

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. 08-1435-JKO**

**STATUS REPORT REGARDING  
PARTIES' EFFORTS TO REDUCE LITIGATION COSTS**

The Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the "Committee"), Citicorp North America, Inc. ("Citicorp"), Wells Fargo Bank, N.A. ("Wells Fargo"), individual First Lien Lenders, individual Second Lien Lenders, and Senior Transeastern Lenders submit this report regarding the status of their efforts to reduce the costs of this adversary proceeding. The parties took part in a meet-and-confer session on January 13, 2009 to discuss possible ways of reducing costs. The following summarizes those discussions and subsequent activity:

1. Number of Depositions. The parties agreed to attempt to cut the number of total depositions by identifying “first priority” witnesses who may be expected to possess knowledge regarding the most significant issues in the case. The parties believed that the testimony of these “first priority” individuals might prove sufficient for the parties to fairly present their claims. However, the parties agreed that, should these individuals lack knowledge about certain relevant issues, additional depositions might be required and accordingly the parties reserved their rights to take additional depositions.

Following the January 13<sup>th</sup> meeting, the Committee and Citibank circulated lists of “first priority” deponents. These parties agreed on approximately 25 “first priority” individuals and 30(b)(6) representatives. This list reduces significantly -- by more than 60 percent -- the number of deponents previously identified by the parties.

2. Length of Depositions. All parties agreed that the strong presumption should be that depositions will be completed in one day. Debtors argued that all depositions should be limited to one 7-hour day. However, some parties noted that, given the number of parties and the complexity of the matter, it may be unrealistic to finish certain important witnesses in only one day. Furthermore, in the case of a few key witnesses with extensive knowledge, a rigid one-day rule might be counterproductive since it might be more efficient to take a two-day deposition rather than arbitrarily require the parties to call additional witnesses (with the additional preparation and travel time that entails).

3. Attendance at Depositions. The parties agreed that, for debtor-funded parties, attendance at depositions would be limited to two attorneys and one hourly non-lawyer advisor per party.

4. Documents and Interrogatories. The Committee noted that it had issued only 10 interrogatory questions and 1 set of document requests to each of the defendants. Counsel for the Second Liens suggested, and counsel for the First Liens agreed, that costs could be reduced by limiting the document response for individual lenders to certain internal due diligence activities and trading data. The Committee concurred that it wished to avoid receiving duplicative materials from each of the individual Liens. Since the January 13<sup>th</sup> meeting, the parties have exchanged emails concerning limiting these document responses and are in the process of scheduling a meet-and-confer on this topic for the week of January 19<sup>th</sup>.

5. Mediation. The parties agreed that, while mediation may be helpful in the future, the recent settlement discussions indicate that the parties are too far apart for mediation to be productive at this time. The Debtors urged the parties to continue the direct settlement discussions that, with the Debtors' assistance, had occurred in recent weeks.

6. Solvency Hearing. The parties discussed the Second Liens' proposal that an early hearing be held for the Court to decide whether the appropriate solvency inquiry, given certain provisions of the loan documents, should focus on whether the consolidated TOUSA group was solvent. Along with expressing doubt about whether this proposition was true, the Committee also had a number of questions about the workings of this possible hearing, including whether the First and Second Liens agreed that the reciprocal principle applied, i.e., whether each of the subsidiaries was insolvent if the consolidated TOUSA group was determined to be insolvent. The parties have continued to exchange emails since the January 13<sup>th</sup> meeting as to these questions and whether such a hearing would be cost effective.

7. Tax Preference Briefing. The Debtors suggested that the parties could engage in early briefing of the tax claim issue. Other parties have questioned, however, whether such early

briefing of this tax issue would result in any meaningful costs savings. The parties continue to consider this issue.

\* \* \*

Although Debtors participated in the January 13, 2009 conference call, they do not join in this status report, which is therefore submitted by the remaining parties to the call. Instead, on the afternoon of January 15<sup>th</sup> (yesterday), Debtors informed the other parties that they intend to file a Debtors' Proposed Discovery Plan and Case Management Order No. 2. Except as noted above, the provisions in the Debtors' Proposed Discovery Plan were not raised in the parties' January 13, 2009 meet-and-confer.

Respectfully submitted,

Dated: January 15, 2009

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)

/s/ Patricia A. Redmond

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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]

/s/ Michael L. Waldman

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