whitaker's flagrant disregard of the rights of the

Creditors as explained in detail above, Creditors should be awarded punitive damages for willful misconduct, malice, and fraud in an amount to be proved at trial.

A JURY TRIAL IS REQUESTED ON ALL COUNTS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via mail to: Elena Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd., Suite 620 Orlando FL. 32801 and served to via mail to: Edward J. Peterson, III (FBN 014612) **STRICHTER, RIEDEL, BLAIN & PROSSER, P.A.** ***(Attorneys for the Debtor/Plaintiff)*** 110 East Madison Street, Suite 200 Tampa, FL 33602.

Katina Duran
7346 Hill Ave.
Holland, Ohio 43528

AFFIDAVIT

STATE OF OHIO §

COUNTY OF LUCAS §

This instrument was acknowledged before me on the 29th day of July , 2011 by Katina Duran in the capacity stated therein.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

BUNNY OSBORN
Notary Public
In and for the State of Ohio
My Commission Expires
April 05, 2014