IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

11-30967 CA 31

NEIL F. LURIA, PLAN TRUSTEE OF THE TAYLOR, BEAN &WHITAKER TRUST

Plaintiff,

vs.

DELOITTE & TOUCHE LLP,

Defendant.

CASE NO. ____________

2011 SEP 26 PM 3:28
FILED FOR RECORD
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
CIVIL 974

COMPLAINT

#01
155-1
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Plaintiff Neil F. Luria, Plan Trustee of the Taylor, Bean & Whitaker Trust (the "Trustee" or "TBW") for his complaint against Defendant Deloitte & Touche LLP ("Deloitte"), alleges on information and belief as follows:

DEBRA SANCHEZ

INTRODUCTION

1. Defendant Deloitte audited TBW—one of the nation's largest mortgage originators—and certified TBW as a solvent, viable company with financial statements free of material misstatements each year from 2002 through 2008. Despite Deloitte's credentials and expertise as one of the "Big 4" accounting firms, those financial statements—and the rosy picture they depicted of TBW—were completely false.

2. Instead of being a profitable, investment-worthy enterprise as Deloitte certified it was, TBW in fact had been hijacked by certain members of its management to perpetrate a massive fraud that ultimately led to TBW's collapse and bankruptcy.

3. The fraud began in 2002—the same year Deloitte became TBW's auditor. The entire time Deloitte audited TBW, TBW's Chairman, Lee Farkas, with others (the "Looters"),

perpetrated a fraud whereby they looted TBW and its subsidiary Ocala Funding, LLC ("Ocala"). As is true of all frauds, once they started, the Looters needed new, additional funds to steal. TBW and Ocala's funding from outside investors became a principal source of the cash needed for the Looters' fraud. But TBW and Ocala could only raise funds if TBW's financial statements, which included Ocala on a consolidated basis, were declared by certified public accountants like Deloitte to be free of material misstatement due to error or fraud. Thus, Deloitte's negligence, and willful blind eye, was the fuel without which the Looters' fraud would have sputtered out long before it resulted in the multi-billion dollar debt under which TBW collapsed.

4. Deloitte's grossly negligent audits breached its duty to TBW. As Deloitte has admitted under oath through the sworn testimony of its partner, Edward Corristan, it was Deloitte's duty to detect fraud at TBW: "[A]uditors are expected to identify fraud that would be material to the financial statements." Despite its duty, each year Deloitte certified that TBW's financial statements were "free of material misstatement" due to error or fraud.

5. As detailed below, Deloitte saw numerous red flags during its audits of TBW, any one of which should have alerted Deloitte to the fraud, yet Deloitte said nothing and continued to certify TBW's financial statements as "free of material misstatement whether caused by error or fraud." At all times, TBW had numerous officers, members of its board of directors and its subsidiary Ocala and its trustee, each of whom were innocent and could have stopped the fraud and—almost as important—stopped TBW's incurrence of billions of dollars of debt that it could not repay. Despite being aware of these numerous red flags, Deloitte never raised a concern with any TBW officer or member of TBW's board of directors or Ocala or its trustee. Had Deloitte

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done so, the looting of TBW would have been stopped before TBW incurred billions of dollars of debt that the Looters used to keep their fraud going.

6. Moreover, Deloitte's public role as certified *public* accountants imposed a duty not just to TBW but also to the public when Deloitte certified TBW's financial statements. Deloitte's public role is so important that the United States *and* the Florida Supreme Courts have declared them "public watchdogs":

> By certifying the public reports that collectively depict a corporation's financial status, **the independent auditor assumes a *public* responsibility** transcending any employment relationship with the client. The independent public accountant performing this special function **owes ultimate allegiance** to the corporation's creditors and stockholders, as well as **to investing public**. This **"public watchdog"** function demands that the accountant maintain total independence from the client at all times and requires **complete fidelity to the public trust.**

KPMG Peat Marwick v. National Union Fire Ins., 765 So.2d 36, 38 (2000); *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18, 104 S.Ct. 1495, 1503 (1984).

7. The ethical standards governing certified public accountants make clear Deloitte's responsibility: "A distinguishing mark of a profession is *acceptance of its responsibility to the public.*" American Institute of Certified Public Accountants ("AICPA") Code of Prof. Conduct, ET § 53.

8. Deloitte's gross negligence caused significant harm. Deloitte's gross negligence harmed the public, as thousands lost their jobs, homes were lost, investors lost their money, and the mortgage financial crisis in Florida was enflamed.

9. Deloitte's gross negligence harmed TBW. In reliance on Deloitte's audit opinions certifying that the TBW consolidated financial statements were free of material misstatements, TBW received billions of dollars in funding that enabled the Looters to continue and grow their fraud on TBW and Ocala. Those billions served not to further the development of business to

TBW, but to mask looting that already took place and perpetuate a fraud that would cause the Looters to destroy TBW.

10. When Deloitte's gross negligence finally came to light and the falsity of the financial statements was discovered, TBW had lost over $6 billion. TBW filed for bankruptcy and members of the very management Deloitte was supposed to be the public watchdog over were indicted and convicted of fraud for their roles in looting TBW and Ocala.

11. By this action, Plaintiff TBW seeks to hold Deloitte responsible for its negligence that allowed the Looters to fund their fraud by stealing from TBW and for the more than $6 billion dollars in damages it caused TBW.

PARTIES, JURISDICTION AND VENUE

12. Plaintiff Neil F. Luria is the Plan Trustee of the Taylor, Bean & Whitaker Trust (the "Trust"). Taylor, Bean & Whitaker Mortgage Corporation filed for Chapter 11 bankruptcy on August 24, 2009 in United States Bankruptcy Court for the Middle District of Florida, Case No. 09-bk-07047-JAF. TBW was headquartered in Ocala, Florida, and did substantial business in Miami-Dade County, including the operation of an office in Miami-Dade County that issued mortgage loans. The Trust was established pursuant to the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors dated June 22, 2011, as amended (the "Plan"). The Bankruptcy Court confirmed the Plan on July 21, 2011 pursuant to the "Order Confirming Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors."

13. Defendant Deloitte & Touche LLP is a limited liability partnership and its partners reside in Florida.

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14. Jurisdiction is proper in the Circuit Court because Plaintiff seeks damages in excess of $15,000.

15. Venue is appropriate in Miami-Dade County because TBW had operations in Miami-Dade County and Defendant Deloitte transacts its customary business in Miami-Dade County, Deloitte maintains an office in Miami-Dade County at 333 SE 2d Avenue, Suite 3600, Miami, Florida 33131, its partners reside and work in Miami-Dade County, and it has representatives and agents in Miami-Dade County.

16. Deloitte is subject to personal jurisdiction in Florida pursuant to Florida Statutes §48.193 because, as set forth more fully herein, it has conducted substantial and not isolated business and activities within Florida, and it has itself or through an agent, including but not limited to its partners, operated, conducted, engaged in or carried on business in this State which gave rise to this cause of action, committed a tortious act in this State, or caused injury to persons or property in Florida resulting from its activities within and outside of this State in connection with services provided in Florida or the solicitation of business in this State.

RELEVANT TIME PERIOD AND CHOICE OF LAW

17. By this Complaint, TBW asserts claims arising out of Deloitte's grossly negligent audits for the financial statements dated 2002-2006 and for the audit work Deloitte conducted in 2009. TBW does not here assert claims arising out of Deloitte's audits of the financial statements dated 2007 and 2008 because those will be the subject of a separate proceeding.

18. As certified public accountants, only Deloitte was licensed by the State of Florida to audit TBW's financial statements, which were consolidated with certain subsidiaries, including wholly-owned subsidiary Ocala. Deloitte's duty was to determine if those financial statements "present[ed] fairly, in all material respects, the financial position of the Company"

such that "the financial statements [were] free of material misstatement, whether caused by error or fraud."

19. TBW's claims for Deloitte's grossly negligent audits it performed in 2002-2006 and 2009, are governed by Florida law. TBW was headquartered in Florida, Deloitte's audits were conducted in Florida, including by sending Deloitte employees to TBW's Florida offices, and TBW's injury from Deloitte's gross negligence—losses of billions of dollars—occurred in Florida.

FACTS

I. TBW's Business: Mortgage Origination

20. TBW was a mortgage origination company. Incorporated in 1991 in the State of Florida, it grew to become one of the largest privately held independent (*i.e.*, non-bank owned) mortgage origination companies in the United States. By July 2009, TBW originated over $30 billion in loans per year and was servicing 512,000 mortgage loans. It employed over 2,500 people, mostly out of its headquarters in Ocala, Florida and in Miami-Dade County.

21. TBW's business model was to originate and service mortgage loans. Typically, it did not hold the mortgages that it originated and did not collect principal and interest payments for its own account, as a traditional mortgage provider might. Instead, it resold them ("loan sales") or packaged the mortgages into pools and sold participation interests in (or "securitized") them for investment by third-party investors.

22. In large part, the sales were made in the secondary market to third-party investors including the Federal Home Loan Mortgage Corporation ("Freddie Mac") or to commercial financial institutions like Citibank or Wells Fargo who either held the loans or securitized them. In most cases, the securitizations were sold to investors who bought interests in the mortgage

payment streams, which interests were guaranteed by Freddie Mac or the Government National Mortgage Association ("Ginnie Mae").

23. TBW's income was derived principally from servicing the loans it sold to or securitized for investors. TBW earned that income by collecting mortgage payments from homeowners or mortgagees and disbursing them to the third-party investors in the loans. Although its servicing operation was technically separate from its acquisition and resale operations, TBW was dependent upon generating new mortgage sales (and then resales or securitizations with the support of Freddie Mac and Ginnie Mae) to keep its servicing operations growing.

II. Financing TBW

24. TBW could not finance its business alone. TBW had regular, immediate cash needs to fund home purchases upon their closings, and interim finance needs to bridge the gap between financing loans at closing and locating investors for resale or securitization.

25. TBW also had operational financing needs to fund its own purchases of whole loans, repurchase obligations related to the loans it sold or securitized, and funding its loan servicing operations. Because processing $30 billion of mortgages a year was a cash-intensive enterprise that required more financing firepower than it possessed alone, TBW depended on other lenders to finance its operations.

26. In the short term, TBW relied on a variety of lines of credit and financing vehicles, initially with a banking partner Colonial Bank ("Colonial"), and later, through Ocala, a wholly owned subsidiary, and investments placed through Ocala.

27. Financing from Colonial came in the form of two facilities, a "COLB" facility and an "AOT" facility. COLB was a mortgage loan participation facility at Colonial Bank through

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which Colonial Bank purchased interests in residential mortgage loans from TBW pending resale of the loans to third-party investors. When TBW subsequently resold those mortgages—which it was designed to do within 90 days of the COLB funding—Colonial Bank intended to recoup its investment. TBW retained legal title to the sold mortgages while remaining solely responsible for servicing the participating loans.

28. The AOT facility was likewise designed as a holding pattern for loans, this one to temporarily finance loans that would ultimately be securitized or sold in pools. Like the COLB facility, purchases under the AOT facility included a "sale" of the mortgage loans to Colonial Bank, pending their resale to a third-party investor.

29. As a condition for Colonial's funding of the COLB and AOT facilities, TBW had to certify that it was solvent and had to provide Colonial with copies of TBW's clean audited financial statements. Colonial relied on Deloitte's clean audit opinions certifying TBW as a solvent company with sufficient assets when funding the COLB and AOT facilities. If Deloitte had conducted its audit in accordance with Generally Accepted Auditing Standards ("GAAS"), as it was required to do, the material misstatement in the TBW financial statements would have been discovered and the lending would have stopped.

30. Through these facilities, TBW was able to receive short term financing while retaining the ability to resell the participating loans. As of the date of TBW's final audited financial statements, the balance owed on the COLB and AOT facilities was $1.27 billion and $1.84 billion, respectively.

31. Ocala was formed in January 2005 to offer additional financing to TBW, both to fund closings on home purchases as well as to provide bridge financing until those mortgages could be resold or securitized. It was established as a bankruptcy remote subsidiary of TBW.

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Moody's and Standard and Poor's, the two rating agencies that rated the Ocala Notes, required that Ocala be separate and apart from TBW as a condition to their investment grade rating of the Ocala Notes. Ocala therefore was required by its formation documents to be separate from TBW, and did maintain separate accountants, books and records. Ocala further had a separate member who was independent from TBW. Ocala therefore was and is a separate entity from TBW. In fact, pursuant to a final order of the United States Bankruptcy Court for the Middle District of Florida, Ocala has a $1.6 *billion* allowed claim *against* TBW.

32. The majority of the mortgages purchased by Ocala from TBW were in turn sold by Ocala to Freddie Mac. To raise the funds necessary to purchase mortgages from TBW, Ocala issued asset-backed commercial paper or promissory notes, (*i.e.*, the "Ocala Notes").

33. The Ocala Notes were required to be over-collateralized. Specifically, Ocala was required to maintain collateral for the Ocala Notes in the form of cash or mortgage loans in an amount greater than the value of the outstanding Ocala Notes issued. The collateral took various forms through the course of the transaction cycle. First, the mortgages purchased by Ocala would be the collateral securing the Ocala Notes. Then, when Ocala sold the mortgages to Freddie Mac, the proceeds would in turn become the collateral securing the Ocala Notes. Under the Ocala Note agreements, as long as certain conditions were met, the proceeds from Ocala's sale of the mortgages could then be used to purchase new mortgages from TBW.

34. The amount and nature of the collateral was reported as part of the consolidated financial statements that Deloitte audited and certified as containing no material misstatement due to error or fraud.

35. As with the COLB and AOT facilities, TBW's financial statements were a condition to the sale of the Ocala Notes. Thus, Ocala's continued funding of TBW-originated

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mortgages was expressly dependent on Deloitte's continuing representation that the TBW audited financial statements were "fairly stated" and free of material misstatement. There were two dedicated financial institutional investors in the Ocala Notes, Deutsche Bank AG ("DB") and BNP Paribas Mortgage Company ("BNP"). The Ocala facility agreements specifically identify Ocala and its trustee, DB and BNP as recipients of TBW's financial statements.

III. Deloitte: Auditors of TBW's Consolidated Financial Statements

36. Deloitte served as TBW's auditors for fiscal years 2002 through 2009. Deloitte's duty was to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud. As Deloitte admits, a purpose of their audit was to detect fraud by management. In fact, Deloitte was required to view management's assertions with "professional skepticism."

37. Deloitte understood that its audits would be used to increase TBW's debt and relied upon by creditors, Ginnie Mae and Freddie Mac, and purchasers of TBW's mortgages. In sworn testimony, Deloitte's engagement partner, Edward Corristan, has confirmed Deloitte's understanding that Deloitte had a duty to the users of the financial statements: "[T]he responsibility that we have is to the entity or the people that engage us and then the users of the financial statements."

38. Deloitte also specifically confirmed that DB and BNP, as purchasers of Ocala Notes, were some of those users to which Deloitte owed a duty:

> Q. Now, you said you understood you had a duty at least to the users of the financial statements. Did you understand who those users would be?
>
> . . .
>
> A. In this specific case, it would be—reports filed with Ginnie Mae, with HUD, with Freddie Mac, and with other creditors.

Q. And who did you understand were the other creditors?

. . .

A. Oh, not necessarily in any particular order but in '08, I believe, **Deutsche Bank** and **BNP**.

39. Consistent with its responsibility, Deloitte purported to conduct an audit of each of TBW's fiscal year-end financial statements, dated April 30, 2002 through April 30, 2008, the date of Deloitte's final completed audit of TBW's financial statements and conducted audit work through July 2009 for the never issued financial statements as of fiscal year ending April 30, 2009.

40. After each such audit, year after year and without fail, Deloitte represented that TBW's financial statements presented fairly, in all material respects, its financial position and the results of its operations, changes in net assets, and cash flow for each year, in conformity with GAAP.

IV. Deloitte's Error: Fraud at TBW, Looting of Ocala, and Material Misstatements in TBW's Financial Statements

41. Deloitte was wrong.

42. In fact, beginning as early as 2002, TBW's operations—and its financial statements—were infected with a growing, and ultimately massive, fraud.

43. The fraud itself was straightforward. With the assistance of conspirators at its principal short term financier, Colonial Bank, at which TBW maintained more than 116 accounts, 110 of which were dedicated to loan servicing, certain members of TBW's management, including Lee Farkas, TBW's Chairman, *e.g.*, the Looters, looted funds from TBW and Ocala.

44. These Looters acted adversely to the interests of TBW and Ocala by stealing money and saddling TBW with debt that—because of the Looters' fraud—was massively under collateralized and could never be repaid.

45. Mr. Farkas and each of the Looters owed TBW a fiduciary duty and by acting adversely to TBW, breached that duty.

46. At all times during the Looters' fraud, there were innocent officers and directors at TBW who—had Deloitte informed them of red flags in the financial operations and statements of TBW—would have taken steps to end the fraud, including the looting and the incurrence of debt TBW could not repay.

47. At the outset, the fraud consisted simply of shifting money among different accounts at Colonial with the intention of disguising overdrafts TBW incurred in its main operating account. By shifting, or "sweeping," overnight money from auxiliary accounts into its master account and then returning the money the following day, the Looters sought to maintain the impression that they were not overdrawing on the accounts.

48. When the deficit grew larger, however, this simple device became inadequate to cover the Looters' fraud. Accordingly, as early as 2003, the Looters began to draw down on the COLB facility. Because use of the COLB facility was predicated on sales of mortgage loans, however, the fraudsters had to manufacture false mortgage data to support phantom sales.

49. They did so. The false data supplied to Colonial Bank to support the phantom sales increased year by year and grew more varied in type. Specifically, as the basis for sales, the Looters included for sale mortgage loans that had already been committed or sold to third party investors, mortgage loans that simply did not exist, and mortgages whose value was aged

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or otherwise materially impaired. As the fraud grew, the Looters created new fake mortgage loans to replace the old ones.

50. As the Looters scrambled to keep the fraud going, the Looters focused more and more on the AOT facility. From at least mid-2004, the Looters caused TBW to sell hundreds of millions of dollars of additional fictitious securitizations to Colonial through the AOT facility, which in reality had no pools of loans collateralizing them.

51. The Looters also looted hundreds of millions of dollars from Ocala for their own benefit and adverse to the interests of TBW. As a result, the Ocala Notes were drastically under-collateralized. Specifically, the Looters took hundreds of millions of dollars from Ocala's bank account to further their fraud. The looting caused there to be "double-sold" and even "triple-sold" mortgages where Colonial Bank, Ocala and Freddie Mac all believed they owned the same mortgages. In order to continue their looting, the Looters misrepresented the amount of collateral for the Ocala Notes so that Ocala could continue to issue the Ocala Notes under the terms of the Ocala facility agreements. Despite obvious red flags, Deloitte did not reveal this fraud.

52. For their looting to work, the Looters depended on grossly negligent audits from Deloitte. Again, Deloitte repeatedly overlooked or chose to ignore the red flags that gave notice of the material misstatements and the looting.

53. As a result, TBW took on debt it could not pay back and Ocala experienced significant shortfalls in the amount of collateral it actually possessed to back the outstanding Ocala Notes. Where the Ocala Notes were required to have collateral (in cash or loans) *in excess* of the amounts of the commercial paper it purchased from Ocala, misappropriated funds and double-sold mortgages in fact resulted in a shortfall of that collateral in excess of $1 billion.

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54. *Finally, and obviously, this fraud impacted* TBW's financial statements, which grossly overstated its assets and its income, and understated its liabilities. TBW's falsified operations trickled down—flooded down—and resulted in the material misstatement of TBW's financial statements. Receivables allegedly owed to TBW for fake mortgage loan sales were not owed, and income earned on those sales was overstated. Similarly, income of mortgage loans held for sale was overstated.

55. At bottom, more than half a billion dollars of assets on TBW's financial statements—assets that gave comfort to TBW's innocent officers and directors to continue the financing of TBW's operations—did not exist.

56. Deloitte's negligence allowed the Looters to completely rob TBW not only of the assets it had but also to obtain additional funds to steal.

V. Deloitte's Gross Negligence

57. Deloitte did not miss the fraud by accident, but as the result of turning a blind eye to red flags of material misstatements and fraud, gross negligence in violating GAAS, failing to understand TBW's business, failing to answer its own legitimate questions that would have uncovered the fraud, and failing to recognize—*even to this day*—the bogus explanations of "off balance sheet transaction" as an obvious fraud.

58. In performing audits of financial statements, certified public accountants must follow GAAS. These include:

- *Professional skepticism.* The auditor must exercise professional skepticism and independence in mental attitude;
- *Professional care.* The auditor must exercise due professional care in the performance of the audit and the preparation of the audit report;

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- *Evidential matter.* The auditor must obtain sufficient competent evidential matter by inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit;

- *Reliance on objective evidence.* The auditor is not permitted to rely exclusively on representations from management, but must seek and obtain reliable information from independent sources, including third parties; and

- *Audit planning.* The auditor is responsible for planning an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.

59. As certified public accountants, Deloitte is a "public watchdog" whose duties run not only to the company that employs it, but to the investing public who relies on its professional, independent assessment of a company's financial statement when making investment decisions. A CPA's failure to honor this duty—or worse still, its willful ignorance of the duty in the name of audit fees or business relationships with its audit client—undermines the company and its investors both.

60. Deloitte's duty also included a duty to disclose any material issue concerning the financial statements to TBW, including its board of directors, if necessary.

61. In violation of these professional standards, Deloitte grossly breached its duties in the conduct of its professional work. Deloitte did not conduct its audits in accordance with the professional standard governing accountants, including GAAS.

62. Deloitte was on notice of numerous red flags demonstrating atypical business practices without reasonable justification and willfully chose to ignore them. Deloitte identified or recklessly ignored evidence that hundreds of millions, at times, billions, in sales of mortgages were actually loans, and that TBW was in breach of its contracts requiring it to transfer immediately 99% of the mortgages. Despite these red flags, Deloitte certified the loans as sales,

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causing the TBW financial statements from 2002 through 2006 to be materially misstated. By doing so, Deloitte further certified materially overstated assets and revenues, and that TBW could continue to operate as a mortgage lender,

63. In violation of GAAS, Deloitte failed to understand TBW's business, particularly as to the financing through Ocala. Deloitte identified or recklessly ignored red flags demonstrating that there was grossly insufficient collateral for the Ocala Notes, and that the explanations from management were obviously false. Moreover, Deloitte violated GAAS by not applying adequate audit procedures to determine that there was insufficient collateral for the mortgage operations, and that fake mortgages were being reflected on the financial statements and sold to third parties.

64. Even more fundamentally, Deloitte failed to follow GAAS and the professional standards to detect fraud. Had Deloitte not violated GAAS and the professional standards, Deloitte would have discovered the material misstatements in TBW's financial statements and the looting of TBW.

VI. Bankruptcy: TBW's Demise

65. Deloitte's gross negligence proximately caused TBW in excess of $6 billion dollars in harm.

66. As a result of Deloitte's gross negligence, the Looters were able to hide, maintain and grow the fraud. The financial statements of TBW, including the consolidated balance sheet including the financial position of Ocala, were materially misstated.

67. That there could have been a different result is clear from Deloitte's conduct during the course of its 2009 audit. In that audit Deloitte finally conducted some GAAS-compliant work and challenged the Looters on some of their explanations. When Deloitte

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received incomplete responses and the Looters refused to provide the necessary information, Deloitte determined there was a scope violation under GAAS. As a result, Deloitte finally did what it should have—and could have—done years earlier—refused to complete the 2009 audit and resigned. Yet, Deloitte's gross negligence continued because it still did not reveal the fraud.

68. Indeed, because Deloitte knew Ocala, DB and BNP, among others, were recipients of Deloitte's Independent Audit Opinions and relying upon them, Deloitte had a duty to inform those recipients that they could no longer rely on Deloitte's prior audits. In breach of its duty to disclose, Deloitte said nothing. Had Deloitte done so, Ocala, DB and BNP and the other recipients would have not continued to rely on the audited financial statements and would not have made decisions in reliance on the accuracy of audited financial statements, including Ocala, DB and BNP's decision to renew the Ocala lending facility. Deloitte's decision to stay silent in the face of its duty to correct its prior misrepresentations resulted in additional billions being looted and added to the debt TBW could not repay.

69. As the result of Deloitte's even limited actions in 2009 to resign demonstrates, if Deloitte would have done its job in prior years, the harm to TBW could have been stopped. In part due to Deloitte's walk off, on August 3, 2009, federal authorities executed search warrants on TBW's headquarters and TBW's operations were suspended on August 4, 2009. Soon thereafter, TBW's board of directors resigned and replaced by a new board. Twenty days later, TBW filed for Chapter 11 bankruptcy.

70. Mr. Farkas and others have either pled guilty or been convicted for their involvement in the fraud on TBW and Ocala.

71. The factual basis for TBW's causes of action against Deloitte was not discovered, including the harm caused by Deloitte to TBW, until after TBW filed for bankruptcy. Nor could

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the facts supporting TBW's claims against Deloitte have been discovered prior to TBW filing for bankruptcy because only Deloitte had the duty as a certified public accountant to opine on the accuracy of TBW's financial statements.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PROFESSIONAL MALPRACTICE — NEGLIGENCE

72. TBW repeats and realleges each and every allegation above as if fully set forth herein.

73. Deloitte is a certified public accounting firm that audited the consolidated financial statements of TBW and performed accounting services for TBW. Deloitte owed a duty to its audit client, TBW, to audit the consolidated financial statements for TBW and to perform those audits in conformance with GAAS, the professional standards set forth in Deloitte's own audit manuals, and to form and express opinions about whether those consolidated financial statements were presented fairly, in all material respects, in conformity with GAAP. Deloitte's duty was to plan and perform its "audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud."

74. Deloitte knew that TBW and its subsidiary Ocala were required to provide Deloitte's audited financial statements to a limited group of investors in TBW and its wholly-owned subsidiary and lender, Ocala. Specifically, Deloitte was aware and intended that TBW's financial statements and the Independent Auditors' Reports it provided in connection therewith would be furnished by TBW to Ocala, DB and BNP for the purposes of influencing their decisions to finance or to continue financing TBW's mortgage origination operations.

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75. Deloitte breached its duty by making at least the following untrue statements in the Independent Auditors' Reports: (i) TBW's consolidated financial statements presented fairly, in all material respects, the financial position of TBW and its subsidiaries in conformity with GAAP, (ii) Deloitte had a reasonable basis for making the statements contained in its Independent Auditors' Reports, (iii) Deloitte conducted its audits in accordance with GAAS; and (iv) the financial statements were free of material misstatements.

76. In reliance upon those negligent or grossly negligent misrepresentations made by Deloitte, TBW's innocent decision makers operated TBW with misinformation of TBW's financial position, and authorized TBW's operations to continue, including the incurrence of additional debt, and including the issuance of over a billion dollars in Ocala Notes. Had any one of these innocents known TBW's real financial condition, they would have stopped the fraud and taken steps to maximize the value of TBW, and would have stopped TBW's incurrence of debt and lending activities immediately. Instead, relying on Deloitte's certifications of financial statements showing TBW to be solvent, TBW took on more and more debt and obligations, so that when the fraud was discovered, it had billions of dollars in debt it could not repay and TBW had to file for bankruptcy.

77. In performing its audits in connection with the consolidated financial statements for TBW, numerous "red flags" were made apparent to Deloitte indicating that TBW's financial misstatements were materially misstated. The presence of these "red flags" reflected a high likelihood that TBW could face significant injury.

78. Deloitte was either aware of or acted in reckless and conscious disregard of these "red flags." Deloitte deliberately chose not to investigate further, as its duties to act with reasonable care and due diligence required, and as would have revealed the material

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misstatements in the financial statements and ultimately the fraud being committed by certain officers of TBW. Deloitte deliberately chose instead to provide Independent Audit Reports that gave no indication of the "red flags" it had encountered and failed to investigate.

79. Deloitte was either aware of or acted in reckless and conscious disregard of the fact that its decision to provide unqualified opinions concerning the accuracy of the financial statements would lull TBW's innocent directors and officers into a false sense of security and would facilitate the fraud that the Looters were committing upon them, and thus would create a high likelihood that TBW would be harmed.

80. Deloitte's conduct thus amounted to a reckless disregard of and indifference to TBW's rights.

81. As a direct and proximate result of its reliance upon Deloitte's grossly negligent audits and resulting misrepresentations, TBW incurred a loss in excess of $6 billion.

SECOND CAUSE OF ACTION

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

82. TBW repeats and realleges each and every allegation above as if fully set forth herein.

83. Deloitte knew that the Looters were breaching their fiduciary duties to TBW, and substantially assisted the Looters in their breaches, thereby causing harm to TBW.

84. In performing its audits in connection with the consolidated financial statements for TBW, numerous "red flags" demonstrating highly atypical practices without business justifications at TBW were made apparent to Deloitte indicating that TBW's financial misstatements were materially misstated. The presence of these "red flags" reflected a high likelihood that TBW could face significant injury.

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85. Deloitte either had knowledge of or acted in reckless and conscious disregard to these "red flags." Deloitte deliberately chose not to investigate further, as its duties to act with reasonable care and due diligence required, and as would have revealed the material misstatements in the financial statements and ultimately the fraud being committed by certain officers of TBW. Deloitte failed to disclose those red flags and deliberately and willfully chose instead to provide Independent Audit Reports that gave no indication of the "red flags" it had encountered and failed to investigate.

86. TBW's officers and directors owed TBW a fiduciary duty. Certain of those officers and directors, including TBW's Chairman, Lee Farkas, committed a fraud against TBW and Ocala, looting its assets and directing TBW and Ocala to incur debt the Looters knew would be drastically undercollateralized and could not be repaid. These Looters breached their fiduciary duty to TBW.

87. The red flags that Deloitte willfully ignored were due to the Looters' breaches of fiduciary duty and all of them demonstrated that TBW was engaging in atypical business practices lacking in business justification. When Deloitte willfully chose to ignore the red flags, TBW's financial statements were materially misstated due to the Looters' fraud undertaken in breach of their fiduciary duties. Thus, Deloitte knew of the red flags that showed that the Looters at TBW were breaching their fiduciary duty. Deloitte acted with gross negligence when it chose to ignore those red flags.

88. Deloitte, as TBW's auditor, had a duty to disclose those red flags and their significance to TBW. TBW also had a duty to disclose because it knew that TBW and Ocala's investors were recipients of Deloitte's Independent Audit Opinions and it was foreseeable that those investors would rely on Deloitte's Audit Opinions.

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89. Deloitte also had a duty *not* to issue its opinions that TBW's consolidated financial statements were free of material misstatement when Deloitte had specific knowledge of red flags that the financial statements were in fact materially misstated.

90. By affirmatively choosing to issue its clean opinions despite its knowledge of the red flags, Deloitte substantially assisted the Looters in breaching their fiduciary duty because by ignoring obvious red flags and providing unqualified opinions of TBW's financial audits—Deloitte both allowed the fraud to continue and to grow exponentially.

91. Deloitte substantially assisted in the first instance because had Deloitte investigated any one of the red flags, as it was duty-bound to do as TBW's auditor, the fraudulent numbers in the financial statements would have been discovered and the fraud revealed.

92. Deloitte also substantially assisted because Deloitte's clean opinion on the TBW's consolidated financial statements was a condition to TBW's ability to obtain additional funding—those monies were a substantial part of what was looted from TBW and Ocala. That funding would not have been available to TBW and Ocala absent Deloitte's substantial assistance to the Looters by its deliberate choice to ignore the red flags and issue clean audit opinions. Finally, Deloitte had knowledge of or acted in reckless and conscious disregard to the fact that its decision to provide unqualified opinions concerning the accuracy of the financial statements would lull TBW's innocent directors and officers into a false sense of security and would facilitate the fraud that the Looters were committing upon them, and thus would create a high likelihood that TBW would be harmed.

93. As a result of Deloitte's negligence and aiding and abetting the Looters' breach of fiduciary duties, TBW collapsed under the weight of its debt taken on in reliance on Deloitte's

audits. As a direct and proximate result of its reliance upon Deloitte's grossly negligent audits and resulting misrepresentations, TBW incurred a loss of approximately $6 billion.

PRAYER FOR RELIEF

WHEREFORE, TBW respectfully requests judgment against Defendant, under all applicable causes of action, as follows:

1. actual, compensatory and consequential damages in an amount to be proven;
2. rescission or rescissory damages;
3. pre-judgment and post-judgment interest as allowed by law; and
4. such other and further legal and equitable relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: September 26, 2011

Respectfully submitted,

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