



This matter came before the Court for hearing on October 23, 2008, at 11:00 a.m.. The Court having reviewed the Joint Proposed Amended Case Management and Scheduling Order for Proposed Adversary Proceeding (“**Joint Proposed Amended CMO**”), presented by the parties,<sup>1</sup> good cause having been shown therefore, and being otherwise fully advised in the premises hereof, does **ORDER** and **ADJUDGE** as follows:

1. The Joint Proposed Amended CMO is approved as set forth herein.
2. The schedule of critical events for the Proposed Adversary Proceeding shall be as follows:<sup>2</sup>

#### **I. PLEADINGS, JOINDER AND THRESHOLD MOTIONS**

- A. The complaint initiating the adversary proceeding was filed July 14, 2008.
  1. Motions to dismiss of defendants Citicorp North America, Inc. and Wells Fargo Bank, N.A. were filed on August 13, 2008 and heard by the Court at a September 17, 2008 hearing.
  2. Motions to dismiss of the Senior Transeastern Lender and Subordinated Noteholder defendants (the "Transeastern Defendants") were filed on September 3, 2008. Hearing on these motions was adjourned by Orders dated October 22, 2008 (D.E. 128, 131). The Transeastern Defendants may re-file or supplement their motions to dismiss pursuant to the briefing schedule set forth in Section I(B), below, and any such motion is scheduled to be heard by the Court at a December 4, 2008 hearing date.
- B. The amended complaint of the Committee was filed on October 17, 2008.
  1. Defendants already party to the case.
    - a. Answers, motions to dismiss or motions per Bankruptcy Rule 7012(c) of all defendants already party to this case as of October 17, 2008

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<sup>1</sup> In light of the third-party claim brought by Citicorp against the Debtors, “Plaintiff” will include Citicorp in its capacity as a third-party plaintiff, and “Defendant” will include the Debtors in their capacity as third-party defendants.

<sup>2</sup> Certain time frames herein have been reduced from those otherwise provided by the Federal Rules of Bankruptcy Procedure or Local Rules of this Court, pursuant to the Court’s authority to shorten applicable time under Rule 9006(c) of the Federal Rules of Bankruptcy Procedure.

(except for defendant Wells Fargo Bank, N.A.<sup>3</sup>) are due November 4, 2008.

- b. Committee's response to motions is due November 18, 2008.
  - c. Defendants' reply briefs are due November 25, 2008.
  - d. It is contemplated that any such motions will be heard by the Court at a December 4, 2008 hearing date.
2. Defendants not party to this case as of October 17, 2008
- a. All other answers, motions to dismiss or motions per Bankruptcy Rule 7012(c) by defendants not party to this case as of October 17, 2008 shall be served pursuant to Federal Rule of Civil Procedure 12(a).
  - b. Committee's response to any motions by these parties shall be filed within 14 calendar days after service. Reply briefs shall be filed within 7 calendar days after service of the opposition.
- C. Service by email shall be deemed proper, except for initial service of the Complaint on parties not presently before the Court. Wherever possible, all pleadings and other documents shall be served by email only.

## II. WRITTEN DISCOVERY

- A. Bankruptcy Rule 7026(a) mandatory disclosures shall not apply.
- B. The presumptive limit of twenty-five (25) interrogatories as specified in Bankruptcy Rule 7033(a) is increased to thirty-five (35) interrogatories per side. Citicorp and the Debtors may serve a maximum of twenty-five (25) interrogatories (per side) upon each other, but only to the extent such interrogatories relate to Citicorp's third-party claim against the Debtors.
- C. Initial Written Discovery

Initial discovery requests to the Debtors were previously served.

Rolling document production by the Debtors to the initial requests has been ongoing, and shall be substantially completed by October 31, 2008. Debtors' initial privilege log with respect to the initial requests has been served.

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<sup>3</sup> Pursuant to the order denying Wells Fargo Bank, N.A.'s motion to dismiss the initial complaint [D.E. #86], Wells Fargo Bank, N.A.'s time to answer the amended complaint shall remain twenty days from filing of the amended complaint, *i.e.*, November 6, 2008.

Initial discovery requests to the Defendants were previously served.

Rolling production by all other parties shall be commenced within 30 days of service. Production in response to initial requests served on or before July 24, 2008 on parties that were signatories to the Case Management Order dated July 15, 2008 (D.E. 3), as evidenced by the submission and service lists thereto, shall be completed by October 31, 2008. Non-Debtors' privilege logs with respect to such initial requests shall be served by November 7, 2008.

- D. Objections to written discovery requests shall be served within twenty (20) days of service of the request.
- E. The meet and confer process is ongoing.
- F. Additional discovery requests to parties (including Debtors) and discovery requests/subpoenas to third parties may be served at any time provided that such discovery is completed by March 6, 2009, except with respect to supplemental fact discovery as provided in Section IV(B) below; response time per applicable rules.
- G. Documents produced by any party shall be simultaneously delivered (either through website access, email, or by disc) to all other parties.
- H. Documents received by any party in response to a discovery request/subpoena directed to a third party shall be delivered (either through website access email, or by disc) to all other parties within two (2) business days of receipt.

### **III. FACT DEPOSITIONS AND REQUESTS FOR ADMISSION**

- A. The parties will confer by November 7, 2008, by telephone and/or in-person, to preliminarily discuss the identity of deponents employed by the Debtors and/or the Debtors' current advisors (and/or 30(b)(6) topics), the topics for such depositions, and the timing and scheduling of depositions. Such depositions shall be conducted between December 1, 2008 and March 6, 2009, except with respect to supplemental fact discovery as provided in Section IV(B) below.
- B. The parties shall confer by December 2, 2008, by telephone and/or in-person, to preliminarily discuss the identity of party and third-party deponents (and/or 30(b)(6) topics) and the timing and scheduling of depositions. Such depositions shall be conducted between January 5, 2009 and March 6, 2009, except with respect to supplemental fact discovery as provided in Section IV(B) below; response time per applicable rules.
- C. Requests for Admission shall be served by March 18, 2009.

### **IV. EXPERTS**

- A. Expert Reports

1. Plaintiff's expert reports shall be served by March 27, 2009.
2. Defendants' expert reports shall be served by April 17, 2009.
3. Plaintiff's rebuttal expert reports shall be served by April 28, 2009.

**B. Supplemental Fact Discovery**

From April 18, 2009 through May 15, 2009, any party may conduct additional fact discovery for the purpose of clarifying or addressing issues raised by the expert reports. All parties (including Debtors) shall use their best efforts to produce documents and requested witnesses on an expedited basis within this time frame. Parties may serve supplemental discovery requests beginning April 18, 2009, with the responsive discovery to occur between April 28 and May 15, 2009. The parties shall confer on or about April 22, 2009, by telephone and/or in-person, to discuss the identity of deponents, and the timing and scheduling of any depositions.

**C. Expert Depositions**

1. Depositions of Plaintiff's experts: May 20 – May 29, 2009.
2. Depositions of Defendants' experts: June 1 – June 9, 2009.

**V. PRE-TRIAL BRIEFS, MOTION PRACTICE AND DEPOSITION DESIGNATION/EXHIBIT DISCLOSURES**

**A. Summary Judgment motions, if any, must be filed by June 10, 2009.**

1. Opposition to summary judgment motions shall be filed within 14 calendar days after service of the motion.
2. Reply briefs shall be filed within 7 calendar days after service of the opposition.

**B. The parties shall meet and confer and propose to the Court no later than May 22, 2009 a schedule for pre-trial filings, such filings to be completed between June 19 and July 3, 2009.**

**C. Pre-trial conference/hearing on motions: July 7, 2009, or such earlier date as the parties may agree with the approval of the Court or as directed by the Court.**

**VI. TRIAL**

**A. Weeks of July 13 and July 20, 2009.**

**VII. MODIFICATION**

- A. Non Signatory Defendants may seek modification of this schedule, particularly as it would apply to them.
- B. The parties may without further order of Court modify any deadline herein other than the trial date, provided all affected parties agree in writing. Any party may for good cause shown request that the Court modify the schedule in any way, including any entities named as a third party defendant.

**VIII. PERIODIC STATUS CONFERENCES AND DISCOVERY DISPUTE RESOLUTION PROCEDURES**

- A. Status conferences are to be fixed on dates convenient for the Court, approximately every two weeks, beginning in mid-July. Parties shall raise specific disputes respecting discovery or the pre-trial schedule as set forth below. Parties may attend the status conferences either in person or telephonically.
  - 1. A party raising a discovery dispute with the Court shall submit a short summary (no more than 10 double-spaced pages) of the dispute no later than 5:00 p.m. (ET), 3 calendar days before the status conference (e.g., on a Tuesday at 5:00 p.m. for a Friday status conference; Friday at 5:00 p.m. for a Monday status conference).
  - 2. The opposing party in the discovery dispute may submit a response (no more than 10 double-spaced pages) by 5:00 p.m. (ET) on the calendar day before the status conference. No reply shall be permitted.

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Submitted by:

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*Fraudulent Conveyance Adversary Proceeding Counsel for the Official Committee of Unsecured Creditors of TOUSA, Inc., et al.*

Copies to:

Alan D. Strasser

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