

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.*,

Plaintiffs,

-against-

TENNENBAUM MULTI-STRATEGY MASTER
FUND, *et al.*,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 10-2242-JKO

STIPULATION

This Stipulation is made between Goldman Sachs Lending Partners LLC ("GSLP") and The Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the "Committee") (collectively, the "Parties").

WHEREAS, GSLP was a lender under the First Lien Term Loan; and

WHEREAS, the Committee instituted the adversary proceeding, *Official Committee of Unsecured Creditors of TOUSA, Inc. v. Citicorp North America, Inc.*, Adv. Pro. No. 08-01435-JKO, by Adversary Complaint filed on July 14, 2008 (D.E. #1) (the "Adversary Proceeding"); and¹

¹ Unless otherwise noted, all Docket Entries refer to the docket for the Adversary Proceeding, and all capitalized terms have the same meanings as used in the Amended Findings and Judgment.

WHEREAS, the Committee did not name GSLP in the Adversary Proceeding, and GSLP did not appear as a party or otherwise participate in the Adversary Proceeding, and

WHEREAS, following the trial of the Adversary Proceeding, the Court entered Findings of Fact and Conclusions of Law (D.E. #658) and Final Judgment (D.E. #659) on October 13, 2009 (collectively, the “Original Findings and Judgment”), and entered Amended Findings of Fact and Conclusions of Law (D.E. #722) and Amended Final Judgment (D.E. #721) on October 30, 2009 (collectively, the “Amended Findings and Judgment”); and

WHEREAS, Citicorp North America, Inc., as administrative agent for the First Lien Term Loan, and the First Lien Term Loan lender defendants appearing in the adversary proceeding at the time of the Original Findings and Judgment (collectively, the “Appearing First Lien Defendants”) filed a timely Notice of Appeal of the Original Findings and Judgment on October 20, 2009 (D.E. #668) and of the Amended Findings and Judgment on November 9, 2009 (D.E. #748) (collectively, the “Appearing First Lien Defendants’ Appeals”); and

WHEREAS, following the Appearing First Lien Defendants’ Notices of Appeal, the Appearing First Lien Defendants obtained an Order on Motions for Stay Pending Appeal from the Court on October 30, 2009 (the “Bond Order) (D.E. #723); and

WHEREAS, the Bond Order was modified by the Order Granting in Part Motions for Stay & Closing Cases entered by the United States District Court for the Southern District of Florida on November 24, 2009, Case No. 09-23425 D.E. #20, and the Order Granting Motion to Modify Order for Stay Pending Appeal entered by the Bankruptcy Court on December 30, 2009 (D.E. #837) (collectively, the “Stay Orders”); and

WHEREAS, the Stay Orders provided the Appearing First Lien Lenders with a stay of enforcement of the monetary portion of the Amended Final Judgment conditioned upon the posting of bonds or cash in the amount of 110% of the interest, principal and/or adequate protection payments made to the Appearing First Lien Defendants under the First Lien Term Loan, as set forth in the Original Findings and Judgment and Amended Findings and Judgment; and

WHEREAS, the Committee has commenced the current adversary proceeding against GSLP (the “Subsequent Adversary Proceeding”) asserting the claims and causes of action asserted in the Adversary Proceeding; and

WHEREAS, GSLP has appeared in the Subsequent Adversary Proceeding;

IT IS HEREBY STIPULATED AND AGREED:

1. The aforementioned “Whereas” recitals are incorporated by reference herein.
2. Other than as expressly set forth in paragraph 3 below, GSLP is bound by and shall be deemed to be a party to the Findings of Fact and Conclusions of Law, the Final Judgment, the Amended Findings of Fact and Conclusions of Law, the Amended Final Judgment, the Bond Order, and the Stay Order as if it had been a party to all prior proceedings herein. GSLP and the Committee shall each be bound by, deemed to be a party to, and enjoy the benefit or suffer the detriment of the outcome of any appeal from the above orders and judgments, including with respect to the judgment described in paragraph 5 below, to the same extent as if GSLP had appeared and defended the Adversary Proceeding and participated in such appeal, and the outcome of such appeal shall likewise be binding as to the Committee in respect of GSLP.
3. To obtain a stay of execution and enforcement proceedings pending appeal, GSLP must post a supersedeas bond or cash that complies with the requirements of the Bond Order as modified by the Stay Order, except that it shall not be required to post such bond or cash by December 22, 2009 but rather by the date set in accordance with paragraph 4 below. GSLP’s bond or cash shall be set at the sum of \$143,435. The Committee shall not execute on or enforce the Amended Final Judgment or the judgment in the Subsequent Adversary Proceeding unless GSLP fails to file a supersedeas bond or cash that complies with the Bond Order and the Stay Order by the date in accordance with paragraph 4 below.
4. Promptly after this Stipulation is signed by the parties, the Committee shall file and serve an agreed motion in a form jointly approved by the Parties asking the Bankruptcy Court to adopt this Stipulation as its Order. GSLP shall post its supersedeas bond or cash within

30 days of entry by the Court of the Order adopting this Stipulation, in order to obtain a stay of execution.

5. Upon the filing of the parties' agreed motion to adopt this Stipulation, the Court shall enter judgment against GSLP in the Subsequent Adversary Proceeding in the amount of \$130,396, subject to the conditions set forth in paragraph 2 above. Subject to GSLP's filing of a supersedeas bond or cash in accordance with paragraph 4 above, a stay of execution and enforcement proceedings regarding the judgment shall be in effect and shall continue until 20 days after the Amended Judgment becomes a Final Order² (the "Stay of Execution"). The Committee shall not execute or enforce the judgment in the Subsequent Adversary Proceeding during the Stay of Execution.

6. Within 20 days of the Amended Final Judgment becoming a Final Order, the parties will confer in good faith to jointly submit a proposed order to the Court regarding the disposition of the security referenced in paragraph 3 above in accordance with the Final Order. In the event the parties are unable to agree on the disposition of security required by the Final Order, each party, within 45 days of the Final Order, will submit papers requesting that the Court determine the disposition of the security.

7. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, employees, heirs, successors, assigns, administrators, receivers and

² As used in this Stipulation, the term "Final Order" shall mean an order entered by the United States Bankruptcy Court for the Southern District of Florida, the United States District Court for the Southern District of Florida, the United States Court of Appeals for the Eleventh Circuit or any other court of competent jurisdiction as to which (a) the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending; or (b) in the event that an appeal, writ of *certiorari*, reargument, or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* or move for reargument or rehearing shall have expired.

legal representatives, whether a signatory hereto or not, including, but not limited to a Chapter 11 or Chapter 7 trustee.

8. Nothing herein shall be deemed or construed as an admission of liability by any Party to this Stipulation.

9. This Stipulation contains the entire agreement between the Parties and no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the Parties or their counsel that are not included herein shall be of any force or effect.

10. Each party signing this Stipulation as an agent or representative of any Party hereby covenants and warrants to the other Parties that he or she is fully authorized to sign this Stipulation on behalf of the Party he or she represents and is fully authorized to bind the party to all of the terms of this Stipulation.

11. This Stipulation may be executed in multiple counterparts and a facsimile or PDF copy of a signature on this Stipulation shall be acceptable as an original.

12. To the fullest extent permitted by applicable law, each of the parties hereto hereby irrevocably and expressly waives all right to a trial by jury in any action, proceeding or counter-claim (whether based upon contract, tort or otherwise) arising out of or relating to this Agreement.

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Stipulated and Agreed To:

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

STEARNS WEAVER MILLER WESSLER,
ALHADEFF & SITTERSON, P.A.

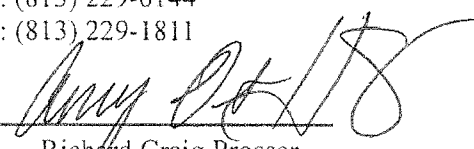
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