

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

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In re:  
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF TOUSA, INC., *ET AL.*,

Plaintiff

vs.

CITICORP NORTH AMERICA, INC., *ET AL.*, ;

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-01435-JKO

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'  
MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO COMPEL DISCOVERY FROM NON-PARTY ALIXPARTNERS LLP**

The Committee of Unsecured Creditors (the "Committee") respectfully requests the Court to order non-party AlixPartners, LLP ("AlixPartners" or "Alix") to comply with the Committee's outstanding document requests. The Committee seeks information from AlixPartners that is relevant to one of the central issues in this case, *i.e.*, the insolvency of the debtors at the time of the fraudulent transfer. Although we have made numerous, good-faith attempts to reach a negotiated solution, AlixPartners has refused to comply with four of the Committee's document requests.

AlixPartners provided an opinion that TOUSA, Inc. was solvent, on a consolidated basis, on July 31, 2007. The Solvency Opinion is attached as Appendix A. The accuracy of that

opinion is a key issue in this adversary proceeding. Indeed, but for the Solvency Opinion issued by AlixPartners, the July 31, 2007 transactions that gave rise to this litigation would not have happened. Nonetheless, without explanation or legal justification, AlixPartners refuses to produce responsive documents. The document requests at issue seek information relating to AlixPartners' experience, qualifications, and fees —information that goes directly to the weight and credibility of the Solvency Opinion. This Court should compel its production.<sup>1</sup>

### **BACKGROUND**

#### **A. The Validity of AlixPartners' Solvency Opinion Will Be A Central Issue In This Case**

The Complaint in this Adversary Proceeding alleges, among other things, that fraudulent transfers occurred on July 31, 2007. To support those claims, Plaintiff will seek to prove that the debtor/transferees were already insolvent on that date, or were rendered insolvent by the transfers.

One of the conditions precedent to the July 31, 2007 transactions was the procurement by TOUSA of "an opinion of solvency of AlixPartners, LLP in form and substance reasonably satisfactory to the Administrative Agent." In keeping with this requirement, and to protect themselves in future litigation, the TOUSA Board of Directors engaged AlixPartners to provide a solvency opinion. The accuracy and reliability of the AlixPartners' Solvency Opinion are thus at the very core of this fraudulent conveyance action.

#### **B. The Committee's Efforts To Obtain Documents From AlixPartners**

Because of the importance of solvency questions in this case, the Committee served a non-party subpoena on AlixPartners four days after the Complaint was filed. That subpoena sought documents related to the AlixPartners solvency opinion, including the following:

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<sup>1</sup> Pursuant to 11 U.S.C. § 105, "[t]he [bankruptcy] court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

(17) documents identifying any other engagements in which Alix has advised, consulted, or assessed the value of any company in the Real Estate or Homebuilding Industries since 2005;

(18) documents reflecting solvency opinions or valuations that Alix has provided regarding any company in the real estate or homebuilding industries since 2005;

(19) documents reflecting the total amount charged by Alix for any solvency opinions or valuation performed since August 1, 2006; and

(20) documents sufficient to identify any engagement in which Alix has declined a request to provide a solvency opinion or provided an opinion that a company was insolvent since 2005.

The Committee's July 18, 2008 subpoena and document request is attached as Appendix B.

AlixPartners raised objections to the subpoena, and counsel for the Committee spoke with and wrote to them on a number of occasions in an attempt to address those objections. In a July 21, 2008 telephone call, counsel for AlixPartners voiced concerns about revealing the names of its other clients. In response, the Committee explained that these documents would be governed by the comprehensive Protective Order [Dock. # 1591]. The Committee even expressed its willingness to accept merely a broad description of specific clients, *e.g.*, by identifying the client's industry, geographic region, and approximate annual revenues, but not an identification of the client by name. AlixPartners agreed to consider this proposal.

On August 8, 2008, AlixPartners served its formal Responses and Objections to the Committee's document requests, attached as Appendix C. AlixPartners objected to the four requests listed above on the grounds that they are "overbroad, unduly burdensome, vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence." Thus, AlixPartners stated in its Responses and Objections that the only documents it intended to produce in response to these four requests were "marketing or other publicly disseminated

materials, if any, regarding AlixPartners' valuation and solvency opinion expertise in the real estate or homebuilding industries".<sup>2</sup> *See* Appendix C.

In subsequent telephone calls and emails, AlixPartners professed a desire to work out an agreement. AlixPartners assured the Committee's counsel that it was endeavoring to determine whether responsive documents even existed and that AlixPartners intended to negotiate with the Committee regarding the production of any responsive documents that did exist. Ultimately, though, AlixPartners informed the Committee that documents responsive to each of the four requests existed, but that AlixPartners would not produce any of them. The Committee emphasized the importance of these documents and suggested ways that any burden imposed on Alix might be mitigated even further. The Committee also repeatedly asked Alix to describe ways in which the document requests could be modified to address Alix's concerns. Alix never did so. Most recently, in a September 22, 2008 letter, the Committee offered to accept declarations attesting to the relevant facts in lieu of the documents themselves.<sup>3</sup> *See* Appendix D. AlixPartners rejected that offer, and continues its refusal to produce responsive documents.<sup>4</sup>

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<sup>2</sup> AlixPartners seems to have abandoned this position, as it now claims that it will produce no documents whatsoever in response to these four requests. *See* Appendix D.

<sup>3</sup> With regard to requests numbers 17 and 18, the Committee offered:

- "to accept a declaration from an AlixPartners employee listing each of AlixPartners' engagements advising companies in the real estate or homebuilding industries, the approximate dates of each engagement, and whether it provided a solvency opinion or valuation in connection with the engagement";
- alternatively, to accept "engagement letters and any solvency opinions or valuations (with any figures redacted) from all of AlixPartners' engagements with companies in the real estate and homebuilding industries" during the relevant time.

Likewise, with respect to request number 19, the Committee offered to accept:

- "a declaration from an AlixPartners employee that provides the total amount billed by AlixPartners for providing each solvency opinion or valuation"; or
- "any summary billing documents possessed by AlixPartners that provides [sic] the total amount billed for each solvency opinion or valuation."

Finally, with regard to request number 20, the Committee expressed its willingness to accept "a declaration identifying those instances since 2005 where AlixPartners declined a request to provide a solvency opinion or provided an opinion that a company was insolvent since 2005." *See* Appendix D.

<sup>4</sup> In the interim, AlixPartners has produced documents responsive to the Committee's other document requests; its refusal to produce is limited to the four document requests discussed herein.

**ARGUMENT**

Federal Rules of Civil Procedure 26 and 45 provide for reasonable discovery to be taken from non-parties. Rule 45 further contemplates the issuance of an order compelling the production of documents by a non-party in response to a subpoena. The documents requested from AlixPartners are of paramount importance to the adversary proceeding before this Court. Yet Alix has refused to produce documents in response to four of the Committee's requests. Alix's vague objections on burden and relevance grounds are unavailing.

**A. The Documents Sought Are Highly Relevant To The Underlying Litigation.**

The documents requested in the Committee's subpoena to Alix are plainly relevant, and there is no colorable argument that this information is not discoverable under Rule 26(b)(1). AlixPartners' Solvency Opinion is central to the instant litigation. The Committee needs to explore AlixPartners' experience performing solvency analyses in the real estate and homebuilding industries, whether AlixPartners followed its customary methodologies in performing the TOUSA solvency analysis, whether AlixPartners was paid a premium to render its Solvency Opinion for TOUSA (and if so, why), and whether its opinion of solvency in this case is consistent with its opinions of insolvency (if any) in other cases. The four outstanding document requests seek precisely this information.

Document request number 17 seeks the identification of other engagements in which Alix advised, consulted, or assessed the value of a real estate or homebuilding company in the two and a half years leading up to its participation in the TOUSA transaction. The extent and nature of AlixPartners' experience working with companies in these industries is plainly relevant to evaluating the weight that should be given to the Solvency Opinion that AlixPartners provided to TOUSA, Inc.

Document request number 18 seeks the products of those engagements, *i.e.*, the solvency opinions or valuations that Alix generated in the same industry and time period as number 17. These documents—or declarations attesting to the substance of these documents—are necessary for the Committee to analyze whether the solvency analysis and opinion AlixPartners engaged in with respect to TOUSA was comparable in scope and depth to other work done for other companies in similar circumstances, and whether the methodology, assumptions, and factual inquiries underlying the TOUSA Solvency Opinion were consistent with the methodology, assumptions, and factual inquiries underlying other solvency analyses by AlixPartners.

Request number 19 seeks information, through documents or declarations, reflecting the fees charged by Alix for similar work, *i.e.*, other solvency opinions and valuation studies. Again, it is clearly relevant whether the amount charged to TOUSA by AlixPartners for the solvency opinion was comparable to the fees charged to other clients by AlixPartners for similar advice. If the fees paid by TOUSA were significantly lower than the fees paid by other companies for comparable solvency opinions, that fact may shed light on the amount of time spent by AlixPartners in its investigation and analysis of TOUSA's solvency and therefore on the persuasiveness (or lack thereof) of the opinion. If the fees paid by TOUSA were significantly higher, that fact may suggest a motive for providing a questionable solvency opinion for a company in dire financial circumstances. The documents sought in request number 19 may demonstrate that TOUSA was paid a "premium" for this "high-risk" solvency opinion.

Documents responsive to request number 20, pertaining to instances in which AlixPartners provided an opinion that a company was insolvent or declined a request to provide a solvency opinion are equally necessary for comparative purposes. Such documents may indicate that AlixPartners has refused to provide solvency opinions under circumstances comparable to those present here; that it has used inconsistent standards, methodologies, or

factual assumptions; or even that AlixPartners has never refused to provide a Solvency Opinion as long as a customer will pay a “premium” rate. Such information would be relevant in assessing the credibility and weight of the solvency opinion provided by AlixPartners in this case. In short, these four categories of documents go to the heart of the TOUSA litigation.

Document requests will not be considered overly broad or unduly burdensome if they seek “specifically identifiable documents that are logically connected to the subject matter of the underlying case.” *Ligas v. Maram*, No. 05 C 4331, 2007 WL 4225459, at \*3 (N.D. Ill. Nov. 27, 2007). The documents requested here are directly and logically connected to the subject matter of the case.

**B. AlixPartners Has No Legitimate Reason Not To Comply With The Subpoena.**

AlixPartners objects to these document requests on the ground that they are unduly burdensome. It is difficult to see how these narrow requests for highly relevant information can be considered unduly burdensome, and AlixPartners has not provided any explanation of its objection on that basis. Moreover, AlixPartners has repeatedly rebuffed efforts by the Committee to reach an agreement by which any supposed undue burden can be addressed by a further narrowing of the scope of the requests.

To determine whether a Rule 45 subpoena is unduly burdensome, “a court may weigh a number of factors including relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are requested, and the burden imposed.” *Whitlow v. Martin*, No. 04-3211, 2008 WL 2414830, at \*3 (C.D. Ill. 2008) (quotation marks and citation omitted). All of these factors weigh against a finding of undue burden. The four document requests are detailed, specific, and narrowly tailored to result in the production of important documents, and all four requests are restricted to

a reasonably short time frame and a specific topical subject matter.<sup>5</sup> See *Ligas*, 2007 WL 4225459, at \*3 (upholding third-party subpoenas where the document requests were “tailored with limiting language that ensures that the documents produced will be relevant to the issues in this case.”) These carefully crafted document requests are not overly broad or unduly burdensome, but even so, the Committee has made numerous attempts to narrow the document requests even further in order to reduce the burden of responding. AlixPartners has not claimed that it would be difficult to identify and locate responsive documents; indeed, it has already collected at least some of the relevant documents.

While it raised no such issue in its Responses and Objections, Alix has also made mention of its concerns regarding the confidentiality of its client information. These concerns would be an insubstantial basis for an objection even if Alix had made one. Documents produced pursuant to the non-party subpoena served on AlixPartners are governed by the comprehensive Protective Order in place in the underlying litigation. There is no reason to think that this Protective Order would provide insufficient protection. And in any case, as has been impressed upon counsel for AlixPartners, the Committee is willing to consider approaches that would protect the names of AlixPartners’ other clients.

A subpoena will not be quashed “merely because compliance may be burdensome; rather, the burden imposed must be ‘undue.’” *Ligas*, 2007 WL 4225459, at \*4. “A burden is undue when it is not justified by an offsetting benefit to the administration of justice,” *e.g.*, when “compliance is unlikely to yield relevant evidence.” *Id.* Requests that are “reasonably calculated to lead to the discovery of admissible evidence,” by contrast, will be enforced. *Id.*, at \*3. Here,

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<sup>5</sup> Document request number 20, for example, calls only for “documents sufficient to identify” instances in which Alix has declined a request to provide a solvency opinion or has provided an opinion that a company was not solvent since 2005. Similarly, document request number 19 is limited to a one-year period in order to minimize the burden on AlixPartners.

there can be no doubt that the documents sought are highly relevant to evaluating the accuracy of the AlixPartners Solvency Opinion and determining how much, if any, weight it should be given.

**CONCLUSION**

AlixPartners has no basis for its refusal to respond to the Committee’s reasonable document requests. Given the importance of the Solvency Opinion to the litigation, the Committee should be permitted to obtain this discovery from AlixPartners. Accordingly, the Committee respectfully asks that the Court order AlixPartners to provide documents responsive to the four outstanding document requests.

Dated: October 16, 2008

Respectfully submitted,

I hereby certify that the undersigned attorneys, along with others at their firm, have conferred with Debtors’ counsel in a good faith effort to resolve by agreement the issues raised herein, but have been unable to do so.

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I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications in this Court set forth in Local Rule 2090-1(A)

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I HEREBY CERTIFY that the undersigned attorneys are appearing *pro hac vice* in this matter pursuant to court order dated July 10, 2008 [D.E. 1360, 1362, 1363 in Ch. 11 No. 08-10928]

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/s/ Patricia A. Redmond

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/s/ Michael L. Waldman

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2008, I caused a true and correct copy of the Official Committee of Unsecured Creditors of TOUSA, Inc., *et al.*'s Motion To Compel Discovery From Non-Party AlixPartners LLP to be served by e-mail on:

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*/s/ Michael L. Waldman*

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Michael L. Waldman

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
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In re:  
TOUSA, INC., *et al.*,

Debtors.

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OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF TOUSA, INC., *ET AL.*,

Plaintiff

vs.

CITICORP NORTH AMERICA, INC., *ET AL.*, ;

Defendants.

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Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-01435-JKO

**[PROPOSED] ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' MOTION TO COMPEL NON-PARTY ALIXPARTNERS LLP**

**THIS MATTER** comes before the Court on the Official Committee Of Unsecured Creditors' Motion To Compel Discovery From Non-Party AlixPartners LLP. Having reviewed the Committee's Motion, it is **ORDERED AND ADJUDGED** that:

1. The Committee's Motion is **GRANTED**.
2. AlixPartners LLP shall turn over to the Committee all documents responsive to the Committee's outstanding discovery requests.

###

**Submitted by:**

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*Fraudulent Conveyance Adversary Proceeding Counsel for the Official Committee of  
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Copies to:

Patricia A. Redmond

*(Attorney Redmond shall upon receipt serve a copy of this Order upon all interested parties and  
file a certificate of service.)*

# APPENDIX A



Chicago Dallas Detroit Düsseldorf London Los Angeles  
Milan Munich New York Paris San Francisco Shanghai Tokyo

July 31, 2007

Board of Directors  
TOUSA, Inc.  
4000 Hollywood Boulevard  
Suite 500N  
Hollywood, FL 33021

To The Members of the Board of Directors of TOUSA, Inc. ("TOUSA"):

We understand that TOUSA is considering entering into the acquisition, financing, and other transactions described on Exhibit A of the attached "Senior Secured Credit Facilities Commitment Letter" (collectively, the "Transactions"). You have requested the opinions of AlixPartners, LLP ("AlixPartners") as to the solvency of TOUSA immediately following consummation of the Transactions.

For purposes of this opinion the following terms are defined as follows:

**Present Fair Saleable Value** - The amount that may be realized by an independent willing seller from an independent willing buyer if the aggregate or total assets (including goodwill) of TOUSA are sold with reasonable promptness in an arm's length transaction under present conditions in an existing and not theoretical market.

**Will Not Have Unreasonably Small Capital** - This means that TOUSA will have the ability to generate enough cash from operations, asset dispositions, or refinancing, or a combination thereof, to meet its obligations (including Stated Liabilities, Identified Contingent Liabilities and New Financing) as they become due and continue to operate as a going concern.

**Stated Liabilities** - The recorded liabilities of TOUSA as presented on the most recent consolidated balance sheet provided to AlixPartners. Stated Liabilities exclude the New Financing.

**New Financing** - The indebtedness incurred, assumed or guaranteed by the subject entity pursuant to the Facilities (as defined in the Senior Secured Credit Facilities Commitment Letter) immediately following consummation of the Transactions.

**Identified Contingent Liabilities** - The reasonably estimated contingent liabilities that may result from, without limitation, threatened or pending litigation, asserted claims and assessments, environmental conditions, guaranties, indemnities, contract obligations, uninsured risks, purchase obligations, taxes, and other contingent liabilities as identified and

Confidential



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explained to AlixPartners in terms of their nature, expected timing and estimated dollar amount by responsible officers of the subject entity.

For purposes of the opinions set forth herein, we have among other things:

- (i) reviewed certain publicly available financial statements and other information of TOUSA;
- (ii) reviewed certain internal financial statements and other financial and operating data concerning TOUSA prepared by the management of TOUSA;
- (iii) reviewed and analyzed certain financial projections concerning TOUSA prepared by the management of TOUSA;
- (iv) discussed the past and current operations and financial condition and the prospects of TOUSA with senior executives of TOUSA;
- (v) compared the financial data and valuation multiples of TOUSA with that of certain other publicly traded companies we deemed relevant;
- (vi) reviewed the pro forma impact of the Transactions on certain financial metrics of TOUSA;
- (vii) reviewed drafts of the financing agreements; and
- (viii) performed such other analyses and considered such other factors as we have deemed appropriate.

The underlying information and facts upon which this opinion is based were provided by others, except for certain information provided by AlixPartners in its advisory capacity. While AlixPartners has provided advisory services to TOUSA and has reviewed such underlying information, AlixPartners makes no representation or warranty regarding the accuracy or completeness of the information relied on. We also advise you that nothing has come to our attention during the course of this engagement that has caused us to believe that it was unreasonable for us to rely upon the information and projections we have reviewed. This opinion is also based on forecasts of future events. A forecast, by its nature, is speculative and includes estimates and assumptions which may prove to be wrong, or which may be materially different from actual future results. Risk factors include, but are not limited to, future micro or macro economic developments, organization changes, business and casualty losses. Furthermore, the industry in which



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TOUSA operates in a cyclical industry and it may experience unforeseen downturns that could adversely affect the Company.

With respect to the financial projections furnished to us, such information has been reviewed by AlixPartners and has been the subject of such discussion and such inquiry as we considered appropriate under the circumstances. AlixPartners does not assume any responsibility for the sufficiency and/or accuracy of any information provided to or otherwise obtained by AlixPartners. We have assumed and relied upon, without independent verification, the accuracy and completeness of the information reviewed by us for the purposes of these opinions. We also advise you that nothing has come to our attention during the course of this engagement that has caused us to believe that it was unreasonable for us to rely upon the information and projections we have reviewed.

Our opinions are necessarily based upon financial, economic, market, and other conditions as they exist and can be evaluated on, and on the information and projections made available to us as of the date hereof. Thus, our opinion speaks only as to circumstances today and we undertake no duty or obligation to supplement or revise this opinion if information or circumstances change after the date hereof.

We have not assumed any obligation to conduct, nor have we conducted, any physical inspection of the properties or other assets of TOUSA. In forming our opinions we relied on appraisals of TOUSA's assets conducted by others. AlixPartners has not taken any action to verify the accuracy or completeness of such appraisals and makes no representation or warranty regarding their accuracy. Also, we have assumed that the Transactions are consummated with the terms and conditions represented to AlixPartners by management.

These opinions are for the information and use of the Board of Directors of TOUSA in its determination as to whether to approve consummation of the Transactions. No other party, other than the financial institutions providing the financing, may rely upon the aforementioned opinions of AlixPartners without our prior written consent. Our opinions do not address the merits of the Transactions and we are not expressing any opinion herein as to the prices at which the TOUSA common stock will trade following the announcement or consummation of the Transactions.

Based upon the foregoing, and the reliance thereon, it is our opinion as of the date hereof that, assuming the Transactions have been consummated as proposed:

- (i) the Present Fair Saleable Value of the assets of TOUSA exceeds and will exceed its Stated Liabilities, Identified Contingent Liabilities and the New Financing;



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- (ii) TOUSA is and will be able to pay its debts (including, without limitation, its Stated Liabilities, Identified Contingent Liabilities and the New Financing) as they mature; and
- (iii) TOUSA Will Not Have Unreasonably Small Capital for the business in which it is and will be engaged.

Therefore, based on the opinions set forth above, TOUSA would be solvent immediately after giving effect to the Transactions.

AlixPartners is currently providing advisory services to TOUSA. TOUSA and AlixPartners agree to the indemnity provisions and other matters as set forth in the General Terms and Conditions of the Engagement Letter dated June 15, 2007, which is incorporated by reference into this letter.

Very truly yours,

ALIXPARTNERS, LLP

A handwritten signature in cursive script that reads 'AlixPartners LLP'.

Dated: July 31, 2007

# APPENDIX B

AO88 (Rev. 12/07) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT  
Northern District of Illinois**

In re: TOUSA, INC , et al.  
V.

**SUBPOENA IN A CIVIL CASE**

Case Number:<sup>1</sup> 08-01435-JKO

TO: Alix Partners  
181 W. Madison Street, Suite 4700  
Chicago, IL 60602

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

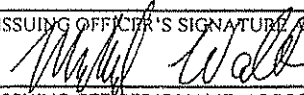
See Attached Schedule A

PLACE Robbins, Russell, Englert, Orseck, Untereiner & Sauber, LLP 1801 K Street, NW, Ste. 411-L, Washington, DC 20006	DATE AND TIME 8/4/2008 5:00 pm
---	-----------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6)

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiffs	DATE 7/18/2008
---	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Michael Waldman, Robbins, Russell, Englert, Orseck, Untereiner & Sauber, LLP 1801 K Street, NW, Ste. 411-L, Washington, DC 20006, 202-775-4525
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(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number

AO88 (Rev. 12/07) Subpoena in a Civil Case (Page 2)

**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

**(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA**

(1) **Avoiding Undue Burden or Expense; Sanctions** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection**

(A) **Appearance Not Required** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena**

(A) **When Required** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B) the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) DUTIES IN RESPONDING TO A SUBPOENA**

(1) **Producing Documents or Electronically Stored Information** These procedures apply to producing documents or electronically stored information:

(A) **Documents** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection**

(A) **Information Withheld** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) CONTEMPT**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**Schedule A**

**DEFINITIONS**

1. "Alix" means Alix Partners LLP and any of its predecessors and any of its predecessor, past or present employees, agents, representatives, and all other persons acting or purporting to act on its or any of its predecessors behalf.

2. "Amended Revolver Agreement" means the agreement for the revolving credit facility that certain TOUSA Companies entered into on July 31, 2007 with Citicorp, as Administrative Agent, and certain other lending institutions.

3. The terms "and", "or", and "and/or", as used herein, shall be construed either conjunctively or disjunctively, as required by the context, to bring within the scope of these requests any information that might be deemed outside their scope by any other construction.

4. The term "any" means one or more.

5. "Citicorp" means Citicorp North America, Inc.

6. "Communication," whether capitalized or not, means any verbal, written, or electronic transmittal of information and includes, but is not limited to, discussions, negotiations, correspondence, faxes, telegrams, telexes, memoranda, notes, presentations, conversations, speeches, meetings, conferences, remarks, questions, answers, panel discussions, and symposia, whether written or oral. The term includes communications and statements which are face-to-face and those which are transmitted by media such as intercom, telephone, televisions, radio, modem, electronic mail, instant message or text message.

7. "Conveying Subsidiaries" means those corporate subsidiaries of TOUSA, Inc. identified by name in Paragraph 9 of the Adversary Complaint.<sup>1</sup>

8. "Creditors' Committee" means the Official Committee of Unsecured Creditors of Debtors.

9. "DB Letter Agreement" means the letter agreement pursuant to which DB Securities acted as financial advisor to certain of the Old Obligors in connection with the Transeastern Acquisition.

10. "DB Securities" means Deutsche Bank Securities Inc.

11. "DB Securities Action" means the lawsuit filed in New York by DB Securities on March 13, 2007 for claims allegedly arising out of the DB Letter Agreement.

12. "DB Trust" means Deutsche Bank Trust Company Americas.

13. "Debtors" means TOUSA, Inc. and its affiliated debtors and debtors-in-possession (or any one or more of such entities), both prior to and during the course of the bankruptcy, and all past and present directors and officers, employees, agents, attorneys, accountants, advisors, experts, consultants, representatives, and all other persons acting or purporting to act on its behalf.

14. "Document," whether capitalized or not, is defined to be synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), including,

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<sup>1</sup> The "Conveying Subsidiaries" include the following: Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; Newmark Homes, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes,

without limitation, electronic or electronically stored information — including writings, notes, presentations, memoranda, drawings, graphs, charts, spreadsheets, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of this term. The term “document” includes metadata associated with an electronic file.

15. “Falcone Entities” means Arthur J. Falcone, Edward W. Falcone, Falcone/TEP Holdings LLC f/k/a Falcone/Ritchie LLC, and affiliates thereof.

16. “First Lien Term Loan Credit Agreement” means the \$200 million first lien term loan facility that certain TOUSA Companies entered into with Citicorp, as Administrative Agent, and certain other lending institutions.

17. “Florida Action” means the Florida declaratory action filed on November 28, 2006, by Guarantors against DB Trust seeking a declaration that the Guarantors’ obligations under the Guaranties had not been triggered and/or that their exposure under such Guaranties differed from what DB Trust had alleged in certain demand letters.

18. “Guaranties” means the unsecured completion guaranties and unsecured carve-out guaranties executed by the Guarantors on August 1, 2005 in respect of the Old Debt.

19. “Guarantors” means TOUSA and Homes.

20. “Homes” means TOUSA Homes L.P., both prior to and during the course of the bankruptcy.

21. “Including,” whether capitalized or not, means including but not limited to.

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Inc.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc

22. “Junior Mezzanine Credit Agreement” means the August 1, 2005 agreement creating the \$87.5 million Junior Mezzanine Credit facility with DB Trust as the administrative agent.

23. “Junior Mezzanine Settlement” means the June 29, 2007 settlement of the Junior Mezzanine Credit facility dated August 1, 2005.

24. “Junior Mezzanine Settlement Agreement” means the June 29, 2007 agreement settling claims relating to the Junior Mezzanine Credit facility dated August 1, 2005.

25. “Land Bank Settlement Agreement” means the May 30, 2007 settlement by and between, among others, TOUSA, Homes, the Transeastern JV subsidiaries and the Falcone Entities.

26. “New Debt” or “New Loans” means the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, and the Amended Revolver Agreement, each dated July 31, 2007, that were entered into by certain TOUSA Companies.

27. “New Lenders” means lenders on the First Lien Term Loan Agreement, the Second Lien Term Loan Agreement, and the Amended Revolver Agreement, each dated July 31, 2007, that were entered into by certain TOUSA Companies.

28. “New York Action” means the New York lawsuit filed by DB Trust on November 29, 2006, against the Guarantors asserting claims allegedly arising out of DB Trust’s rights under the Guaranties.

29. “Old Debt” or “Old Loans” means the senior, senior mezzanine, and junior mezzanine credit facilities dated August 1, 2005.

30. "Old Obligor" means the obligors on the Old Debt, including EH/Transeastern, LLC; TOUSA Senior LLC; TOUSA Mezzanine LLC; TOUSA Mezzanine Two; TOUSA and Homes.

31. "Old Lenders" means lenders on the senior, senior mezzanine, and junior mezzanine credit facilities dated August 1, 2005.

32. "Petition Date" means January 29, 2008.

33. "Prepetition Transeastern Litigation" means the Florida Action, the New York Action, and the DB Securities Action.

34. "Project" means a project undertaken by any TOUSA Company to finance, acquire, develop, construct, design, manage, market and/or sell property (including but not limited to any parcel of land, residence, subdivision and/or community), whether considered, planned, under construction, or constructed but with unsold units, as of July 31, 2007.

35. "Relating to," whether capitalized or not, means concerning, reflecting, referring to, pertaining to, containing, describing, regarding, illustrating, mentioning, evidencing, embodying, involving, analyzing, reporting on, commenting on, constituting, supporting, discussing or having any logical or factual connection whatsoever with the subject matter in question.

36. "Revolving Credit Agreement" means the agreement dated August 1, 2005 creating the revolving credit facility with DB Trust as Administrative Agent.

37. "Second Lien Term Loan Credit Agreement" means the \$300 million second lien term loan facility that certain TOUSA Companies entered into with Wells Fargo Bank, N.A., as Administrative Agent, and certain other lending institutions.

38. "Senior Credit Agreement" means the August 1, 2005 agreement creating the \$450 million senior credit facility with DB Trust as the administrative agent.

39. "Senior Mezzanine Credit Agreement" means the August 1, 2005 agreement creating the \$137.5 million Senior Mezzanine Credit facility with DB Trust as the administrative agent.

40. "Senior Mezzanine Settlement" means the June 29, 2007 settlement of the Senior Mezzanine Credit facility dated August 1, 2005.

41. "Senior Mezzanine Settlement Agreement" means the June 29, 2007 agreement settling claims relating to the Senior Mezzanine Credit facility dated August 1, 2005.

42. "Solvency Opinion" means the opinion regarding TOUSA's solvency that was issued by Alix Partners LLP on July 31, 2007, in connection with the Transeastern Settlement.

43. "TOUSA" means TOUSA, Inc., both prior to and during the course of the bankruptcy.

44. "TOUSA Companies" means TOUSA, together with all of its predecessors, affiliates, subsidiaries, and joint ventures, both prior to and during the course of the bankruptcy, as well as any and all predecessor, past and present directors and officers, employees, agents, attorneys, accountants, advisors, experts, consultants, representatives, and all other persons acting or purporting to act on its behalf.

45. "Transeastern Acquisition" means Transeastern JV's (and/or TE/TOUSA's) acquisition of substantially all of the homebuilding assets of Transeastern Properties, Inc., which transaction closed on August 1, 2005.

46. "Transeastern Debt" means the Senior Credit Agreement, the Senior Mezzanine Credit Agreement, and the Junior Mezzanine Credit Agreement, each dated August 1, 2005,

totaling \$675 million, that were entered into between Homes, TOUSA, certain Transeastern JV subsidiaries, DB Trust and various lenders to fund the Transeastern Acquisition.

47. "Transeastern JV" means the joint venture, between Homes and an entity controlled by the Falcone Entities, that acquired substantially all of the homebuilding assets of Transeastern Properties, Inc. on August 1, 2005.

48. "Transeastern Settlement" means the following agreements in settlement of the Prepetition Transeastern Litigation: (1) the Senior Credit Mutual Release and Consent Agreement; (2) the Senior Mezzanine Settlement and Release Agreement; (3) the Junior Mezzanine Settlement and Release Agreement; and (4) the Land Bank Settlement Agreement.

49. "You" or "your," whether capitalized or not, means the recipient of this subpoena or document request, together with all of its predecessors, affiliates, subsidiaries, and joint ventures, as well as any and all predecessor, past and present directors and officers, employees, agents, attorneys, accountants, advisors, experts, consultants, representatives, and all other persons acting or purporting to act on its behalf.

### INSTRUCTIONS

A. The preceding Definitions apply to each of these Instructions and each of the succeeding Requests.

B. You are required to obtain and furnish all information available to you and to any of your representatives, agents, employees and/or attorneys, and to obtain and furnish all information that is in your actual or constructive possession, custody or control, or in the actual or constructive possession, custody or control of any of your representatives, agents, employees, officers, accountants or attorneys.

C. Each Request is continuing and requires you to supplement your responses to the fullest extent required by any applicable law or rule.

D. References to the singular include the plural, and references to the plural include the singular as needed to construe the Requests in their broadest permissible form.

E. The masculine form of a noun or pronoun includes the feminine form to construe the Requests in their broadest permissible form.

F. Any document requested herein shall be produced as it is kept in the ordinary course of business. The name of the file from which it was produced, the identity of the person from whose file it was produced, and the identity of the present custodian of that file each shall be set forth. All documents requested herein shall be produced electronically as tagged image file format ("TIFF") or portable document format ("PDF") files with extracted text for electronic documents, except that all spreadsheets, including but not limited to those created with Excel software, shall be produced in their native form. Metadata shall be provided for documents that were electronic in their native form.

G. If any document requested herein was formerly in your possession, custody or control and has been lost, destroyed or otherwise disposed of, identify in writing each such document, in accordance with terms and conditions to be agreed upon by the parties or ordered by the Court.

H. If any document is withheld or not produced under a claim of privilege, immunity or otherwise, identify in writing the basis upon which the asserted privilege, immunity or other reason for non-disclosure is claimed, in accordance with terms and conditions to be agreed upon by the parties or ordered by the Court.

I. If only a part of a document is protected by any privilege or immunity, the document shall be produced with only the privileged matter redacted.

J. Each paragraph and subparagraph herein shall be construed independently and not with reference to any other paragraph or subparagraph for the purposes of limitation.

K. Some of the document requests may overlap. No inference is to be drawn from the fact that two or more requests might appear to request the same documents.

**DOCUMENTS TO BE PRODUCED**

1. All documents relating to TOUSA Companies from September 1, 2006 to present.
2. All documents relating to the Solvency Opinion.
3. All documents relating to any communications between or among Alix, the TOUSA Companies, or any lender relating to the possible retention of Alix to provide services to TOUSA Companies.
4. All documents relating to communications relating to the engagement that culminated in the Solvency Opinion.
5. All documents relating to communications with New Lenders or Old Lenders relating to the engagement that culminated in the Solvency Opinion.
6. All documents, including all communications, work papers, notes, models, memoranda, presentations, and the like, relating to the TOUSA Companies or one or more of the subsidiaries of TOUSA, including any such documents relating to the analysis that culminated in the Solvency Opinion, regardless of whether Alix relied on or considered the documents in forming its opinion.
7. All documents that Alix reviewed in rendering the Solvency Opinion, regardless of whether Alix relied on or considered the documents in forming its opinion, including all documents referenced in items (i) through (viii) on page 2 of the Solvency Opinion.

8. All documents reflecting or supporting the “appraisals of TOUSA’s assets conducted by others” referenced on page 3 of the Solvency Opinion.

9. All drafts of the Solvency Opinion.

10. All documents relating to communications relating to the Solvency Opinion or drafts of the Solvency Opinion.

11. Any presentations, including any presentations made to or by Alix’s opinion committee, relating to the Solvency Opinion.

12. All documents relating to the TOUSA Companies, Solvency Opinion, the New Loans, or the Old Loans produced by Alix to Jeffries Group, Inc., or any other party or entity since August 1, 2007.

13. All documents relating to the engagement letter between Alix and TOUSA Companies, including all drafts.

14. All documents relating to the engagement letter between Alix and any New Lender regarding any of the TOUSA Companies, including all drafts.

15. All records relating to Alix’s billing, invoicing or charging for any matter or project involving the TOUSA Companies, including all correspondence, invoices, internal time records, and description of tasks and time spent on tasks.

16. All documents relating to the resume, curriculum vitae, education, training and professional experience of each individual who worked on the engagement that culminated in the Solvency Opinion.

17. All documents identifying any other engagements in which Alix has advised, consulted or assessed the value of any company in the Real Estate or Homebuilding Industries since 2005.

18. All documents reflecting solvency opinions or valuations that Alix has provided regarding any company in the real estate or homebuilding industries since 2005.
19. All documents reflecting the total amount charged by Alix for any solvency opinions or valuation performed since August 1, 2006.
20. All documents sufficient to identify any engagement in which Alix has declined a request to provide a solvency opinion or provided an opinion that a company was insolvent since 2005.
21. All documents relating to work, other than work on the Solvency Opinion, that Alix performed for any of the TOUSA Companies during 2006 and 2007.
22. All financial projections, forecasts, analyses, spreadsheets, reports and other documents relating to the TOUSA Companies provided to or prepared (in whole or in part) by Alix.
23. All policies, guidelines, or instructions relating to the retention or destruction of documents.

# APPENDIX C

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re	:	Chapter 11 Cases
TOUSA, INC., <u>et al.</u> ,	:	
	:	Case No. 08-10928-JKO
Debtors.	:	Jointly Administered
<hr/>		
OFFICIAL COMMITTEE OF UNSECURED	:	
CREDITORS OF TOUSA, INC., <u>ET AL.</u> ,	:	Adv. Pro. No. 08-01435-JKO
	:	
Plaintiff,	:	
vs.	:	
CITICORP NORTH AMERICA, INC., <u>ET AL.</u> ,	:	
	:	
Defendants.	:	

**RESPONSES AND OBJECTIONS OF ALIXPARTNERS LLP TO THE  
SUBPOENA ISSUED ON BEHALF OF THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF TOUSA, INC.**

Third-party AlixPartners LLP (“AlixPartners”) hereby responds to the requests for the production of documents (the “Requests”) contained in the subpoena issued by Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP (“Robbins Russell”), counsel for the Official Committee of Unsecured Creditors of TOUSA, Inc., the plaintiff in the above-captioned adversary proceeding.

**GENERAL OBJECTIONS TO DEFINITIONS,  
INSTRUCTIONS AND REQUESTS**

1. AlixPartners objects to the Requests to the extent they seek the production of documents that contain material protected by the attorney-client privilege,

that constitute attorney work product or that are otherwise privileged or protected from disclosure.

2. AlixPartners objects to the Requests to the extent they are unduly burdensome, overbroad and cumulative. AlixPartners will use reasonable efforts to collect, review and produce responsive documents from the appropriate custodians.

3. AlixPartners objects to the Requests to the extent they either fail to specify any time period for which they seek responsive documents, or identify a time period that is overbroad and unduly burdensome. AlixPartners will produce responsive, non-privileged documents from the time period beginning December 1, 2006 through January 29, 2008.

4. AlixPartners objects to the Requests to the extent they seek production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

5. AlixPartners objects to the Requests on the grounds of overbreadth and irrelevance to the extent they seek documents unrelated to AlixPartners' work regarding TOUSA, Inc. ("TOUSA"). AlixPartners will produce responsive, non-privileged documents related to its work regarding TOUSA.

6. AlixPartners objects to the Requests to the extent they seek the production of documents that contain proprietary business information or reveal strategic positions or other confidential information. Without waiver, documents will be withheld on this basis until execution of the protective order attached to the subpoena.

7. AlixPartners objects to the Requests to the extent they seek the production of documents concerning AlixPartners' relationships, proposals, negotiations or agreements with third parties.

8. AlixPartners objects to the Requests to the extent their definitions are inconsistent with normal English usage and to the extent they seek to impose obligations beyond those required by the applicable rules. AlixPartners will interpret the Requests in accordance with normal English usage and the applicable rules.

9. AlixPartners objects to the Requests to the extent they seek the production of information that is not within AlixPartners' possession, custody or control or is more readily obtainable from alternative sources, such as public sources.

10. AlixPartners submits these responses to the Requests without conceding the relevancy, materiality or admissibility of any information provided in response to the Requests and without prejudice to AlixPartners' rights to object to further subpoenas and document requests.

#### **SPECIFIC RESPONSES AND OBJECTIONS**

Subject to the General Objections, AlixPartners responds as follows:

***REQUEST NO. 1:*** *All documents relating to TOUSA Companies from September 1, 2006 to present.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents.

***REQUEST NO. 2:*** *All documents relating to the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents.

*REQUEST NO. 3: All documents relating to any communications between or among Alix, the TOUSA Companies, or any lender relating to the possible retention of Alix to provide services to TOUSA Companies.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the response to Request No. 1.

*REQUEST NO. 4: All documents relating to communications relating to the engagement that culminated in the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

*REQUEST NO. 5: All documents relating to communications with New Lenders or Old Lenders relating to the engagement that culminated in the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

*REQUEST NO. 6: All documents, including all communications, work papers, notes, models, memoranda, presentations, and the like, relating to the TOUSA Companies or*

*one or more of the subsidiaries of TOUSA, including any such documents relating to the analysis that culminated in the Solvency Opinion, regardless of whether Alix relied on or considered the documents in forming its opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 7:** *All documents that Alix reviewed in rendering the Solvency Opinion, regardless of whether Alix relied on or considered the documents in forming its opinion, including all documents referenced in items (i) through (viii) on page 2 of the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 8:** *All documents reflecting ot [sic] supporting the "appraisals of TOUSA's assets conducted by others" referenced on page 3 of the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 9:** *All drafts of the Solvency Opinion.*

**RESPONSE:** Without waiver, AlixPartners will produce responsive documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 10:** *All documents relating to communications relating to the Solvency Opinion or drafts of the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 11:** *Any presentations, including any presentations made to or by Alix's opinion committee, relating to the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 12:** *All documents relating to the TOUSA Companies, Solvency Opinion, the New Loans, or the Old Loans produced by Alix to Jeffries Group, Inc., or any other party or entity since August 1, 2007.*

**RESPONSE:** Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

**REQUEST NO. 13:** *All documents relating to the engagement letter between Alix and TOUSA Companies, including all drafts.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the response to Request No. 1.

**REQUEST NO. 14:** *All documents relating to the engagement letter between Alix and any New Lender regarding any of the TOUSA Companies, including all drafts.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague and ambiguous. Without waiver, AlixPartners will produce responsive, non-privileged documents related to the reliance letters provided by AlixPartners to the New Lender as described in the response to Request No. 1.

***REQUEST NO. 15:** All records relating to Alix's billing, invoicing or charging for any matter or project involving the TOUSA Companies, including all correspondence, invoices, internal time records, and description of tasks and time spent on tasks.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the response to Request No. 1.

***REQUEST NO. 16:** All documents relating to the resume, curriculum vitae, education, training and professional experience of each individual who worked on the engagement that culminated in the Solvency Opinion.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver, AlixPartners will produce resumes, curricula vitae and marketing materials relating to the custodians to be identified in the General Objections.

***REQUEST NO. 17:** All documents identifying any other engagements in which Alix has advised, consulted or assessed the value of any company in the Real Estate or Homebuilding Industries since 2005.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the

discovery of admissible evidence. Without waiver, AlixPartners will produce marketing or other publicly disseminated materials, if any, regarding AlixPartners' valuation and solvency opinion experience in the real estate or homebuilding industries.

***REQUEST NO. 18:*** All documents reflecting solvency opinions or valuations that Alix has provided regarding any company in the real estate or homebuilding industries since 2005.

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

***REQUEST NO. 19:*** All documents reflecting the total amount charged by Alix for any solvency opinions or valuation performed since August 1, 2006.

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

***REQUEST NO. 20:*** All documents sufficient to identify any engagement in which Alix has declined a request to provide a solvency opinion or provided an opinion that a company was insolvent since 2005.

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

***REQUEST NO. 21:*** All documents relating to work, other than work on the Solvency Opinion, that Alix performed for any of the TOUSA Companies during 2006 and 2007.

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the response to Request No. 1.

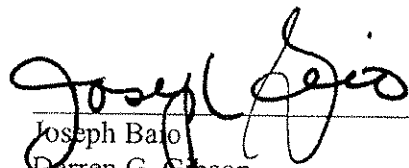
*REQUEST NO. 22: All financial projections, forecasts, analyses, spreadsheets, reports and other documents relating to the TOUSA Companies provided to or prepared (in whole or in part) by Alix.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiver, AlixPartners will produce responsive, non-privileged documents as described in the responses to Request Nos. 1 and 2.

*REQUEST NO. 23: All policies, guidelines, or instructions relating to the retention or destruction of documents.*

**RESPONSE:** AlixPartners objects to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver, AlixPartners will produce responsive, non-privileged documents.

Dated: August 7, 2008

  
Joseph Baro  
Darren G. Gibson  
Colleen M. O'Brien

WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, NY 10019-6099  
(212) 728-8000

**COUNSEL FOR ALIXPARTNERS LLP**

# APPENDIX D

**ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP**

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WASHINGTON, D.C. 20006  
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FAX (202) 775-4510  
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Michael L. Waldman

(202) 775-4525  
mwaldman@robbsrussell.com

September 22, 2008

Via E-mail and First Class Mail

Darren G. Gibson, Esq.  
Wilkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019

Re: *Official Committee of Unsecured Creditors of Touse, Inc., et al. v. Citicorp North America, Inc., et al.*, Adv. Pro. No. 08-01435-JKO

Dear Mr. Gibson:

I write in response to your September 18, 2008 letter. This letter's description of your previous discussions with the Committee is wholly inaccurate, given AlixPartners' previous refusals to even consider the production of any documents under requests number 17 through 20. However, we welcome AlixPartners' professed willingness to negotiate such an agreement, even if it is long overdue.

With regard to requests number 17 and 18, the Committee does not seek all documents from AlixPartners relating to its engagements advising clients in the real estate or homebuilding industries since 2005. However, the extent and nature of AlixPartners' experience working with these industries is plainly relevant to our litigation. The Committee is prepared to accept a declaration from an AlixPartners employee listing each of AlixPartners' engagements advising companies in the real estate or homebuilding industries, the approximate dates of each engagement, and whether it provided a solvency opinion or valuation in connection with the engagement. Alternatively, the Committee would accept the actual engagement letters and any solvency opinions or valuations (with any figures redacted) from all of AlixPartners' engagements with companies in the real estate and homebuilding industries.

**Robbins, Russell, Englert, Orseck & Untereiner LLP**

Darren G. Gibson, Esq.  
September 22, 2008  
Page 2

With regard to request number 19, it is clearly relevant whether the amount AlixPartners charged Touse for the solvency opinion was consistent with what AlixPartners charged comparable companies for similar work. Again, we do not want all billing data. Instead, we would be satisfied with a declaration from an AlixPartners employee that provides the total amount billed by AlixPartners for providing each solvency opinion or valuation. Alternatively, the Committee would accept any summary billing documents possessed by AlixPartners that provides the total amount billed for each solvency opinion or valuation. I would note that the Committee limited this request to a one-year period in order to minimize the burden on AlixPartners. We also are amenable to permitting AlixPartners not to identify the name of the clients, as long as a profile of each company is provided (e.g., "\$2 billion publicly traded homebuilder, primarily operating in Southern and Western United States").

With regard to request number 20, we are not seeking any work product information. We also are not looking for a large volume of documents. The Committee would agree to AlixPartners providing a declaration identifying those instances since 2005 where AlixPartners declined a request to provide a solvency opinion or provided an opinion that a company was insolvent since 2005. We also are willing to consider permitting AlixPartners to not disclose the actual name but instead provide a profile of the client.

Two additional points: First, AlixPartners expresses a reluctance to turn over information because of its confidential nature. As we have previously discussed, a comprehensive protective order has been entered by the Court in the underlying litigation here. We believe that this protective order should more than adequately address your client's concerns but, to the extent that it does not, we are available to discuss additional steps to ensure confidentiality. Second, any agreement concerning these document requests would not waive the Committee's rights and ability to seek additional documents or discovery from AlixPartners in the future. Similarly, any agreement concerning document requests would not waive AlixPartners' rights and ability to object to the Committee's seeking any additional documents or discovery from AlixPartners in the future.

I am available to discuss the above if you have questions or problems. Please let me know by COB on September 24<sup>th</sup> whether AlixPartners will agree to produce documents consistent with the terms set out in this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael Waldman", with a long horizontal flourish extending to the right.

Michael Waldman

**WILLKIE FARR & GALLAGHER** LLP

787 Seventh Avenue  
New York, NY 10019-6099  
Tel: 212 728 8000  
Fax: 212 728 8111

September 24, 2008

**VIA E-MAIL AND FIRST CLASS MAIL**

Michael L. Waldman, Esq.  
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP  
1801 K Street, N.W. Suite 411L  
Washington, DC 20006

Re: Document Production in In re TOUSA, Inc.,  
Docket No. 08-10928-JKO; Adv. Pro. No. 08-01435-JKO

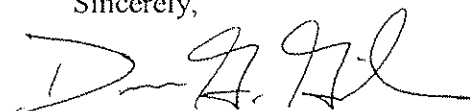
Dear Mr. Waldman:

We write on behalf of AlixPartners LLP in response to your letter dated September 22, 2008. As to the vast majority of your document requests relating to TOUSA, we take it that you are comfortable with our responses and our production of TOUSA-related documents – over 21,000 pages produced to date, with rolling productions continuing through October 3.

In your letter, you propose that, in lieu of producing documents in response to requests 17 through 20, an AlixPartners employee make a sworn declaration providing details of AlixPartners' engagements with companies other than TOUSA. We do not believe, however, that such a declaration is warranted. As an initial matter, the applicable rules do not contemplate, much less require, discovery of nonparties by such means. Nor can such a declaration from a nonparty be justified by pointing to underlying document requests, which themselves are overly broad and unduly burdensome. Indeed, merely replacing improper document requests with an improper request for a declaration is surely not what the rules envision, particularly where the requested information is of questionable relevance to the underlying litigation. Furthermore, because you reserve the right to seek "additional documents or discovery from AlixPartners in the future" even if a declaration is provided, your proposal offers no meaningful relief from the burden of your original document requests. Finally, providing such a declaration would cause AlixPartners to violate the obligations of confidentiality it has to its other clients for whom it has provided advisory and consulting services.

Please feel free to contact me if you have any questions or would like to discuss this further.

Sincerely,



Darren G. Gibson

**ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP**

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Michael L. Waldman

(202) 775-4525  
mwaldman@robbsrussell.com

September 26, 2008

Via E-mail

Darren G. Gibson, Esq.  
Wilkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019

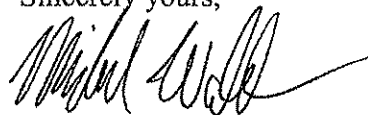
Re: *Official Committee of Unsecured Creditors of Touse, Inc., et al. v. Citicorp North America, Inc., et al.*, Adv. Pro. No. 08-01435-JKO

Dear Mr. Gibson:

We received your letter dated September 24, 2008. It belies your protestations that you were negotiating in good faith regarding the scope of the Committee's document requests 17 through 20; in fact, as your letter demonstrates, AlixPartners never intended to produce any documents in response to these legitimate document requests, no matter how reasonable the Committee was in seeking to address AlixPartners' stated concerns. Moreover, your letter's statement that the rules do not allow for declarations by nonparties is nonsensical. Please be apprised that the Committee fully expects to avail itself of Federal Rule of Civil Procedure 45 to take the deposition of AlixPartners' personnel, many of whom possess important evidence in connection with the above-referenced litigation. A declaration seemed to us to be a more efficient and attractive approach for your client to provide some of this relevant information, but that of course is your choice.

We are available for further discussions if AlixPartners has any desire to avert litigation on these issues. Otherwise, we will proceed accordingly.

Sincerely yours,



Michael Waldman