

United States Bankruptcy Court
Middle District of Florida

In re:
Taylor, Bean & Whitaker Mortgage Corp.
Debtor

Case No. 09-07047-JAF
Chapter 11

CERTIFICATE OF NOTICE

District/off: 113A-3

User: pcatyl
Form ID: pdfdoc

Page 1 of 8
Total Noticed: 1

Date Rcvd: Oct 01, 2012

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Oct 03, 2012.

cr +Dean L. and Marciell Jacobs, 305 Rolling Hills Place, Parker, CO 80138-4905

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE. TOTAL: 0

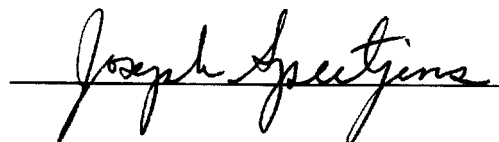
Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Oct 03, 2012

Signature:



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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on October 1, 2012 at the address(es) listed below:

A Richard Feldman on behalf of Creditor ACE American Insurance Company rfeldman@bazless.com
 Adina L Pollan on behalf of Creditor Greg Hicks adina.pollan@akerman.com,
 nicole.frierson@akerman.com;susan.scott@akerman.com;jennifer.meehan@akerman.com
 Alan L Landsberg on behalf of Defendant Trantalis Law offices
 alan.landsberg@kellerlandsberg.com
 Alan M. Weiss on behalf of Creditor BNP Paribas alan.weiss@hklaw.com
 Alessandro A Apolito on behalf of Defendant Dimension Data aaapolito@bmdpl.com,
 hnewcomer@bmdpl.com
 Alicia M Hunt on behalf of Creditor United States Department of Housing and Urban Development
 Alicia.M.Hunt@usdoj.gov
 Alisa Paige Mason on behalf of Attorney Berger Singerman, P.A. pmason@bergersingerman.com,
 efile@bergersingerman.com;SMarquez@bergersingerman.com
 Allan C Watkins on behalf of Defendant Huston Motors, Inc. court@watkinslawfl.com
 Amir Ali Patrick Guerami on behalf of Counter-Defendant Joe Johnson amir@gueramilaw.com
 Amy Denton Harris on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp.
 aharris.ecf@srbp.com, srbpecf@srbp.com;mclift@srbp.com
 Ana-Laura Diaz on behalf of Creditor Select Portfolio Servicing, Inc. adiaz@aclawllp.com,
 FLECF@aclawllp.com
 Andrea Teves Smith on behalf of Defendant Columbia Air Services BHB, LLC
 asmith@petersonmyers.com, gcorda@petersonmyers.com;pbush@petersonmyers.com
 Andrew L Fivecoat on behalf of Creditor American Home Mortgage Servicing, Inc.
 afivecoat@albertellilaw.com, bkfl@albertellilaw.com
 Angelina E. Lim on behalf of Creditor Nationwide Title Clearing angelinal@jpfirm.com,
 minervag@jpfirm.com
 Antonio Alonso on behalf of Creditor Bank of America NA antonio.alonso@marshallwatson.com,
 jairo.garcia@marshallwatson.com;BKMailFromCourt@MarshallWatson.com
 Arnold D Levine on behalf of Defendant Dine Design Group, Inc. alevine@lhsblaw.com,
 tsouthworth@lhsblaw.com
 Arthur C Neiwirth on behalf of Defendant Eugene Fenasci aneiwirthcourt@qpwbllaw.com
 Arthur J Spector on behalf of Accountant Crowe horwath aspector@bergersingerman.com,
 efile@bergersingerman.com
 BMC Group on behalf of Other Prof. BMC Group ecf@bmcgroup.com
 Barry Jay Warsch on behalf of Creditor Land Settlement Services, Inc. bwarsch@boydlawgroup.com,
 warschl3@aol.com;scastro@boydlawgroup.com;jriopelle@boydlawgroup.com;scothron@boydlawgroup.com;et
 oribio@boydlawgroup.com;nkhani@boydlawgroup.com;tboyd@boydlawgroup.com;ntorrado@boydlawgroup.com
 Bart T. Heffernan on behalf of Creditor American Home Mortgage Servicing, Inc.
 bheffernan@mlg-defaultlaw.com,
 astojkovick@mlg-defaultlaw.com;sbeach@mlg-defaultlaw.com;jfagan@mlg-defaultlaw.com;mkepler@mlg-de
 faultlaw.com
 Bethany R Reichard on behalf of Defendant Ring Power Corporation breichard@hacsr.com
 Betsy C Cox on behalf of Creditor MBIA Insurance Corporation bcox@rtlaw.com, aruff@rtlaw.com
 Brad W. Hissing on behalf of Creditor Saxon Mortgage Services, Inc.
 bankruptcynotices@kasslaw.com, bankruptcynotices@yahoo.com
 Bradford Petrino on behalf of Defendant The Dorchester Group, LLC bpetrino@korshaklaw.com
 Bradley Pack on behalf of Interested Party Engelman Berger, P.C. bdp@engelmanberger.com
 Bradley M Saxton on behalf of Mediator Bradley Saxton bsaxton@whww.com,
 scolgan@whww.com;breece@whww.com
 Bradley R Markey on behalf of 3rd Party Plaintiff United State Fire Insurance Company
 brm@stmlaw.net, rrt@stmlaw.net;enm@stmlaw.net;blc@stmlaw.net;sad@stmlaw.net
 Brian D. Zinn on behalf of Creditor Lee County Tax Collector (TM) brian@zinnlaw.net
 Brian J Gillis on behalf of Creditor Direct Mortgage Corporation bgillis@marklawfirm.com,
 swebb@boginmunns.com
 Brian M McKell on behalf of 3rd Party Plaintiff National Union Fire Insurance Company of
 Pittsburgh, PA brian.mckell@wilsonelser.com,
 frances.weiss@wilsonelser.com;stefan.dandelles@wilsonelser.com
 Brigham Cannon on behalf of Intervenor United States Department of Justice Criminal Division
 brigham.cannon@usdoj.gov
 Brooke Bornick Chadeayne on behalf of Creditor Locke Lord LLP bchadeayne@lockelord.com,
 kwest@lockelord.com
 CS Office of Schuyler S Smith on behalf of Creditor Mountain View Condominium Association of
 Vernon, Conn courtmail@schuyllaw.com
 Cameron H P White on behalf of Creditor Cameron White cwhite@southmilhausen.com,
 spode@southmilhausen.com;kbrown@southmilhausen.com
 Camille J Iurillo on behalf of Creditor Microsoft Corporation and Microsoft Licensing GP
 ciurillo@iurillolaw.com,
 vborgianini@iurillolaw.com;cdean@iurillolaw.com;gpellegrino@iurillolaw.com;sbeavens@iurillolaw.co
 m
 Carolyn P Richter on behalf of Spec. Counsel Troutman Sanders LLP
 carolyn.richter@troutmansanders.com
 Charles J Meltz on behalf of Defendant Friese & Price Law Firm, LLC gk@growerketcham.com,
 cjmeltz@growerketcham.com
 Charles W. McBurney on behalf of Creditor Aurora Loan Services, LLC cmcburney@bellsouth.net,
 sgeiger@mcburneylaw.net;jbradley@mcburneylaw.net
 Chester J. Trow on behalf of Defendant DWC Maintenance Services chester@ocalalawfirm.com
 Christian P George on behalf of Defendant Mutual of Omaha Insurance Company
 christian.george@akerman.com, kim.gibbons@akerman.com;jennifer.meehan@akerman.com
 Christopher Emden on behalf of 3rd Pty Defendant Government National Mortgage Association
 christopher.j.emden@usdoj.gov

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Clay Naughton on behalf of Defendant Camper & Nicholsons USA, Inc. cnaughton@moore-and-co.com
 Clive N. Morgan on behalf of Creditor GMAC Mortgage, LLC clive@clivemorgan.net, ecfnotifications@penderlaw.com
 Collette B Cunningham on behalf of Creditor United States Attorney Collette.Cunningham@usdoj.gov, dee.jackson@usdoj.gov
 Craig A Raby on behalf of Defendant Arizona Department of Financial Institutions craig.raby@azag.gov
 Craig I Kelley on behalf of Creditor Wachovia Bank, N.A. cik@kelleylawoffice.com, ecf@kelleylawoffice.com, kelleyecfmiddle@gmail.com, kristin@kelleylawoffice.com
 Dana S Plon on behalf of Creditor G&I VI 655/755 Business Center FE, LLC dplon@sirlinlaw.com
 Daniel A Caldwell on behalf of Interested Party United States of America dan.caldwell@usdoj.gov
 Daniel C Wolters on behalf of Creditor Integrity Field Services, Inc. dwolters@cavitch.com
 Daniel F Blanks on behalf of Attorney McGuireWoods LLP dblanks@mcguirewoods.com, aabbott@mcguirewoods.com
 Daniel T O'Connor on behalf of Defendant Bank of America dan.oconnor@bryancave.com
 Danielle S Kemp on behalf of Counter-Plaintiff Sovereign Bank kempd@gtlaw.com, devlind@gtlaw.com, tpalitdock@gtlaw.com, allens@gtlaw.com
 Darryl S Laddin on behalf of Defendant Verizon Communications, Inc. bkrfilings@agg.com, mark.stern@agg.com
 David A Lerner on behalf of Creditor Plunkett Cooney dlerner@plunkettcooney.com
 David Allen Burt on behalf of Defendant Knott, Consoer, Ebelini, Hart & Swett, P.A. dburt@knott-law.com, knunnally@knott-law.com
 David D Burns on behalf of Defendant Hawker & Beechcraft Services, Inc. david.burns@fowlerwhite.com, heidi.stembridge@fowlerwhite.com, amy.intorcia@fowlerwhite.com, kimberly.rentz@fowlerwhite.com
 David E Hicks on behalf of Defendant Solar Designs, Inc. theresa.byington@gmail.com
 David E. Otero on behalf of Creditor Akerman Senterfitt david.otero@akerman.com, susan.scott@akerman.com, jennifer.meehan@akerman.com, sandra.bohanan@akerman.com
 David E. Peterson on behalf of Creditor Federal Home Loan Mortgage Corporation david.peterson@lowndes-law.com
 David J Lienhart on behalf of Defendant Jumbolair, Inc. dlienhart@ralaw.com, ksphillips@ralaw.com, yhibbert@ralaw.com, gjensen@ralaw.com, cgibson@ralaw.com, dperrow@ralaw.com, joliva@ralaw.com
 David J. Miller on behalf of Creditor U.S. Bank National Association dmiller@albertellilaw.com
 David L Gay on behalf of Creditor Committee Creditors Committee dgay@bergersingerman.com, efile@bergersingerman.com, jalvarez@bergersingerman.com
 David W Barrett on behalf of Creditor Michael Cabassol heidi.stembridge@fowlerwhite.com, amy.intorcia@fowlerwhite.com
 Dayle M Van Hoose on behalf of Defendant Nevada Association Services, Inc dvanhoose@sessions-law.biz, evap@sessions-law.biz
 Dean J Trantalis on behalf of Defendant Trantalis Law offices brian@trantalis.com
 Debi Evans Galler on behalf of Attorney Berger Singerman, P.A. dgaller@bergersingerman.com, efile@bergersingerman.com, jalvarez@bergersingerman.com
 Denise D Dell-Powell on behalf of Counter-Defendant Certain Underwriters at Lloyd's, London and London Market Insurance Companies, et al. ddpowell@burr.com, dkelly@burr.com, greid@burr.com, jlindval@burr.com
 Dennis J. LeVine on behalf of Defendant Mortgage Support Services, Inc. theresa.byington@gmail.com
 Dock A Blanchard on behalf of Creditor Barfield & Associates of Ocala, Inc. dblanchard@bmaklaw.com
 Donald A Workman on behalf of Creditor Lender Processing Services, Inc. dworkman@bakerlaw.com
 Douglas Goldin on behalf of Creditor Bayview Loan Servicing, LLC dgoldin@broadandcassel.com, srowland@broadandcassel.com
 Douglas C Zahm on behalf of Creditor Wells Fargo Bank, N.A. bk@dczahm.com
 Douglas R Gonzales on behalf of Creditor City of Miramar dgonzales@wsh-law.com
 E. Colin Thompson on behalf of Creditor Federal Deposit Insurance Corporation, as Receiver for Colonial Bank, Montgomery, Alabama colin.thompson@dlapiper.com, docketingchicago@dlapiper.com, arlene.vice@dlapiper.com, deborah.boyle@dlapiper.com, evelyn.rodriquez@dlapiper.com, william.coleman@dlapiper.com
 Earl M. Barker on behalf of Creditor Compu-Link Corporation d/b/a Celink embarker@sbnjax.com, cchestnut@sbnjax.com
 Edmund S Whitson on behalf of Defendant Progress Energy, Inc. ewhitson@bمولaw.com, mrossel@bمولaw.com
 Edsel F Matthews on behalf of Defendant Edsel F. Matthews, Jr., P.A. efmlaw@bellsouth.net
 Edward J. Peterson on behalf of Debtor Home America Mortgage, Inc. epeterson@srbp.com, epeterson.ecf@srbp.com, srbpecf@srbp.com
 Elaine Johnson James on behalf of Defendant Taylor Bean & Whitaker Mortgage Corporation ejames@bergersingerman.com
 Elena L Escamilla on behalf of U.S. Trustee United States Trustee - JAX 11 elena.l.escamilla@usdoj.gov
 Elena L Escamilla TB on behalf of U.S. Trustee United States Trustee - JAX 11 ustp.region21.or.ecf@usdoj.gov
 Eric N Assouline on behalf of Defendant ACES Risk Management Corporation ena@assoulineberlowe.com
 Erin K Mautner on behalf of Creditor Deutsche Bank AG erin.mautner@bingham.com
 Esther A McKean on behalf of Plaintiff The Travelers Indemnity Company on it's own behalf and on behalf of certain affiliates esther.mckean@akerman.com

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Eyal Berger on behalf of Defendant Advantage Systems, Inc. eyal.berger@akerman.com, jeanette.martinez@akerman.com
 Ezra H Cohen on behalf of Spec. Counsel Troutman Sanders LLP ezra.cohen@troutmansanders.com
 Francis L Carter on behalf of Mediator Francis Carter flc@katzbarron.com, lcf@katzbarron.com
 Frank F McGinn on behalf of Creditor Iron Mountain Information Management, Inc. ffm@bostonbusinesslaw.com
 Frederic J DiSpigna on behalf of Creditor Brock & Scott, PLLC frederic.dispigna@brockandscott.com, flbkecf@brockandscott.com
 George B Cauthen on behalf of Creditor Avista Solutions, Inc. george.cauthen@nelsonmullins.com, joan.kishline@nelsonmullins.com; jody.bedenbaugh@nelsonmullins.com; linnea.hann@nelsonmullins.com
 Gill R Geldreich on behalf of Creditor Tennessee Dept. of Financial Institutions agbankflorida@ag.tn.gov
 Glen M Lindsay on behalf of Creditor Bank of America, N.A., et. al. glindsay@smith-hiatt.com
 Glenn S Banner on behalf of Defendant Impact Realty - Melton and Associates, Inc , lkipp@hinshawlaw.com
 Gregory S Grossman on behalf of Defendant Metlife, Inc. ggrossman@astidavis.com
 Harold F X Purnell on behalf of Defendant Beverage Law Institute, Inc. harry@reuphlaw.com
 Helena Gutierrez Malchow on behalf of Creditor Sunrise Landing Condo. Assn of Brevard Cty, Inc. hgmalchow@wmlo.com
 Hollyn J Foster on behalf of Creditor Compu-Link Corporation d/b/a Celink hollynf@bellsouth.net
 Hywel Leonard on behalf of Defendant AIG Insurance Management Services, Inc. hleon@carltonfields.com, lrodriguez@carltonfields.com;tpaecf@cfdom.net
 J. Ellsworth Summers on behalf of Creditor Coda Roberson jes@rtlaw.com, sgs@rtlaw.com
 Jacob A Brown on behalf of Attorney Akerman Senterfitt jacob.brown@akerman.com, jennifer.meehan@akerman.com; kayla.gothier@akerman.com; sandra.bohanan@akerman.com; katherine.fackler@akerman.com; adina.pollan@akerman.com; april.davidson@akerman.com
 Jacob D. Flentke on behalf of Defendant Greg Weaver jflentke@broadandcassel.com, cpage@broadandcassel.com
 Jacqueline J Brown on behalf of Creditor American Home Mortgage Servicing, Inc. jbrown@ffapllc.com, dgoulet@ffapllc.com
 James A Timko on behalf of Defendant Pulte Mortgage LLC jtimko@shutts.com
 James C Cunningham on behalf of Plaintiff Official Committee of Unsecured Creditors of Taylor, Bean & Whitaker Mortgage Corp., on behalf of Taylor, Bean & Whitaker Mortgage Corp. jcunningham@bergersingerman.com, ngracey@bergersingerman.com
 James D Dantzler on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp. david.dantzler@troutmansanders.com, kelly.wade@troutmansanders.com
 James D Gassenheimer on behalf of 3rd Pty Defendant Taylor Bean & Whitaker Mortgage Corporation jgassenheimer@bergersingerman.com, efile@bergersingerman.com; skegerreis@bergersingerman.com; MHines@bergersingerman.com; ggaukroger@bergersingerman.com
 James E Sorenson on behalf of Creditor Atlantic Coast Bank bk@wggdlaw.com, jsorenson@wggdlaw.com
 James H. Post on behalf of Creditor Wells Fargo Bank, N.A. jpost@smithhulsey.com, kstewart@smithhulsey.com; sbusey@smithhulsey.com; tcopeland@smithhulsey.com; cdix@smithhulsey.com
 James M Liston on behalf of Creditor Braintree Hill Office Park jml@bostonbusinesslaw.com, sas@bostonbusinesslaw.com; sjm@bostonbusinesslaw.com
 James W Carpenter on behalf of Creditor RBC Bank (USA), Successor By Merger to Florida Choice Bank jwc@angelolaw.com
 Jason B. Burnett on behalf of Creditor Wells Fargo Bank NA jburnett@gray-robinson.com, ldean@gray-robinson.com; pwagner@gray-robinson.com; kjacobs@gray-robinson.com; kim.miller@gray-robinson.com
 Jason Ward Johnson on behalf of Creditor Federal Home Loan Mortgage Corporation jason.johnson@lowndes-law.com, joann.anderson@lowndes-law.com
 Jeffrey Ainsworth on behalf of Defendant Actuarial & Technical Services jeff@mangum-law.com
 Jeffrey N Rich on behalf of Creditor Natixis Real Estate Capital Inc. jeff.rich@klgates.com
 Jeffrey T Kucera on behalf of Creditor Natixis Real Estate Capital Inc. jeffrey.kucera@klgates.com, linda.vasserot@klgates.com; david.weitman@klgates.com; miamidocketing@klgates.com
 Jeffrey W Kelley on behalf of Counter-Claimant Sovereign Bank jeffrey.kelley@troutmansanders.com, bonnie.feuer@troutmansanders.com; stephen.roach@troutmansanders.com
 Jeffry R Jontz on behalf of Defendant Emerson Network Power, Liebert Services, Inc. jjontz@swannhadley.com, dbandemer@swannhadley.com; jday@swannhadley.com
 Jennifar M. Hill on behalf of Creditor American Express Bank, FSB jmh@lkllaw.com, cag@lkllaw.com
 Jennifer Hayes on behalf of Creditor Bank of America, National Association as Successor by Merger to LaSalle Bank National Association as Trustee for First Franklin Mortgage Loan Trust 2007-1, Mortgage Loan Asset-Backed Certificates, Ser jhayes@foley.com, KCavanaugh@foley.com
 Jerrett M. McConnell on behalf of Defendant The Royal Gulf Beach and Racquet Club Condominium Owners Association, Inc. jmccConnell@fandmlaw.com
 Jerrold J. Golson on behalf of Creditor American Home Mortgage Servicing, Inc jgolson@ffapllc.com, rjohansen@ffapllc.com; gdeangelo@ffapllc.com; thefflinger@ffapllc.com
 John B Rosenquest on behalf of Defendant MERS CORP, Inc. jrosenquest@morganlewis.com, pmartinez@morganlewis.com; dthomas@morganlewis.com
 John C Brock on behalf of Creditor The Bank of New York Mellon Corporation bkfl@albertellilaw.com
 John C Hanson on behalf of Interested Party GreatAmerican Leasing Corporation jhanson@barthet.com

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

John H. McCorvey on behalf of Creditor Bradford Village Condominium Trust
john@jacksonvillefloridalawyers.com, john@jacksonvillefloridalawyers.com

John P Dillman on behalf of Creditor Cypress Fairbanks ISD houston_bankruptcy@publicans.com

John S Sarrett on behalf of Creditor Integrity Field Services, Inc. jsarrett@sarrettlaw.com

John S Schoene on behalf of Creditor General Electric Capital Corporation
schoenej@earthlink.net, snydercd@earthlink.net

John T Rogerson on behalf of Creditor GreatAmerica Leasing Corporation jrogerson@vbwr.com,
rboudrow@vbwr.com

John W Kozyak on behalf of Creditor MBIA Insurance Corporation jk@kttlaw.com, ypaz@kttlaw.com,
la@kttlaw.com

Jonathan Tolentino on behalf of Creditor Matthew Naufel jtoleninopa@yahoo.com,
jonalhant@yahoo.com

Jonathan L Blackmore on behalf of Creditor Phelan Hallinan & Schmieg, P.C. and Phelan Hallinan
& Schmieg, LLP FLMD.bankruptcy@phelanhallinan.com

Jonathan T Edwards on behalf of Creditor Wells Fargo Bank, National Association, as Master
Servicer jonathan.edwards@alston.com

Joseph D Foley on behalf of Creditor Urban Trust Bank Holdings, Inc., aka
jfoley@josephfoleylaw.com

Joseph D Wargo on behalf of Defendant RLI Insurance Company jwargo@wargofrench.com,
mrochman@wargofrench.com; jrobison@wargofrench.com

Joseph E Shickich on behalf of Creditor Microsoft Corporation and Microsoft Licensing GP
jshickich@riddellwilliams.com, mmilano@riddellwilliams.com; ctracy@riddellwilliams.com

Joseph R Zapata on behalf of Creditor National Alliance Capital Markets jrzapata@nmmlaw.com

Joshua D McKarcher on behalf of Creditor Promontory Financial Group, LLC jmckarcher@cov.com

Judy Simmons Henry on behalf of Creditor Stephens, Inc. jhenry@wlj.com

Jules S Cohen on behalf of Plaintiff The Travelers Indemnity Company on it's own behalf and on
behalf of certain affiliates jules.cohen@akerman.com

Kay D Brock on behalf of Defendant Travis County Tax Collector kay.brock@co.travis.tx.us

Keith T Appleby on behalf of Defendant Express Services, Inc. kappleby@fowlerwhite.com,
kthompson@fowlerwhite.com, anita.flowers@fowlerwhite.com, deborah.lester@fowlerwhite.com

Kenneth B Jacobs on behalf of Defendant Capital Markets Cooperative, LLC
kjacobs@gray-robinson.com, zhosseini@gray-robinson.com; jburnett@gray-robinson.com

Kenneth M Hesser on behalf of Defendant All Air Heating and Cooling, Inc.
khesser@schatthesser.com

Kevin A Reck on behalf of Creditor Seaside National Bank & Trust kreck@foley.com,
khal@foley.com

Kevin Alan Comer on behalf of Creditor CitiMortgage, Inc bkfiling@consuegralaw.com

Kevin B Paysinger on behalf of Creditor Five Brothers Mortgage Company Services & Securing,
Inc. court@jacksonvillebankruptcy.com

Kevin E Mangum on behalf of Creditor Jose Maldonado kevin@mangum-law.com,
elizabeth@mangum-law.com

Kevin L Hing on behalf of Creditor JPMorgan Chase Bank, National Association khing@logs.com,
Electronicbankruptcyntices@logs.com

Kevin M Eckhardt on behalf of unknown Bank of America, National Association, as successor in
interest through merger to LaSalle Bank, National Association and LaSalle Global Trust Services,
and in its capacity as Collateral Agent keckhardt@fulcruminv.com, dparry@hunton.com

Kevin M Eckhardt on behalf of Interested Party Bank of America National Association
keckhardt@hunton.com,
mmanner@hunton.com; dparry@hunton.com; acapo@hunton.com; probson@hunton.com

Kevin Patrick Robinson on behalf of Creditor MICHAEL PAPE & ASSOC., P.A.
krobinson@zkslawfirm.com

Kevin D Orr on behalf of Defendant State Regulatory Registry, LLC korr@jonesday.com

Kimberly H. Israel on behalf of Creditor Massachusetts Property Insurance Underwriting Ass'n
khisrael@hilawfirm.com, khisrael@hilawfirm.com

Kristopher E Aungst on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp.
kaungst@bergersingerman.com, efile@bergersingerman.com; sochoa@bergersingerman.com

Kristopher E. Pearson on behalf of Creditor Premier Corporate Centre, LLC
kpearson@stearnsweaver.com,
mmasvidal@stearnsweaver.com; rross@stearnsweaver.com; mmesones-mori@stearnsweaver.com; jmartinez@ste
arnsweaver.com

Kyle Lonergan on behalf of Counter-Claimant Federal Home Loan Mortgage Corporation
klonergan@mckoolsmith.com

Lance Paul Cohen on behalf of Defendant Henley Holdings, LLC cohenthurston@cs.com

Lara Roeske Fernandez on behalf of Defendant Allure Global Solutions, Inc.
lrfernandez@trenam.com, lkfloyd@trenam.com; jfollman@trenam.com

Larry M Foyle on behalf of Creditor Republic Bank bankruptcyntices@kasslaw.com,
bankruptcyntices@yahoo.com

Laura A Price on behalf of Creditor IRS laura.a.price@irscounsel.treas.gov

Laura L Walker on behalf of Creditor James B Nutter & Company
lwalker@flaforeclosureattorneys.com, debbieg@flaforeclosureattorneys.com

Lawrence Weisberg on behalf of Creditor GMAC Mortgage LLC bankruptcy@lmwlegal.com

Lawrence J Bernard on behalf of Creditor Johnson Bank, a Wisconsin Banking corporation
belinda@bernardlaw.net, jamie@bernardlaw.net; courtmail@schuylaw.com

Leanne McKnight Prendergast on behalf of Attorney Smith Hulsey & Busey
lprendergast@smithhulsey.com, tcopealand@smithhulsey.com

Lee County Tax Collector (TM) bankruptcyecfdocs@leetc.com

Leonard H Gilbert on behalf of Mediator Leonard Gilbert leonard.gilbert@hklaw.com,
kathleen.goelz@hklaw.com

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The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Leonora K Baughman on behalf of Creditor Oakland County Treasurer lbaughman@kaalaw.com
 Lincoln B Quintana on behalf of Creditor Liwayway Delino lincoln.quintana@QMSLaw.com
 Linda M Leali on behalf of Creditor Assured Guaranty Corp. lleali@whitecase.com, avenes@whitecase.com
 Linda S Finley on behalf of Creditor Cal-Western Reconveyance Corporation lfinley@bakerdonelson.com, kstine@bakerdonelson.com;crochester@bakerdonelson.com;kfurr@bakerdonelson.com;ksdavis@bakerdonelson.com
 Lloyd H Randolph on behalf of 3rd Pty Defendant Government National Mortgage Association lloyd.randolph@usdoj.gov
 M Lee Johnsey on behalf of Defendant NV Energy, Inc ljohnsey@balch.com
 Marc G Granger on behalf of Creditor U.S. Bank National Association, mgranger@kahaneandassociates.com, Joliveira@kahaneandassociates.com;jbuchanan@kahaneandassociates.com;wsambolin@kahaneandassociates.com
 Marcy Ford on behalf of Creditor Trott and Trott, PC dstefaniak@trottlaw.com
 Mariane L Dorris on behalf of Defendant Jackson Walker, L.L.P. bankruptcynotice@lseblaw.com, mdorris@lseblaw.com
 Mark J. Wolfson on behalf of Creditor Bank of America, National Association as Successor by Merger to LaSalle Bank National Association as Trustee for First Franklin Mortgage Loan Trust 2007-1, Mortgage Loan Asset-Backed Certificates, Ser mwolfson@foley.com, KCavanaugh@foley.com;jhayes@foley.com
 Mark S Mitchell on behalf of Defendant The Carlisle Group, Inc. MMitchell@rtlaw.com, SPEirpoint@rtlaw.com
 Mark S. Kessler on behalf of Creditor School Street Condominium Trust apksm@aol.com
 Marsha A McCoy on behalf of Creditor Deutsche Bank AG mmccoy@gunster.com, braiford@gunster.com
 Marsha G Rydberg on behalf of Interested Party Florida Gas Transmission Company, LLC mrydberg@rydberglaw.com, rydberglaw@yahoo.com
 Marshall G. Reissman on behalf of Defendant Triple Point Construction, LLC marshall@reissmanlaw.com, scgearhart@gmail.com;sandi.gajewski@gmail.com;andrea@reissmanlaw.com;jlreissman@reissmanlaw.com;g1374@notify.cincompass.com;jason@reissmanlaw.com
 Martin Jefferson Davis on behalf of Defendant Office of the Controller of the Currency martin.davis@occ.treas.gov
 Matthew A Gold on behalf of Creditor Argo Partners courts@argopartners.net
 Matthew I Rochman on behalf of Defendant RLI Insurance Company mrochman@wargofrench.com, dvazquez@wargofrench.com
 Maurice D Hinton on behalf of Creditor The Bank of New York Mellon Corporation, as Trustee for TBW Mortgage-Backed Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 mdh@rasflaw.com, bankruptcy@rasflaw.com;smcclain@rasflaw.com
 Melissa A Campbell on behalf of Defendant Lincoln National Life Insurance Company mcampbell@joneswalker.com
 Michael Nardella on behalf of Defendant Alexander Aviation Associates, Inc. michael.nardella@burr.com, jlindval@burr.com,greid@burr.com
 Michael A Tessitore on behalf of Interested Party Bank of America National Association mtessitore@tess-law.com
 Michael J Marees on behalf of Creditor AK Contracting General Contractors Property Management, LLC mmarees@josephandmarees.com
 Michael L Schuster on behalf of Defendant Raymond Quinlan mschuster@gjb-law.com, gjbecf@gjb-law.com
 Michael M Parker on behalf of Creditor NL Ventures VII Magnlia, LLC mparker@fulbright.com
 Mike E. Jorgensen on behalf of Defendant J.R. Corelli Association, Inc. mjorgensen@seniorcounsellaw.com, mjorge@aol.com
 Missouri Department of Revenue mdfl@dor.mo.gov
 Neil M Peretz on behalf of Cross Defendant Government National Mortgage Association neil.peretz@cfpb.gov
 Nicholas V. Pulignano on behalf of Creditor Centurion Asset Partners, Inc. npulignano@marksgrey.com, slw@marksgrey.com
 Nicole M Mariani on behalf of Creditor Cenlar FSB bankruptcynotices@kasslaw.com
 Nicolette Corso Vilmos on behalf of Creditor Bayview Loan Servicing, LLC nvilmos@broadandcassel.com, srowland@broadandcassel.com
 Nina M LaFleur on behalf of Creditor Neasham Investments, LLC nina@lafleurlaw.com, corinne@lafleurlaw.com;trish@lafleurlaw.com
 Oscar B Fears on behalf of Creditor Georgia Department of Banking and Finance bfears@law.ga.gov
 Patricia Redmond on behalf of Attorney Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. predmond@stearnsweaver.com, rross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;jrivera@stearnsweaver.com;sanderson@stearnsweaver.com;mruark@saul.com
 Patrick T Lennon on behalf of Creditor USAmeriBank ptl@macfar.com
 Patti W Halloran on behalf of Interested Party Bank of the Ozarks as Successor* phalloran@gibblaw.com
 Paul A Avron on behalf of Plaintiff Neil Luria, Plan Trustee pavron@bergersingerman.com
 Paul D Moak on behalf of Counter-Claimant Federal Home Loan Mortgage Corporation pmoak@mckoolsmith.com
 Paul Steven Singerman on behalf of Creditor Committee Creditors Committee singerman@bergersingerman.com, efile@bergersingerman.com;ctarrant@bergersingerman.com;mdiaz@bergersingerman.com
 Peter M Reed on behalf of Creditor Bowie CAD et al othercourts@mvbalaw.com

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Date Rcvd: Oct 01, 2012

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Philip L. Burnett on behalf of Creditor Shepherd Pursuits, LLC philburnett@embarqmail.com, lisamaitland@embarqmail.com;cindikline@embarqmail.com
 R Christopher Dix on behalf of Attorney R. Dix cdix@smithhulsey.com, tcopeland@smithhulsey.com
 R Scott Shuker on behalf of Creditor Selene RMOF REO Acquisition II, LLC bknotice@lseblaw.com, rshuker@lseblaw.com;lbrown@lseblaw.com
 R Travis Santos on behalf of Creditor LPP Mortgage, Ltd. and LNV Corporation tsantos@hwhlaw.com, lbecker@hwhlaw.com
 Rashad L Blossom on behalf of Defendant GMAC MORTGAGE, LLC rblossom@bab.com
 Raymond B Joseph on behalf of Creditor AK Contracting General Contractors Property Management, LLC rjoseph@josephandmarees.com, rjosephlaw@gmail.com
 Raymond J Rotella on behalf of Defendant Harbor Auto Restoration, Inc. rrotella@kostoandrotella.com, dmeyer@kostoandrotella.com
 Rehan N. Khawaja on behalf of Defendant Townley & Lindsay, LLC khawaja@fla-bankruptcy.com, john@fla-bankruptcy.com
 Richard A Robinson on behalf of Defendant Embarq Florida, Inc. a/k/a Century Link, Inc. rrobinson@reedsmith.com
 Richard A. Perry on behalf of Creditor Phillips Printing, Inc. richardperry@richard-a-perry.com, robertamiro@richard-a-perry.com, bonniepurdy@richard-a-perry.com,JonPaugh@Richard-A-Perry.com
 Richard B Webber on behalf of Defendant Down to Earth Landscape, LLC rwebber@zkslawfirm.com, jblucher@zkslawfirm.com;mhouch@zkslawfirm.com
 Richard C. Prosser on behalf of Debtor Taylor, Bean & Whitaker Mortgage Corp. rprosser.ecf@srbp.com, srbpecf@srbp.com
 Richard E Whitaker on behalf of Defendant Ridgewood Condominiums, LLC whitakerlaw@att.net
 Richard M Maseles on behalf of Creditor Missouri Department of Revenue mdfl@dor.mo.gov
 Richard R Thames on behalf of Defendant Empiric Design, Inc. rrt@stmlaw.net, sad@stmlaw.net;brm@stmlaw.net;enm@stmlaw.net;rah@stmlaw.net
 Robert A DeMarco on behalf of Defendant Serano At Hammock Bay Condominium Association, Inc. rdemarco@swflalaw.com, fdemarco@swflalaw.com
 Robert A Heekin on behalf of Creditor Greg Steinmetz Construction, Inc. rah@stmlaw.net, yio@stmlaw.net;rrt@stmlaw.net
 Robert A. Soriano on behalf of Counter-Claimant Sovereign Bank SorianoR@gtlaw.com, tpalitdock@gtlaw.com;allens@gtlaw.com;rechtinh@gtlaw.com
 Robert Bruce George on behalf of Defendant Fiserv, Inc. rgeorge@lilesgavin.com, pwilson@lilesgavin.com
 Robert C Edmundson on behalf of Defendant Commonwealth of Pennsylvania Department of Banking redmundson@attorneygeneral.gov
 Robert D Bernard on behalf of Creditor Joseph Chaplause bob@eightflagslaw.com
 Robert D Wilcox on behalf of Creditor 443 Building Corporation rdwilcox@bmdpl.com, sbhightower@bmdpl.com;aaapolito@bmdpl.com;arichey@bmdpl.com
 Robert L Doty on behalf of Creditor Ohio Bureau of Workers Compensation robert.doty@ohioattorneygeneral.gov
 Robert M Dombroff on behalf of Creditor Deutsche Bank AG, New York robert.dombroff@bingham.com
 Robert M Klein on behalf of Defendant Roberts & Shirley Law Offices kleinr@kgplp.com, montanem@kgplp.com,piersonj@kgplp.com,jonesr@kgplp.com
 Robert M Quinn on behalf of Defendant JP Morgan Chase & Company rquinn@carltonfields.com, lrodr@carltonfields.com;tpaecf@cfdom.net
 Robert N Gilbert on behalf of Interested Party National Union Fire Insurance Company of Pittsburgh, Pa. rgilbert@carltonfields.com, kdemar@carltonfields.com;wpbecf@cfdom.net
 Robert P Charbonneau on behalf of Creditor RL Regi-FL Cutler Ridge LLC rpc@ecclegal.com, phornia@ecclegal.com;nsocorro@ecclegal.com;redreira@ecclegal.com;ec@ecclegal.com;bankruptcy@ecclegal.com
 Robyn Marie Severs on behalf of Creditor Alafaya Woods Homeowners Association, Inc. rbraun@taylor-carls.com, kpacifico@taylor-carls.com
 Rodney Morris on behalf of Defendant Government National Mortgage Association rodney.morris2@usdoj.gov
 Rodrigo S Da Silva on behalf of Defendant Metlife, Inc. rdasilva@astidavis.com
 Roy S Kobert on behalf of Creditor Bayview Loan Servicing, LLC orlandobankruptcy@broadandcassel.com
 Russell M Blain on behalf of Attorney Stichter Riedel Blain & Prosser, P.A. rblain.ecf@srbp.com, rblain@srbp.com;srbpecf@srbp.com
 Ryan D Barack on behalf of Plaintiff Charles Leforce rbarack@ksblaw.com
 S. Hunter Malin on behalf of Creditor John Crain hmalin@jax-law.com
 Sabrina C Beavens on behalf of Defendant United Healthcare Insurance Company sbeavens@iurillolaw.com, vborgianini@iurillolaw.com;cdean@iurillolaw.com;gpellegrino@iurillolaw.com
 Sara F Holladay-Tobias on behalf of Defendant Bank of America, N.A. sfhollad@mcguirewoods.com, sdye@mcguirewoods.com;dblanks@mcguirewoods.com;jmaddock@mcguirewoods.com;dblanks@mcguirewoods.com;rfblair@mcguirewoods.com
 Schuyler S Smith on behalf of Creditor Brodie Calder & Laura Calder courtmail@schuyllaw.com
 Scott R Weiss on behalf of Creditor Americas Servicing Company scott.weiss@marshallwatson.com, Jairo.Garcia@marshallwatson.com;BKMailFromCourt@MarshallWatson.com
 Sean M Affleck on behalf of Creditor Guaranty Bank ecf@butlerandhosch.com
 Seldon J Childers on behalf of Defendant Digvijay "Danny" Gaekwad Trust jchilders@smartbizlaw.com, bkcourtmail@gmail.com;bk13.paralegal@gmail.com;ellen.lord@smartbizlaw.com
 Sharon L Kegerreis on behalf of Plaintiff Neil Luria, Plan Trustee skegerreis@bergersingerman.com

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Date Rcvd: Oct 01, 2012

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Sharon L Simmons on behalf of Creditor American Home Mortgage Servicing, Inc
simmonsrlaw@juno.com

Southpaw Asset Management LP (JC) jc@southpawasset.com

Spencer K Stephens on behalf of Creditor Matthew Zarrabina and Key Realty Group, LLC
spencer@stephensassociates.net

Stephen Andrews on behalf of Creditor Deutsche Bank AG sandrews@wc.com

Stephen Sorensen on behalf of Creditor Deutsche Bank AG ssorensen@wc.com

Stephen D. Busey on behalf of Defendant ADP, Inc. busey@smithhulsey.com,
tcopeland@smithhulsey.com;kstewart@smithhulsey.com

Stephen P Drobny on behalf of Defendant Lincoln National Life Insurance Company
sdrobny@joneswalker.com, rbruckmann@joneswalker.com/ejulia@joneswalker.com

Steve Dinh Tran on behalf of Creditor The Law Offices of Daniel C. Consuegra, P.L.
bkfiling@consuegralaw.com

Steven E Seward on behalf of Creditor ACE American Insurance Company sseward@hinshawlaw.com,
lportuondo@hinshawlaw.com

Steven G Powrozek on behalf of Creditor Fisher & Shapiro LLC spowrozek@logs.com,
electronicbankruptcynotices@logs.com

Steven S Newburgh on behalf of Defendant Chariots of Palm Beach, Inc. ssn@newburghlaw.net

Stuart Wilson-Patton on behalf of Creditor Tennessee Department of Revenue
Stuart.Wilson-Patton@ag.tn.gov

Suann D Cochran on behalf of Creditor State of Michigan, Department of Treasury
cochrans@michigan.gov

Suly M Espinoza on behalf of Creditor Deutsche Bank National Trust Company
sespinoza@flwlaw.com, nmendoza@flwlaw.com

Taji S. Foreman on behalf of Creditor DLJ Mortgage Capital, Inc. Tforeman@erwlaw.com,
BankruptcyECF@erwlaw.com

Teresa M Hair on behalf of Creditor Wells Fargo Bank, N.A. midbkmail@wolfelawfl.com

Thomas W Cartwright on behalf of Creditor Martin Palmer Construction, Inc.
tcartwright@embarqmail.com

Tiffany A DiIorio on behalf of Creditor Heartland National Bank tiffany.diiorio@arlaw.com

Timothy J Norris on behalf of Defendant Shi International Corporation tjnorris@duanemorris.com

Todd B. Allen on behalf of Defendant Cedar Hammock Golf & Country Club todd@flcommunitylaw.com,
Talons4racin@gmail.com

Todd K Norman on behalf of Creditor Western Union Financial Services, Inc.
tnorman@broadandcassel.com, mwhite@broadandcassel.com

Trevor Hawes on behalf of 3rd Pty Defendant Great American Insurance Group
trevor.hawes@csklegal.com, kimberly.aceves@csklegal.com;tammy.lewis@csklegal.com

United States Trustee - JAX 11 USTP.Region21.OR.ECF@usdoj.gov

Vincent F Alexander on behalf of Defendant Adler Holdings II, LLC vfa@kttlaw.com

W James Gooding on behalf of Defendant City of Ocala jgooding@ocalalaw.com

W Keith Fendrick on behalf of Creditor Dell Marketing, L.P. keith.fendrick@hklaw.com,
andrea.olson@hklaw.com

Wendell Finner on behalf of Interested Party Richard Yanagi wendell@lccl.com,
ecflccl@gmail.com

William B McDaniel on behalf of Creditor Wangard Partners Inc. court@jacksonvillebankruptcy.com

William E Grantmyre on behalf of Creditor Mortgage First wgrantmyrejr@vanlawfl.com,
Bankruptcy@vanlawfl.com

TOTAL: 279

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION,

CASE NO.: 3:09-bk-7047-JAF
Chapter 11

Debtor.

**ORDER DENYING MOTION FOR ENTRY OF ORDER AUTHORIZING AND
DIRECTING RULE 2004 EXAMINATION OF TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION**

This case is before the Court on Dean and Marcielle Jacobs' (collectively, the "Movants") motion to authorize Rule 2004¹ examination of Taylor, Bean & Whitaker Mortgage Corporation ("TBW") (Doc. 6034, the "Motion"). The Motion additionally seeks Court authorization for the Movants to engage in certain discovery, and to compel discovery responses (Doc. 6034 at 4-5). The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A). For the reasons stated below, the Motion is denied to the extent set forth herein.

The Movants are creditors of TBW. The Movants originally filed a proof of claim in the amount of \$3,442.68 (Claim No. 1484); to which, TBW filed an objection (Doc. 5390, the "Objection"). The Movants filed a response in opposition to the Objection (Doc. 5531, the "Response"). Subsequent to filing the Response, the Movants amended their claim to reflect a claim in the amount of \$202,023,443.00 (Claim No. 3514).

By way of the Motion (Doc. 6034), the Movants request the Court to: (1) authorize a Rule 2004 examination of TBW; (2) authorize service of the Request for Production (attached to the Motion as

¹ Unless otherwise indicated, all references to a "Bankruptcy Rule" or "Rule" are to the Federal Rules of Bankruptcy Procedure and all references to the "Bankruptcy Code" or "Code" are to 11 U.S.C. § 101 *et seq.*

Exhibit A); (3) authorize notices of deposition; (4) authorize “subpoenas and other process to compel a response to the Request for Production”; (5) compel a response to the Request for Production within thirty (30) days; and (6) compel attendance of current and former employees of TBW at one or more oral examinations (Doc. 6034 at 4).

Rule 2004 of the Federal Rules of Bankruptcy Procedure provides: “[o]n motion of any party in interest, the court may order the examination of any entity.” FED. R. BANKR. P. 2004(a). The scope of an examination permitted by Rule 2004 may relate only to the acts, conduct, property, or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the bankruptcy estate. FED. R. BANKR. P. 2004(b). The Court has discretion with respect to whether to grant a request for a Rule 2004 examination.

An examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure is not a substitute for discovery under Rule 26 of the Federal Rules of Civil Procedure. *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 455 (Bankr. D.N.J. 1998). The majority of courts prohibit Rule 2004 examinations “of parties involved in or affected by an adversary proceeding [or contested matter] while it is pending.” *Id.* at 456; *see also In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (noting “the well recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004”); *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996) (noting once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to the Federal Rules of Bankruptcy Procedure 7026 *et seq.*, rather than by a Rule 2004 examination).

The basis for this proscription “lies in the distinction between the broad nature of the Rule 2004 exam and the more restrictive nature of discovery under the Federal Rules of Civil Procedure.” *In re Enron Corp.*, 281 B.R. at 840-41 (internal quotations omitted). Rule 2004 necessarily permits a broad

investigation into the financial affairs of debtors to assure the proper administration of bankruptcy estates. *In re Symington*, 209 B.R. 678, 683-84 (Bankr. D.Md. 1997). By contrast, Rule 26 of the Federal Rules of Civil Procedure provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” FED. R. CIV. P. 26(b)(1).

Under the Federal Rules of Bankruptcy Procedure, the filing of an objection to a proof of claim gives rise to a contested matter. *Georgia Dept. of Rev. v. Mouzon Enters. (In re Mouzon Enters.)*, 610 F.3d 1329, 1333 (11th Cir. 2010). TBW has objected to the Movants’ proof of claim; therefore, the dispute is a contested matter. As such, the Movants are not entitled to a Rule 2004 examination of TBW, and the motion to permit the same is denied.

The Movants, however, additionally request that the Court authorize them to conduct discovery (Doc. 6034 at 4). As noted previously, the parties’ dispute is a contested matter. Many aspects of the discovery process provided for under Federal Rules of Bankruptcy Procedure 7026 *et seq.* and the Federal Rules of Civil Procedure are made applicable in contested matters pursuant to Rule 9014. Court authorization is therefore not required for the Movants to engage in appropriate discovery. The Movants may conduct discovery in accordance with the Rules. Even though the Movants are litigating their claim(s) *pro se*, they remain subject to the relevant laws and rules of the Court, including the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure. *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

The Movants additionally request that the Court compel a response to the Request for Production (attached as Exhibit A) within thirty (30) days of service (Doc. 6034 at 4, Ex. A). The Movants’ request in this regard is premature and unnecessary.

More particularly, the Rules “require that discovery be accomplished voluntarily; that is, the parties should affirmatively disclose relevant information without the necessity of court orders

compelling disclosure.” *Bush Ranch, Inc. v. E.I. DuPont De Nemours & Co.*, 918 F. Supp. 1524, 1542 (M.D. Ga. 1995), *rev'd on other grounds*, 99 F.3d 363 (11th Cir. 1996). Discovery is intended to operate with minimal judicial supervision unless a dispute arises and one of the parties files a motion requiring judicial intervention. In this case, the Movants have yet to seek discovery from TBW in accordance with the Rules.² As such, any motion to compel a response is nonsensical. Moreover, the Rules provide that any response to a request for production be made within thirty (30) days of service. FED. R. BANKR. P. 7034; FED. R. CIV. P. 34. Thus, the requested relief in this regard is superfluous.

Again, the Court would note that the Movants may engage in appropriate, relevant discovery. If a dispute later arises, a motion to compel discovery may be appropriate. Until such time as TBW fails to respond to a particular discovery request, however, any motion to compel a response thereto is premature. In addition, the Court would point out to the Movants that any motion to compel discovery must be accompanied by a certification that the movant has in good faith conferred, or attempted to confer, with the person or party failing to provide discovery in an effort to obtain it without court action. FED. R. BANKR. P. 7073; FED. R. CIV. P. 37. No such certification is attached to the Motion. Based on the foregoing, the Movants’ motion to compel discovery is denied.

The Movants also request the Court to compel the attendance at deposition(s) of TBW and current and former employees (Doc. 6034 at 4). Generally, Rule 30 of the Federal Rules of Civil Procedure (made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure) provides the method by which the Movants may seek to depose witnesses. The Movants, however, have not sought to depose any witnesses pursuant to the Rules. As such, any motion to compel attendance is premature, and will be denied as such.

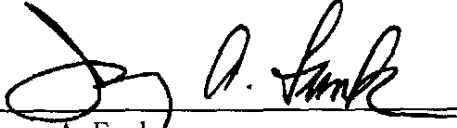
² It appears the Movants sought certain information from TBW prior to the filing of the Petition (*see* Doc. 6034 at 12, 16).

With respect to deposing former employees of TBW, it may be necessary for the Movants to issue subpoena(s). Issuance of subpoenas to non-parties is governed by Rule 45 of the Federal Rules of Civil Procedure (made applicable by Rule 9016 of the Federal Rules of Bankruptcy Procedure). The Movants are advised that they must comply with all the requirements of Rule 45 if they desire to subpoena non-party witnesses to appear for deposition. If a party uses a subpoena to command a witness' appearance, he or she will be required to pay the witness' fees and mileage as allowed by law. Fed. R. Civ. P. 45(b)(1). Additionally, a subpoena must be served by a non-party, so the party may incur the costs of a process server. Litigants must bear their own litigation expenses.

Based on the foregoing, it is **ORDERED**:

1. The motion to authorize Rule 2004 examination of Taylor, Bean & Whitaker Mortgage Corporation (Doc. 6034) is denied to the extent provided herein.
2. The Movants' request to conduct a Rule 2004 examination of Taylor, Bean & Whitaker Mortgage Corporation is denied.
3. The Movants may conduct appropriate, relevant discovery in accordance with the Federal Rules of Civil Procedure, made applicable by the Federal Rules of Bankruptcy Procedure.
4. The Movants' motion to compel discovery responses is denied as premature.

DATED this 1st day of October, 2012 in Jacksonville, Florida.


Jerry A. Funk
United States Bankruptcy Judge

Copies to:
Alisa Paige Mason, attorney for Debtor;
Dean and Marcielle Jacobs, Creditors;
All other interested parties