

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**
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In re:)	Chapter 11 Cases
)	
TOUSA, INC., <i>et al.</i> ,)	Case No. 08-10928-JKO
)	
Debtors.)	Jointly Administered
)	

**STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF TOUSA, INC., ET AL. REGARDING THE DEBTORS’ MOTION FOR AN
ORDER APPROVING AGREEMENT BETWEEN TOUSA HOMES, INC. AND
MASCO CORPORATION AND CERTAIN OF ITS SUBSIDIARIES TO
(A) SETOFF AND SETTLE CERTAIN PREPETITION
OBLIGATIONS AND (B) ASSUME CERTAIN PREPETITION CONTRACTS**

The Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc., et al. (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this statement (the “Statement”) regarding the Debtors’ Motion for an Order Approving Agreement (the “Agreement”) Between TOUSA Homes, Inc. and Masco Corporation and Certain of its Subsidiaries to (a) Setoff and Settle Certain Prepetition Obligations and (b) Assume Certain Prepetition Contracts [D.E. #1579] (the “Motion”). In support of this Statement, the Committee respectfully submits as follows:

STATEMENT

1. By the Motion, the Debtors seek approval of the Agreement to effect the setoff of prepetition obligations between Masco Corporation and certain of its subsidiaries (collectively, the “Masco Entities”) and certain of the Debtors, which will result in Masco paying the Debtors’ approximately \$1.5 million in the aggregate (the “Settlement Amount”). Specifically, the Debtors propose the setoff of (a) amounts owed by certain Debtors to certain Masco Entities

related to such Debtors' prepetition purchase of goods and services against (b) rebates owed by certain Masco Entities to certain Debtors based on the quantity of goods and services purchased.

2. In order to effectuate setoff under Bankruptcy Code section 553, the moving party must prove that (a) the creditor holds a claim against the debtors that arose prepetition; (b) the creditor owes a debt to the debtor that arose prepetition; and (c) the claim and the debt are mutual. In re Tower Env'tl. Inc., 217 B.R. 933, 939-940 (Bankr. M.D. Fla. 1997). For the obligations to be mutual, the creditor's debt must be owed to the estate of the bankrupt, and the estate's debt must be owed to the same creditor. In re Apex Int'l Mgmt. Servs., Inc., 155 B.R. 591, 594 (Bankr. M.D. Fla. 1993) (citing Matter of Romano, 52 B.R. 586, 594 (Bankr. M.D. Fla. 1985) and finding that "the debts must be in the same right and between the same parties standing in the same capacity"). As such, "a corporation may not setoff the right of an associated, wholly owned corporation." In re Virginia Block Co. (Virginia Block I), 16 B.R. 560, 562 (citing Inland Steel Co. v. Berger Steel Co., Inc., 327 F.2d 401, 403-04 (7th Cir. 1964). Two entities, even if related (i.e., parent and subsidiary), are not permitted to aggregate their debts or claims for setoff purposes. Virginia Block I, 16 B.R. at 562; In re Challa, 186 B.R. 750, 761 (Bankr. M.D. Fla. 1995) (finding that a shareholder and two corporations in which the individual was a shareholder must each be treated separately for purposes of setoff); but see, In re Lykes Bros. S.S. Corp., 217 B.R. 304 (Bankr. M.D. Fla. 1997) (holding that the U.S. government is one creditor for the purposes of setoff under the Bankruptcy Code).

3. The Debtors have advised the Committee that the Debtors (i) have properly allocated the Settlement Amount among the Debtors that are entitled to rebates and (ii) through an invoice reconciliation process, have represented that they were able to determine which Debtors owed prepetition amounts to Masco Entities. Accordingly, the Debtors were able to reallocate the underlying claims against the proper Debtors to ensure that only a setoff consistent with Bankruptcy Code section 553 would be effectuated.

4. Based on the fact that (a) the Debtors are only seeking to setoff obligations that adhere strictly to the mutuality requirements of Bankruptcy Code section 553 and (b) the amounts to be received by the Debtors from the Masco Entities under the Agreement will be allocated to the proper Debtor entities, the Committee has no objection to the approval of the Agreement.

CONCLUSION

For the reasons set forth above, the Committee has no objection to the Motion. The Committee, however, reserves all of its rights with respect to the allocation of all other claims asserted against the Debtors' estates.

Dated: August 22, 2008.

Respectfully submitted,

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 to practice in this court set forth in Local Rule 2090-1(A).

**STEARNS WEAVER MILLER WEISSLER
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-and-

We hereby certify that the undersigned attorneys are appearing pro hac vice in this matter pursuant to Court orders dated February 27, 2008 and March 3, 2008.

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