

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORPORATION,

Case No. 3:09-bk-07047-JAF

Debtor.  
\_\_\_\_\_ /

**DEBTOR'S MOTION TO ESTABLISH PROCEDURES  
TO PERMIT MONTHLY PAYMENT OF INTERIM  
FEE APPLICATIONS OF CHAPTER 11 PROFESSIONALS**

Taylor, Bean & Whitaker Mortgage Corporation (the “**Debtor**” or “**TBW**”), by and through its undersigned counsel, hereby files its Motion to Establish Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals (the “**Motion**”) and requests the entry of an order approving the payments set forth below. In support of its Motion, the Debtor respectfully represents the following:

**Jurisdiction And Venue**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
2. The statutory predicates for the relief requested herein include 11 U.S.C. §§ 105, 362, 363, and 541.

### **Chapter 11 Filing**

3. On August 24, 2009, (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in this case.

6. On September 11, 2009, the Office of the United States Trustee filed its Notice of Appointment of Creditors’ Committee (Doc. No. 203) and appointed an Official Committee of Unsecured Creditors (the “**Committee**”).

7. TBW continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

### **Relief Requested and Grounds for Relief**

8. By this Motion, the Debtor seeks entry of an order, pursuant to Sections 105(a) and 331 of the Bankruptcy Code establishing an orderly and regular process for allowance and payment of compensation and reimbursement for attorneys and other professionals (“**Professionals**”) whose services are authorized by this Court pursuant to Section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code.

9. The Debtor has, by separate applications, obtained orders authorizing it to retain: (a) Stichter, Riedel, Blain & Prosser, P.A., as its general bankruptcy counsel; and (b) Troutman Sanders, LLP, as special counsel. Additionally, the Committee has hired

the law firm of Berger Singerman. The Committee's application for approval of Berger Singerman's employment [D.E. No. 304] is set for hearing on October 15, 2009.

10. Pursuant to Section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement every 120 days, or more frequently if the Court permits. In addition, Section 105(a) of the Bankruptcy Code authorizes the Court to issue any order "that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," thereby codifying the bankruptcy court's inherent equitable powers.

11. The procedures suggested herein will enable the Debtor to closely monitor the costs of administration, maintain a level cash flow, and implement efficient case management procedures. These procedures will also allow the Court, the Office of the United States Trustee, and the key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought. Moreover, these procedures will assist Professionals in their work on these cases without undue burdens on themselves and their firms and will avoid having Professionals finance the reorganization proceedings.

12. No previous application for relief sought herein has been made by the Debtor to this Court or any other court.

**Proposed Procedures for Monthly Payment of Chapter 11 Professionals**

13. The Debtor proposes that the procedures set forth below be incorporated in an order (the "**Order**") of this Court, specifically:

- a. On or before the 15<sup>th</sup> day of each month following the month for which compensation is sought, each Professional whose

employment was approved by order of this Court authorized to seek compensation may serve a monthly statement, by email (i) Neil F. Luria, Navigant Capital Advisors, LLC, by email, nluria@navigantcapitaladvisors.com; (ii) Matthew Rubin, Navigant Capital Advisors, LLC, by email, mrubin@ncacf.com; (iii) counsel for the Debtor, Edward J. Peterson, III, Stichter, Riedel, Blain & Prosser, P.A., by email, epeterson@srbp.com; (iv) counsel for the Office of the United States Trustee, Elena Lopez Escamilla, by email, elena.l.lescamilla@usdoj.gov; (v) Paul Steven Singerman, Berger Singerman, P.A. (prospective) counsel for the Official Committee of Unsecured Creditors, by email, singerman@bergersingerman.com, and (vi) any other party that the Court may designate (collectively, the “**Service Parties**”).

- b. The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding judge’s chambers because this Order is not intended to alter the fee application requirements outlined in Sections 330 and 331 of the Bankruptcy Code because professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, and the Bankruptcy Rules.
- c. Each monthly fee statement must contain an abbreviated narrative of the services rendered, accompanied by a printout or schedule of the reimbursable expenses incurred and the Professional and paraprofessional time spent (in sufficient detail to allow the review of the time by the Service Parties), which shall ordinarily be for services rendered through a particular calendar month.
- d. Each Service Party receiving a statement may object to the payment of the fees and the reimbursement of costs set forth therein by serving a written objection (which shall not be filed with the Court) upon the other Service Parties on or before the 25<sup>th</sup> day of the month in which the statement is received. The objection shall state the nature of the objection and identify the amount of the fees or costs to which objection is made. The objecting party shall attempt in good faith to object only to the portion of the statement that is deemed to be objectionable.
- e. In absence of any timely objection, the Debtor is authorized to pay up to 80% of the fees and 100% of the expenses identified in each monthly statement to which no objection had been timely made in accordance with paragraph (d).

- f. If the Debtor receives an objection to a particular fee statement, it shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e) above. All Professionals subject to this Order will establish a separate billing number for any time spent on the resolution of fee disputes. Any fees incurred in connection with such fee disputes shall not be paid pursuant to the monthly statement, but may only be sought and paid upon the filing of an interim fee application as set forth in paragraph 3(j) below and after order of the Court.
- g. Similarly, if parties to an objection are able to resolve their dispute, then the Debtor is authorized to pay that portion of the fee statement that is no longer subject to an objection, if the party whose statement was objected to serves on the Service Parties a statement indicating that the objection was withdrawn and describing in detail the terms of the resolution.
- h. Any objections that are not resolved by the parties would be preserved and presented to the Court by the objecting party at the next interim or final fee application hearing to be heard by the Court.
- i. The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application on any ground, whether or not raised in the objection. Further, the decision by any party not to object to a fee statement shall not be a waiver of, nor otherwise prejudice, that party's right to object to any subsequent fee application.
- j. Unless the Court orders otherwise, each of the Professionals utilizing the procedures described in this Order shall file interim fee applications, for the amount of fees and costs sought in paragraph (e) above, in accordance with the 120 day guideline set forth in Section 331 of the Bankruptcy Code as follows:
  - i. First Interim Fee Applications may be filed on or before January 15, 2010 ("**First Interim Fee Applications**"). The First Interim Fee Applications shall represent fees and costs incurred by the Professionals from August 24, 2009 through December 31, 2009.

- ii. Second Interim Fee Applications may be filed on or before May 15, 2010 (“**Second Interim Fee Applications**”). The Second Interim Fee Applications shall represent fees and costs incurred by the Professionals from January 1, 2010 through April 30, 2010.
- iii. Thereafter, interim fee applications may be filed in accordance with the schedule set forth above covering the preceding four month time period. All interim fee applications shall comply with the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330 (Appendix A to 28 C.F.R. §58). The Court shall schedule and conduct a hearing, upon proper notice in accordance with Bankruptcy Rule 2002(a)(6), to determine all interim fee applications pending before it.
- k. A Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order when such application is due shall preclude such Professional from utilizing the automatic pay procedures as provided herein until an interim fee application has been filed and heard by the Court.
- l. A determination, by the Court, that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- m. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court’s interim or final allowance of compensation and reimbursement of expenses of any Professionals.
- n. The Debtor shall include all payments to Professionals on its monthly operating reports, detailed so as to state the amount paid to each of the Professionals.
- o. The Debtor may not make any payments under this Order if the Debtor has not timely filed monthly operating reports or remained current with its administrative expenses and 28 U.S.C. § 1930. Otherwise, this Order shall continue and shall remain in effect during the pendency of this case unless otherwise ordered by this Court.

- p. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
- q. Upon motion or application, and after due notice to all parties set forth on the Court's mailing matrix, additional professionals employed by the Debtor or a committee may be authorized to participate in modified interim compensation procedures as set forth in this Order.
- r. All Professionals subject to this Order shall be required to monitor their own compliance with the terms of this Order and shall include the following certification on each monthly invoice: *I hereby certify that I am in compliance with the terms of the Order Establishing Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals.*

14. Similar relief has been granted in other large cases in this District. See, e.g., In re Winn Dixie Stores, Inc., et al., Case No. 3:05-bk-3817-JAF, Order Approving Interim Compensation Procedures for Professionals (Doc. No. 265).

WHEREFORE, the Debtor respectfully requests entry of an order:

- A. Granting this Motion;
- B. Establishing procedures to permit monthly payment to Professionals whose services are authorized by this Court pursuant to Sections 327 and 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code; and

C. Granting such other and further relief as may be just and proper.

Dated this 14<sup>th</sup> day of October, 2009.

*/s/ Edward J. Peterson, III*

\_\_\_\_\_  
Russell M. Blain (FBN 236314)

[rblain@srbp.com](mailto:rblain@srbp.com)

Edward J. Peterson, III (FBN 014612)

[epeterson@srbp.com](mailto:epeterson@srbp.com)

Stichter, Riedel, Blain & Prosser, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Attorneys for Debtor