

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.; WELLS FARGO BANK, N.A.; BANK OF AMERICA, N.A.; JPMORGAN CHASE BANK, N.A.; MORGAN STANLEY SENIOR FUNDING, INC.; CASTLERIGG MASTER INVESTMENTS, LTD.; CFIP MASTER FUND, LTD.; CITIBANK, N.A.; CGDO, LLC (AS AGENT FOR CHILTON GLOBAL CREDIT OPPORTUNITIES MASTER FUND LP); ESPERANCE C/O SCOTIABANK (IRELAND) LIMITED; REOI CAYMAN LTD.; FIDELITY FIXED INCOME TRUST: FIDELITY STRATEGIC REAL RETURN FUND; THE FOOTHILL GROUP, INC.; FORTRESS CREDIT INVESTMENTS I LTD.; FORTRESS CREDIT INVESTMENTS II LTD.; GOLDMAN SACHS CREDIT PARTNERS L.P.; GRAND CENTRAL ASSET TRUST, GAIA SERIES; GRAND CENTRAL ASSET TRUST, SIL SERIES; HBK MASTER FUND L.P.; HELIOS FUNDING LLC; INVESTMENT CBNA LOAN FUNDING LLC; JP MORGAN WHITEFRIARS INC.; LEHMAN COMMERCIAL PAPER INC.; MARATHON FINANCING I. B.V.; MCDONNELL LOAN OPPORTUNITY LTD.; MERRILL LYNCH PIERCE FENNER & SMITH INC.; MONARCH MASTER FUNDING

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-1435-JKO

LTD; PERRY PRINCIPALS, L.L.C.;
PROMETHEAN I MASTER, LTD.; ROYAL
BANK OF CANADA; SOF INVESTMENTS,
L.P.; TACONIC CAPITAL PARTNERS 1.5
L.P.; TACONIC OPPORTUNITY FUND L.P.;
TENNENBAUM MULTI-STRATEGY
MASTER FUND; TRILOGY PORTFOLIO
COMPANY, LLC; VAN KAMPEN DYNAMIC
CREDIT OPPORTUNITIES FUND; VAN
KAMPEN SENIOR INCOME TRUST; VAN
KAMPEN SENIOR LOAN FUND; WCP REAL
ESTATE STRATEGIES FUND; WESTPORT
CAPITAL PARTNERS LLC; AIG ANNUITY
INSURANCE COMPANY; ALEXANDRA
GLOBAL MASTER FUND, LTD.; AMERICAN
GENERAL LIFE INSURANCE COMPANY;
AMERICAN INTERNATIONAL GROUP,
INC.; AVENUE INVESTMENTS LP;
DEUTSCHE BANK AG NEW YORK
BRANCH; LONGACRE CAPITAL PARTNERS
QP, LP; LONGACRE MASTER FUND LTD;
M.D. SASS RE/ENTERPRISE PORTFOLIO
COMPANY, L.P.; MORGAN STANLEY
SENIOR FUNDING, INC.; Q FUNDING III, LP;
QUADRANGLE MASTER FUNDING LTD;
STONEHILL INSTITUTIONAL PARTNERS
LP; SUNAMERICA INCOME FUNDS –
SUNAMERICA HIGH YIELD BOND FUND;
SUNAMERICA SERIES TRUST – HIGH
YIELD BOND PORTFOLIO; THE MASTER
TRUST BANK OF JAPAN, LTD.; THE
VARIABLE ANNUITY LIFE INSURANCE
COMPANY; THIRD POINT LOAN LLC;
TRILOGY PORTFOLIO COMPANY LLC;
VALIC COMPANY II HIGH YIELD BOND
FUND; THE CIT GROUP/BUSINESS CREDIT,
INC; DISTRESSED HIGH YIELD TRADING
OPS. FUND LTD; 3V CAPITAL MASTER
FUND LTD.; DEUTSCHE BANK TRUST
COMPANY AMERICAS; SILVER OAK
CAPITAL, LLC; BEAR STEARNS
INVESTMENT PRODUCTS INC.; BLACK
DIAMOND CLO 2005-1; FALL CREEK CLO,
LTD.; EATON VANCE SENIOR DEBT
PORTFOLIO; EATON VANCE SENIOR
INCOME TRUST; EATON VANCE GRAYSON

& CO.; EATON VANCE VT FLOATING-RATE
 INCOME FUND; EATON VANCE LIMITED
 DURATION INCOME FUND; EATON VANCE
 SENIOR FLOATING-RATE TRUST; EATON
 VANCE FLOATING-RATE INCOME TRUST;
 EATON VANCE CREDIT OPPORTUNITIES
 FUND; FARALLON CAPITAL
 INSTITUTIONAL PARTNERS, L.P.;
 FARALLON CAPITAL INSTITUTIONAL
 PARTNERS II, L.P.; TINICUM PARTNERS,
 L.P.; FARALLON CAPITAL OFFSHORE
 INVESTORS, INC.; FARALLON CAPITAL
 OFFSHORE INVESTORS II, L.P.; FARALLON
 CAPITAL PARTNERS, L.P.; FARALLON
 CAPITAL INSTITUTIONAL PARTNERS III,
 L.P.; AURUM CLO 2002-1 LTD.; FLAGSHIP
 CLO III; FLAGSHIP CLO IV; FLAGSHIP CLO
 V; GRAND CENTRAL ASSET TRUST, CED
 SERIES; HARTFORD MUTUAL FUNDS, INC.
 ON BEHALF OF THE HARTFORD FLOATING
 RATE FUND BY HARTFORD INVESTMENT
 MANAGEMENT COMPANY, ITS SUB-
 ADVISOR; STEDMAN CBNA LOAN
 FUNDING LLC; ATASCOSA INVESTMENTS,
 LLC; GLENEAGLES CLO LTD; GRAND
 CENTRAL ASSET TRUST, HLD SERIES;
 GRAND CENTRAL ASSET TRUST, SOH
 SERIES; JASPER CLO, LTD.; LIBERTY CLO,
 LTD.; BURNET PARTNERS, LLC; ROCKWALL
 CDO, LTD.; HIGHLAND CDO OPPORTUNITY
 FUND, LTD.; HIGHLAND FLOATING RATE
 LLC; HIGHLAND LEGACY LIMITED; LOAN
 FUNDING VII, LLC; HIGHLAND OFFSHORE
 PARTNERS, L.P.; HIGHLAND CREDIT
 OPPORTUNITIES CDO LTD.; HIGHLAND
 FLOATING RATE ADVANTAGE FUND; LL
 BLUE MARLIN FUNDING LLC; MERRILL
 LYNCH CREDIT PRODUCTS, LLC; OCEAN
 BANK; QUADRANGLE MASTER FUNDING
 LTD.; CENTURION CDO 10, LTD.;
 CENTURION CDO XI, LTD.; CENTURION
 CDO 8, LIMITED; CENTURION CDO 9, LTD.;
 CENTURION CDO II, LTD.; CENTURION CDO
 VI, LTD.; SEQUILS-CENTURION V, LTD.;
 CENTURION CDO VII, LTD.; RIVERSOURCE
 FLOATING RATE FUND; AND DOE

SUCCESSOR TRUSTEE.

Defendants.

**MOTION FOR FILING OF
THIRD AMENDED ADVERSARY COMPLAINT**

Plaintiff, the Official Committee of Unsecured Creditors (the “Committee”) pursuant to Fed. R. Civ P. 15(a)(2) made applicable by Bank. R. 7015, hereby files the attached Third Amended Adversary Complaint. The Third Amended Adversary Complaint eliminates the allegations concerning the Revolving Credit Facility that had been added by the Second Amended Adversary Complaint.¹ The Committee has filed this Third Amended Complaint to streamline the litigation and reduce some of the litigation costs that the Estates otherwise would bear. Counsel for the First Lien Lenders, the Second lien Lenders, the Transeastern Lenders and the New Subordinated Note Holders have authorized undersigned counsel to inform the Court that they do not object to the filing of the Third Amended Adversary Complaint, provided that they be given twenty days to respond to the Third Amended Complaint. Accordingly, the

¹ The Committee does not intend by this amendment to affect the appeal of the Court’s earlier orders dismissing other allegations regarding the Revolving Credit Facility.

Committee requests that the court permit the filing of the Third Amended Adversary Complaint and grant twenty days to the defendants to move or otherwise plead in response to it.

Respectfully Submitted,

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]

/s/ Lawrence S. Robbins

LAWRENCE S. ROBBINS *pro hac vice*
(D.C. Bar No. 420260)

ALAN D. STRASSER *pro hac vice*
(D.C. Bar No. 967885)

MICHAEL L. WALDMAN *pro hac vice*
(D.C. Bar No. 414646)

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

1801 K Street N.W., Suite 411-L

Washington, DC 20006

Telephone: (202) 775-4500

Facsimile: (202) 775-4510

lrobbins@robbinsrussell.com

astrasser@robbinsrussell.com

mwaldman@robbinsrussell.com

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

Dated: February 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that February 4, 2009, I caused a true and correct copy of the MOTION FOR FILING OF THIRD AMENDED ADVERSARY COMPLAINT to be served by electronic filing and/or email on:

Paul Steven Singerman, Esq. singerman@bergersingerman.com
BERGER SINGERMAN P.A., *Local Counsel*
200 S. Biscayne Blvd., Suite 1000
Miami, FL 33131
Telephone: 305.775.9500
Facsimile: 305.714.4340

– and –

Paul M. Basta, Esq. pbasta@kirkland.com
Richard M. Cieri, Esq. rcieri@kirkland.com
M. Natasha Labovitz, Esq. nlabovitz@kirkland.com

KIRKLAND & ELLIS, LLP
153 East 53 Street
New York, NY 10022
Telephone: 212.446.4800
Facsimile: 212.446.4900

– and –

Jeffrey S. Powell, Esq. jpowell@kirkland.com
Matthew E. Papez mpapez@kirkland.com
Daniel T. Donovan ddonovan@kirkland.com

KIRKLAND & ELLIS, LLP
655 15 Street, NW
Washington DC 20005
Telephone: 202.879.5000
Facsimile: 202.879.5200

Counsel for TOUSA, Inc., et al., Debtors / Third Party Defendants

Patricia A. Redmond, Esq. predmond@swwwas.com
David C. Pollack, Esq. dpollack@swwwas.com
STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A., *Local Counsel*
150 W. Flagler Street, Suite 2200
Miami, FL 33130
Telephone: 305.789.3200
Facsimile: 305.789.3395

– and –

Lawrence S. Robbins, Esq. lrobbins@robbinsrussell.com
Alan D. Strasser, Esq. astrasser@robbinsrussell.com
Michael L. Waldman, Esq. mwaldman@robbinsrussell.com
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP,
Fraudulent Conveyance Adversary Proceeding
Special Counsel

1801 K Street, Suite 411-L
Washington, DC 20006
Telephone: 202-775-4500
Facsimile: 202.775.4510

– and –

Daniel H. Golden, Esq. dgolden@akingump.com
Philip C. Dublin, Esq. pdublin@akingump.com

AKIN GUMP STRAUSS HAUER & FELD LLP

590 Madison Avenue
New York, NY 10022
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

Counsel for Official Committee of Unsecured Creditors of TOUSA, Inc., et al, Plaintiff

Allan E Wulbern, Esq.
Stephen D. Busey, Esq.

awulbern@smithhulsey.com
busey@smithhulsey.com

SMITH HULSEY & BUSEY

225 Water Street, Suite 1800
Jacksonville, FL 32202
Telephone: 904.359.7700
Facsimile: 904.359.7708

– and –

Richard Craig Prosser, Esq.
Harley Edward Riedel, Esq.
Amy D. Harris, Esq.
Edward Peterson, Esq.

rproser@srbp.com
hriedel@srbp.com
aharris.ecf@srbp.com
epeterson@srbp.com

STICHTER, RIEDEL, BLAIN & PROSSER, P.A.

110 East Madison Street, Suite 200
Tampa, FL 33602-4718
Telephone: 813.229.0144
Facsimile: 813.229.1811

– and –

Joseph H. Smolinsky, Esq.
Thomas J. Hall, Esq.
Seven R. Rivera, Esq.
Thomas J. McCormack, Esq.

jsmolinsky@chadbourne.com
thall@chadbourne.com
sriveera@chadbourne.com
tmccormack@chadbourne.com

CHADBOURNE & PARKE LLP

30 Rockefeller Plaza
New York, NY 10112
Telephone: 212.408.5100
Facsimile: 212.541.5369

Counsel for Citicorp North America, Inc., in its capacity as Administrative Agent for the First Lien Revolver and First Lien Term Loan Credit Agreement, Defendant

Scott L. Baena, Esq.
Matthew I. Kramer, Esq.
Jeffrey I Snyder, Esq.

sbaena@bilzin.com
mkramer@bilzin.com
jsnyder@bilzin.com

BILZIN SUMBERG BAENA PRICE & AXELROD LLP, Local Counsel

200 S. Biscayne Blvd., Suite 2500
Miami, FL 33131
Telephone: 305.374.7580
Facsimile: 305.374.7593

– and –

David M. Levine, Esq.
Lawrence A. Kellogg, Esq.
Jeffrey C. Sneider, Esq.

jcs@tewlaw.com

TEW CARDENAS LLP, Local Counsel

200 S. Biscayne Blvd., Suite 2500
Miami, FL 33131

Telephone: 305.536.1112

Facsimile: 305.536.1116

– and –

Evan D. Flaschen, Esq.

evan.flaschen@bgllp.com

Gregory W. Nye, Esq.

gregory.nye@bgllp.com

Richard Whiteley, Esq.

richard.whiteley@bgllp.com

Daynor M. Carman, Esq.

daynor.carman@bgllp.com

BRACEWELL & GIULIANI LLP

225 Asylum Street, Suite 2600

Hartford, CT 06013

Telephone: 860.947.9000

Facsimile: 860.246.3201

Co-Counsel to Wells Fargo, as Successor Administrative Agent under that Certain Second Lien Term Loan Credit Agreement, and an Informal Group of Holders of Second Lien Term Loan Lenders, Defendants

David M. Levine, Esq.

dml@tewlaw.com

Lawrence A. Kellogg, Esq.

lak@tewlaw.com

Jeffrey C. Sneider, Esq.

jcs@tewlaw.com

Robin J. Rubens, Esq.

rjr@tewlaw.com

TEW CARDENAS LLP, Local Counsel

200 S. Biscayne Blvd., Suite 2500

Miami, FL 33131

Telephone: 305.536.1112

Facsimile: 305.536.1116

– and –

Edward J. Estrada, Esq.

eestrada@reedsmith.com

Jordan W. Siev, Esq.

jsiev@reedsmith.com

John L. Scott, Esq.

jscott@reedsmith.com

REED SMITH LLP

599 Lexington Avenue, 22nd Floor

New York, NY 10022

Telephone: 212.541.5400

Facsimile: 212.541.5450

Co-Counsel to Morgan Stanley Senior Funding, Inc., a Second Lien Term Loan Lender, Defendant

Jeffrey C. Schneider, Esq.

jcs@tewlaw.com

TEW CARDENAS LLP

Four Seasons Tower, 15th Floor

1441 Brickell Avenue

Miami, FL 33131-3407

Telephone: 305.539.2481 (direct dial)

Facsimile: 305.536.1116

Local Counsel to several members of an Informal Group of Holders of Second Lien Term Loan Lenders, Defendants

John H. Genovese, Esq.

jgenovese@gjb.com

Paul J. Batista, Esq.

pbattista@gjb.com

Heather L. Yonke, Esq.

hyonke@gjb.com

GENOVESE JOBLOVE & BATTISTA, P.A., Local Counsel

100 SE 2 Street, 44 Floor

Miami, FL 33131

Telephone: 305.349.2300

Facsimile: 305.349.2310

– and –

David S. Rosner, Esq.
Andrew K. Glenn, Esq.
Jeffrey R. Gleit, Esq.
Daniel A. Fliman, Esq.
John Minsker, Esq.

drosner@kasowitz.com
aglenn@kasowitz.com
jgleit@kasowitz.com
dfliman@kasowitz.com
jminsker@kasowitz.com

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

1633 Broadway
New York, NY 10019
Telephone: 212.506.1700

Counsel to Aurelius Named-Entities, GSO Named-Entities, and Carlyle Strategic Partners (collectively, the “Noteholders”), Defendants

Michael I Goldberg, Esq.

michael.goldberg@akerman.com

AKERMAN SENTERFITT, Local Counsel

350 East Las Olas Blvd., Suite 1600
Fort Lauderdale, FL 33301-2229
Telephone: 954.463.2700
Facsimile: 954.463.2224

– and –

Karen Chang, Esq.
Dennis F. Dunne, Esq.
Andrew M. LeBlanc, Esq.
Andrew Beirne, Esq.
Atara Miller, Esq.
Dennis C. O’Donnell, Esq.
David R. Eastlake, Esq.

kchang@milbank.com
ddunne@milbank.com
aleblanc@milbank.com
abeirne@milbank.com
amiller@milbank.com
dodonnell@milbank.com
deastlake@milbank.com

MILBANK, TWEED, HADLEY & MCCLOY LLP

1 Chase Manhattan Plaza
New York, NY 10005
Telephone: 212.530.5287
Facsimile: 212.530.5219 or 212.822.5057

Counsel for the “Senior Transeastern Lenders,” Defendants

Ileana A. Cruz, Esq.

icruz@whitecase.com

WHITE & CASE LLP

200 S. Biscayne Blvd., Suite 4900
Miami, FL 33131
Telephone: 305.371.2700
Facsimile: 305.995.5289

– and –

Meghan McCurdy, Esq.
David G. Hille, Esq.

mmccurdy@whitecase.com
dhille@whitecase.com

WHITE & CASE LLP

1155 Avenue of the Americas
New York, NY 10036
Telephone: 212.819.8200
Facsimile: 212.354.8113

Counsel for Deutsche Bank Trust Company Americas, Highland Named-Entities, Jasper CLO Ltd., Loan Funding VII LLC, Quadrangle Master Funding Ltd.

Jerry M. Markowitz, Esq.
Rachel L. Rubio, Esq.
MARKOWITZ, DAVIS, RINGEL & TRUSTY, P.A.
9130 South Dadeland Boulevard, Suite 1225
Miami, FL 33156-7849
Telephone: 305.670.5000
Facsimile: 305.670.5011

jmarkowitz@mdrtlaw.com
rrubio@mdrtlaw.com

– and –

Joseph T. Baio, Esq.
WILKIE FARR & GALLAGHER PA
787 Seventh Avenue
New York, NY 10019-6099
Telephone: 212.728.8521
Facsimile: 212.728.9521

jbaio@wilkie.com; sjones@wilkie.com;
mabrams@wilkie.com
dgibson@wilkie.com

Counsel for AlixPartners LLP.

Steven Schneiderman, Esq.
OFFICE OF THE ASSISTANT UNITED STATES TRUSTEE
51 SW 1 Avenue, Suite 1204
Miami, FL 33130
Telephone: 305.536.7285
Facsimile: 305.536.7360

steven.d.schneiderman@usdoj.gov

/s/ Alan D. Strasser
ALAN D. STRASSER
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER
& SAUBER LLP
1801 K Street N.W., Suite 411-L
Washington, DC 20006
Telephone: (202) 775-4500
Facsimile: (202) 775-4510

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Debtors.

OFFICIAL COMMITTEE OF UNSECURED
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Plaintiff

vs.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-1435-JKO

CITICORP NORTH AMERICA, INC.; WELLS FARGO BANK, N.A.; BANK OF AMERICA, N.A.; JPMORGAN CHASE BANK, N.A.; MORGAN STANLEY SENIOR FUNDING, INC.; CASTLERIGG MASTER INVESTMENTS, LTD.; CFIP MASTER FUND, LTD.; CITIBANK, N.A.; CGDO, LLC (AS AGENT FOR CHILTON GLOBAL CREDIT OPPORTUNITIES MASTER FUND LP); ESPERANCE C/O SCOTIABANK (IRELAND) LIMITED; REOI CAYMAN LTD.; FIDELITY FIXED INCOME TRUST: FIDELITY STRATEGIC REAL RETURN FUND; THE FOOTHILL GROUP, INC.; FORTRESS CREDIT INVESTMENTS I LTD.; FORTRESS CREDIT INVESTMENTS II LTD.; GOLDMAN SACHS CREDIT PARTNERS L.P.; GRAND CENTRAL ASSET TRUST, GAIA SERIES; GRAND CENTRAL ASSET TRUST, SIL SERIES; HBK MASTER FUND L.P.; HELIOS FUNDING LLC; INVESTMENT CBNA LOAN FUNDING LLC; JP MORGAN WHITEFRIARS INC.; LEHMAN COMMERCIAL PAPER INC.; MARATHON FINANCING I. B.V.; MCDONNELL LOAN OPPORTUNITY LTD.; MERRILL LYNCH PIERCE FENNER & SMITH INC.; MONARCH MASTER FUNDING LTD; PERRY PRINCIPALS, L.L.C.; PROMETHEAN I MASTER, LTD.; ROYAL BANK OF CANADA; SOF INVESTMENTS, L.P.; TACONIC CAPITAL PARTNERS 1.5 L.P.; TACONIC OPPORTUNITY FUND L.P.; TENNENBAUM MULTI-STRATEGY MASTER FUND; TRILOGY PORTFOLIO COMPANY, LLC; VAN KAMPEN DYNAMIC CREDIT OPPORTUNITIES FUND; VAN KAMPEN SENIOR INCOME TRUST; VAN KAMPEN SENIOR LOAN FUND; WCP REAL ESTATE STRATEGIES FUND; WESTPORT CAPITAL PARTNERS LLC; AIG ANNUITY INSURANCE COMPANY; ALEXANDRA GLOBAL MASTER FUND, LTD.; AMERICAN GENERAL LIFE INSURANCE COMPANY; AMERICAN INTERNATIONAL GROUP, INC.; AVENUE INVESTMENTS LP; DEUTSCHE BANK AG NEW YORK

BRANCH; LONGACRE CAPITAL PARTNERS QP, LP; LONGACRE MASTER FUND LTD; M.D. SASS RE/ENTERPRISE PORTFOLIO COMPANY, L.P.; MORGAN STANLEY SENIOR FUNDING, INC.; Q FUNDING III, LP; QUADRANGLE MASTER FUNDING LTD; STONEHILL INSTITUTIONAL PARTNERS LP; SUNAMERICA INCOME FUNDS – SUNAMERICA HIGH YIELD BOND FUND; SUNAMERICA SERIES TRUST – HIGH YIELD BOND PORTFOLIO; THE MASTER TRUST BANK OF JAPAN, LTD.; THE VARIABLE ANNUITY LIFE INSURANCE COMPANY; THIRD POINT LOAN LLC; TRILOGY PORTFOLIO COMPANY LLC; VALIC COMPANY II HIGH YIELD BOND FUND; THE CIT GROUP/BUSINESS CREDIT, INC; DISTRESSED HIGH YIELD TRADING OPS. FUND LTD; 3V CAPITAL MASTER FUND LTD.; DEUTSCHE BANK TRUST COMPANY AMERICAS; SILVER OAK CAPITAL, LLC; BEAR STEARNS INVESTMENT PRODUCTS INC.; BLACK DIAMOND CLO 2005-1; FALL CREEK CLO, LTD.; EATON VANCE SENIOR DEBT PORTFOLIO; EATON VANCE SENIOR INCOME TRUST; EATON VANCE GRAYSON & CO.; EATON VANCE VT FLOATING-RATE INCOME FUND; EATON VANCE LIMITED DURATION INCOME FUND; EATON VANCE SENIOR FLOATING-RATE TRUST; EATON VANCE FLOATING-RATE INCOME TRUST; EATON VANCE CREDIT OPPORTUNITIES FUND; FARALLON CAPITAL INSTITUTIONAL PARTNERS, L.P.; FARALLON CAPITAL INSTITUTIONAL PARTNERS II, L.P.; TINICUM PARTNERS, L.P.; FARALLON CAPITAL OFFSHORE INVESTORS, INC.; FARALLON CAPITAL OFFSHORE INVESTORS II, L.P.; FARALLON CAPITAL PARTNERS, L.P.; FARALLON CAPITAL INSTITUTIONAL PARTNERS III, L.P.; AURUM CLO 2002-1 LTD.; FLAGSHIP CLO III; FLAGSHIP CLO IV; FLAGSHIP CLO V; GRAND CENTRAL ASSET TRUST, CED SERIES; HARTFORD MUTUAL FUNDS, INC.

ON BEHALF OF THE HARTFORD FLOATING RATE FUND BY HARTFORD INVESTMENT MANAGEMENT COMPANY, ITS SUB-ADVISOR; STEDMAN CBNA LOAN FUNDING LLC; ATASCOSA INVESTMENTS, LLC; GLENEAGLES CLO LTD; GRAND CENTRAL ASSET TRUST, HLD SERIES; GRAND CENTRAL ASSET TRUST, SOH SERIES; JASPER CLO, LTD.; LIBERTY CLO, LTD.; BURNET PARTNERS, LLC; ROCKWALL CDO, LTD.; HIGHLAND CDO OPPORTUNITY FUND, LTD.; HIGHLAND FLOATING RATE LLC; HIGHLAND LEGACY LIMITED; LOAN FUNDING VII, LLC; HIGHLAND OFFSHORE PARTNERS, L.P.; HIGHLAND CREDIT OPPORTUNITIES CDO LTD.; HIGHLAND FLOATING RATE ADVANTAGE FUND; LL BLUE MARLIN FUNDING LLC; MERRILL LYNCH CREDIT PRODUCTS, LLC; OCEAN BANK; QUADRANGLE MASTER FUNDING LTD.; CENTURION CDO 10, LTD.; CENTURION CDO XI, LTD.; CENTURION CDO 8, LIMITED; CENTURION CDO 9, LTD.; CENTURION CDO II, LTD.; CENTURION CDO VI, LTD.; SEQUILS-CENTURION V, LTD.; CENTURION CDO VII, LTD.; RIVERSOURCE FLOATING RATE FUND; AND DOE SUCCESSOR TRUSTEE.

Defendants.

PROPOSED ORDER

On the consent motion of the Official Committee of Unsecured Creditors to file a Third Amended Adversary Complaint and the request to grant the defendants twenty days to respond, it is this ___ day of _____, 2009 ordered that

1. The Third Amended Adversary Complaint be filed; and
2. The defendants shall have twenty days to respond to it.

Judge Olson