

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.,

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF
(Jointly Administered Under
Case No. 3:09-bk-07047-JAF)

Debtors.

_____/

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP.

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

Applicable Debtor.

**MOTION TO APPROVE THE STIPULATION REGARDING CLAIM NUMBER 3020
BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR
COLONIAL BANK AND THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

**NOTICE OF OPPORTUNITY TO
OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, without further notice or hearing unless a party in interest files an objection within 21 days from the date this paper is entered on the docket. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court: Lee Ann Bennett, Clerk of Court, 4th Floor Courtroom D, 300 North Hogan Street, Jacksonville, Florida 32202, and serve a copy on the movant's attorney, Berger Singerman LLP, Attn: Debi Evans Galler, Esq, 1450 Brickell Avenue, Suite 1900, Miami, FL 33331.

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Neil F. Luria, Plan Trustee (the “Plan Trustee”) of the Taylor, Bean & Whitaker Plan Trust (“Plan Trust”), files this Motion to Approve (the “Motion”) the Stipulation attached hereto as **Exhibit A**, and incorporated herein by reference (the “Stipulation”), between the Plan Trust and the Federal Deposit Insurance Corporation as Receiver for Colonial Bank (“FDIC-R,” together with the Plan Trust, the “Parties”) as to proof of claim number 3020 (“Claim No. 3020”) filed by FDIC-R, and in support of the Motion respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

Procedural Background

2. On August 14, 2009, the Alabama State Banking Department closed Colonial Bank and appointed the FDIC-R as receiver of Colonial Bank.

3. On August 24, 2009 Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor” or “TBW”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

4. On August 11, 2010, the Debtor filed its *Motion to Approve Settlement Agreement by and Between Taylor, Bean & Whitaker Mortgage Corp., the Federal Deposit Insurance Corporation, as Receiver of Colonial Bank, and the Official Committee of Unsecured Creditors* [ECF No. 1783], as amended by the *Notice of Filing First Amendment to Settlement Agreement by and Between Taylor, Bean & Whitaker Mortgage Corp., the Federal Deposit Insurance Corporation, as Receiver of Colonial Bank, and the Official Committee of Unsecured Creditors* filed on August 31, 2010 [ECF No. 1878], which sought approval of a settlement (“Settlement”

Agreement”) that provided a framework for the interface between the Debtor’s estate and the Colonial Bank receivership estate and defined a reconciliation process designed to identify and address issues regarding the appropriate allocation, receipt, and disbursement of borrower funds and other cash as well as questions regarding the nature and ownership of the mortgages and other related assets under the Debtor’s management and control.

5. In addition, pursuant to Section 1.9 of the Settlement Agreement, the FDIC-R was to have an allowed general unsecured claim in the amount equal to \$3,253,622,510, less (i) the unpaid principal balance of the COLB Loans (as defined in the Settlement Agreement) as of September 9, 2009 and (ii) any amounts realized or received by the FDIC-R from the AOT Waterfall and Overline Waterfall, as defined in the Settlement Agreement.

6. On September 14, 2010, the Court entered its *Order Approving Settlement Agreement, as Amended, by and Between Taylor, Bean & Whitaker Mortgage Corp., the Federal Deposit Insurance Corporation, as Receiver of Colonial Bank, and the Official Committee of Unsecured Creditors* [ECF No. 1936].

7. On July 21, 2011, the Court entered the Order confirming the Third Amended and Restated Joint Plan of Liquidation (the “Plan”). The Plan created a liquidating trust and Neil F. Luria was appointed the Plan Trustee of the Plan Trust¹.

8. The Plan Trustee and the FDIC-R have undertaken extensive analysis, reconciliation, and negotiation regarding the outstanding amounts due under FDIC-R Claim No. 3020 as a result of recoveries from the AOT Waterfall and the Overline Waterfall, and the amounts that still remain to be collected that might reduce FDIC-R Claim No. 3020.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

9. The Plan Trustee and the FDIC-R have agreed to enter into the Stipulation to settle the amount of FDIC-R Claim No. 3020 at this time, rather than delay the final determination until such time as all amounts under the AOT Waterfall and Overline Waterfall have been determined and all adjustments could be calculated. Accordingly, the Plan Trustee and the FDIC-R have agreed to fix FDIC-R Claim No. 3020 at **\$2,215,095,998.00**, and have it allowed as a Class 8 general unsecured claim in that amount without further adjustment.

Relief Requested

10. Compromises are generally favored in Chapter 11 cases. *E.g., Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.)*, 632 F.2d 955, 959 (2d Cir. 1980). Approval of a settlement is left to the sound discretion of the court based upon the particular circumstances of the proposed settlement and the case as a whole. *See Langes v. Green*, 282 U.S. 531, 541 (1931); *In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio 1987); *In re Ericson*, 6 B.R. 1002 (D. Minn. 1980); *Knowles v. Putteraugh (In re Hallet)*, 33 B.R. 564 (Bankr. D. Me. 1983); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985); *In re Hydronic Enterprise, Inc.*, 58 BR. 363 (Bankr. D. R.I. 1986).

11. The Plan Trustee is obligated to maximize the value of the estate and make decisions in the best interests of all of the creditors of the estate. *E.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Courts generally defer to a Debtor's business judgment when there is a legitimate business justification for the decision to compromise a dispute. *Id.* at 395.

12. The Plan Trust Agreement authorizes the Plan Trustee to use his reasonable business judgment in administering the Plan Trust Assets. *See Plan Trust Agreement § III.B.*

13. In determining whether a settlement should be approved, the court must consider: “(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (internal citations omitted).

14. A review of the above considerations demonstrates that establishing the final amount of Claim No. 3020 is: (a) in the best interests of the Plan Trust and all of the creditors, (b) fair and reasonable, and (c) within the Plan Trustee’s sound business judgment.

15. The Stipulation resolves the outstanding issues related to Claim No. 3020. Without such a resolution, the Plan Trust would be forced to expend significant resources in ongoing negotiations with the FDIC-R, and continual reevaluation of the amounts owed on account of Claim No. 3020, all of which would continue to delay the Plan Trustee’s efforts to make a distribution on account of Class 8 claims. Further, the Plan Advisory Committee has unanimously approved the Stipulation and this Motion.

WHEREFORE, the Plan Trustee respectfully requests that the Court enter an order: (i) approving the Stipulation described above with the Parties; (ii) fixing FDIC-R Claim No. 3020 at \$2,215,095,998.00; and (iii) granting such other and further relief as is just and equitable.

Respectfully submitted, this 21st day of October, 2014.

BERGER SINGERMAN LLP
*Counsel to Neil F. Luria, Plan Trustee for the
Taylor, Bean & Whitaker Plan Trust*
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Debi Evans Galler
Debi Evans Galler
Florida Bar No. 0985236
dgaller@bergersingerman.com

**EXHIBIT A
STIPULATION**

STIPULATION OF CLAIM AMOUNT

This Stipulation (the "Stipulation"), dated as of October ¹⁵, 2014, is made by and between Taylor Bean & Whitaker Plan Trust (the "Plan Trust"), and the Federal Deposit Insurance Corporation in its capacity as Receiver for Colonial Bank ("FDIC-R") (the Plan Trust and FDIC-R are collectively referred to herein as the "Stipulating Parties").

RECITALS

A. **WHEREAS**, on August 24, 2009, Taylor, Bean & Whitaker Mortgage Corp. ("TBW") filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, (the "Bankruptcy Court") (the "Chapter 11 Case");

B. **WHEREAS**, the FDIC-R filed a proof of claim, Claim number 3020, in the Chapter 11 Case on or about June 15, 2010 (the "FDIC Proof of Claim").

C. **WHEREAS**, on or about August 11, 2010, TBW and the FDIC-R entered into that certain Settlement Agreement, the effectiveness of which was subject to the Bankruptcy Court entering an order confirming a joint plan of liquidation of TBW, REO Specialists, Inc. and Home America Mortgage Inc. (the "FDIC Settlement Agreement");

D. **WHEREAS**, on July 21, 2011, the Bankruptcy Court entered an Order [ECF 3420 in the Chapter 11 Case] confirming the Third Amended and Restated Joint Plan of Liquidation of the Debtors¹ and the Official Committee of Unsecured Creditors (the "Plan");

E. **WHEREAS**, Neil F. Luria has been appointed as trustee ("Trustee") of the Plan Trust to act on its behalf;

F. **WHEREAS**, pursuant to the FDIC Settlement Agreement, the Plan provides that the FDIC would have an allowed claim in the Chapter 11 Case in the amount of \$3,253,622,510 less (i) the unpaid principal balance of the COLB Loans (as defined in the FDIC Settlement Agreement) as of September 9, 2009 and (ii) any amounts realized or received by the FDIC-R from the AOT Waterfall as defined in the FDIC Settlement Agreement and the Overline Waterfall (as defined in the FDIC Settlement Agreement) (collectively the "Adjustments"); and

G. **WHEREAS**, The Plan Trustee and the FDIC-R have determined that it is unlikely that the Adjustments can be finally determined in the near future and that it is in the best interests of the Stipulating Parties and the administration of the Plan to compromise and stipulate to the amount of the Adjustments and to seek the Bankruptcy Court's approval of the final amount of the Allowed FDIC Claim in accordance with the terms hereof.

¹ Debtors refer to Taylor, Bean & Whitaker Mortgage Corp., Home America Mortgage, Inc., and REO Specialists, LLC.

NOW, THEREFORE, the Stipulating Parties, subject to Bankruptcy Court approval, do hereby agree as follows:

ARTICLE I STIPULATION

Section 1.1. **FDIC Proof of Claim.** Upon approval of this Stipulation by the Bankruptcy Court, the FDIC Proof of Claim shall be an Allowed Class 8 Claim (as that term is defined in the Plan) in the amount of \$2,215,095,998.00 (the "**Allowed FDIC Claim**"). FDIC-R shall have no further claim to any assets of, or assets held by, the Plan Trust and shall have no right to any further distributions from the assets of the Plan Trust except distributions to which the FDIC-R is entitled under the Plan on the Allowed FDIC Claim.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. **Representations and Warranties of the Plan Trust.** The Plan Trust hereby represents and warrants that, subject to any necessary approval by the Bankruptcy Court, it has full requisite power and authority to execute and deliver this Stipulation and to perform its obligations under this Stipulation, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith have been duly and validly authorized by it.

Section 2.2. **Representations and Warranties of FDIC-R.** FDIC-R hereby represents and warrants that it has full requisite power and authority to execute and deliver and to perform its obligations under this Stipulation, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith have been duly and validly authorized by it.

Section 2.3. **Representations of the Stipulating Parties.** Each Stipulating Party represents and acknowledges that: (a) in executing this Stipulation, it does not rely, and has not relied, upon any representation or statement made by any other party or any of such other party's representatives, agents or attorneys, with regard to the subject matter, basis or effect of this Stipulation or otherwise, other than as may be stated specifically in this Stipulation, (b) in executing this Stipulation, it has relied entirely upon its own judgment, beliefs and interest and upon the advice of its counsel and that it has had a reasonable period of time to consider the terms of this Stipulation before entering into it, and (c) it has reviewed this Stipulation and that it fully understands and voluntarily accepts all of the provisions contained herein. Each Stipulating Party further represents, acknowledges and agrees that this Stipulation was the product of negotiations among the Stipulating Parties and that any rule of construction as to ambiguities being resolved against the drafting party shall not apply in the interpretation of this Stipulation.

ARTICLE III COVENANTS

Section 3.1. **Covenants of the Plan Trust.** The Plan Trust hereby covenants and agrees that it shall take all actions reasonably necessary to obtain approval of this Stipulation by the Bankruptcy Court, and in furtherance of the preceding, it agrees that within ten (10) business

days after the execution and delivery of this Stipulation by the Stipulating Parties it shall file a motion seeking an order from the Bankruptcy Court approving the terms and provisions.

**ARTICLE IV
EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

Section 4.1. **Effective Date.** This Stipulation shall become effective on the first date on which each of the following has occurred ("**Effective Date**"):

- (a) **Execution.** This Stipulation has been fully executed; and
- (b) **Bankruptcy Court Approval.** This Stipulation has been approved by an order of the Bankruptcy Court which has become a final order not subject to appeal.

Section 4.2. **Termination Date.** If the Effective Date has not occurred by December 31, 2014, unless such date is extended by a writing signed by all Stipulating Parties (the "**Termination Date**"), then this Stipulation shall become null and void, subject to and in accordance with Section 4.3 below, and the Stipulating Parties shall be returned to the status *quo ante* as if this Stipulation had never been executed.

Section 4.3. **Effect of Termination.** Unless otherwise ordered by the Bankruptcy Court, in the event that this Stipulation shall not become effective on or prior to the Termination Date or this Stipulation should terminate, or be cancelled, or otherwise fail to become effective for any reason, then:

- (a) the Stipulating Parties shall be restored to their respective positions as of the date of this Stipulation with all of their respective claims and defenses, preserved as they existed on that date. The Stipulating Parties shall take such steps and file such documents as are necessary to cause such claims and defenses to be restored; and
- (b) except for the provisions of this Section 4.3, the terms and provisions of this Stipulation shall be null and void and shall have no further force or effect with respect to the Stipulating Parties, and neither the existence nor the terms of this Stipulation (nor any negotiations preceding this Stipulation nor any acts performed pursuant to, or in furtherance of, this Stipulation) shall be used in any action or proceeding for any purpose.

**ARTICLE V
NO ADMISSIONS**

Section 5.1. **No Admissions.** The Stipulating Parties intend this Stipulation and the resolutions described herein to be in resolution of disputed claims, and this Stipulation shall not be deemed an admission by any Settling Party as to the merits of any claim or defense with respect to these claims.

Section 5.2. **Stipulation Inadmissible.** Neither this Stipulation, nor any act performed or document executed pursuant to or in furtherance of this Stipulation, shall be

admissible in any proceeding for any purpose, except to seek approval of or to enforce the terms of the Stipulation.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1. **Good Faith.** The Stipulating Parties agree that the Stipulation was negotiated in good faith by the Stipulating Parties, and reflects a settlement that was reached voluntarily after consultation with each of the Stipulating Parties' respective competent legal counsel.

Section 6.2. **Amendments.** This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Stipulating Parties, as the case may be, or their respective successors-in-interest.

Section 6.3. **Authority.** Each person executing this Stipulation on behalf of any party hereto hereby warrants that such person has the full authority to do so.

Section 6.4. **Counterparts.** This Stipulation may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Bankruptcy Court.

Section 6.5. **Successors.** This Stipulation shall be binding upon, and inure to the benefit of, the successors of the parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes.

Section 6.6. **Jurisdiction.** The Stipulating Parties agree that the Bankruptcy Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all parties hereto consent and submit to the jurisdiction of the Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in this Stipulation.

Section 6.7. **Further Assurances.** Each of the Stipulating Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Stipulating Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Stipulation.

Section 6.8. **Governing Law.** This Stipulation and any exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Florida, and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida without giving effect to that state's choice of law principles.


Section 6.9. **Entire Stipulation.** This Stipulation constitutes the entire agreement between the Stipulating Parties and no representations, warranties or inducements have been made to any party concerning this Stipulation other than the representations, warranties and covenants contained and memorialized in this Stipulation. It is understood by the Stipulating

Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Stipulation is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Stipulation shall be in all respects effective and not subject to termination by reason of any such different facts or law.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed as of the date set forth above.

**NEIL F. LURIA, as TRUSTEE for THE
TAYLOR BEAN & WHITAKER PLAN
TRUST.**

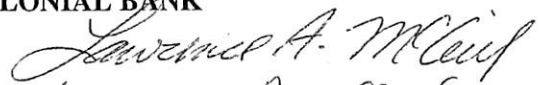
By:



Neil F. Luria, Trustee

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
COLONIAL BANK**

By:



Its: Attorney-in-Fact

**EXHIBIT B
PROPOSED ORDER**

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: Chapter 11 Case

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.,
Debtors.

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Jointly Administered Under
Case No. 3:09-bk-07047-JAF

_____/

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
Applicable Debtor.

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

**ORDER GRANTING MOTION TO APPROVE THE STIPULATION REGARDING
CLAIM NUMBER 3020 BETWEEN FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR COLONIAL BANK
AND THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

THIS MATTER came before the Court upon Plan Trustee's *Motion to Approve Stipulation Regarding Claim Number 3020 Between Federal Deposit Insurance Corporation as Receiver for Colonial Bank and the Taylor, Bean & Whitaker Plan Trust* (the "Motion") [ECF. ____]. The Court, having considered the Motion, having been advised that there are no objections to the Motion, and finding that good and sufficient notice of the Motion was provided to all interested parties, and being otherwise fully advised in the premises, does thereupon

ORDER as follows:

1. The Motion is **GRANTED** and the Stipulation is **APPROVED**.

2. FDIC-R Claim Number 3020 is allowed as a Class 8 Claim in the amount of \$2,215,095,998.00 and shall not be subject to further adjustment.

3. The Motion and Stipulation were served upon all interested parties with the Local Rule 2002-4 negative notice legend informing the parties of their opportunity to object within 21 days of the date of service.

4. No party filed an objection within the time permitted.

5. The Court therefore considers the matter to be unopposed.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, the Motion and the Stipulation.

DONE AND ORDERED this _____ day of _____, 2014, in Jacksonville, Florida.

Jerry A. Funk
United States Bankruptcy Judge