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Dated: March 9, 2009

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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

PATRICIA A. REDMOND  
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*Local Counsel to the Fraudulent Conveyance  
Adversary Proceeding Counsel for the Official  
Committee of Unsecured Creditors of TOUSA, Inc., et  
al.*

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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*Fraudulent Conveyance Adversary Proceeding  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2009, I caused a true and correct copy of the foregoing notice of appeal to be served by e-mail on:

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/s/ Patricia A. Redmond

Patricia A. Redmond

ORDERED in the Southern District of Florida on Feb 25, 2009



*John K. Olson*

John K. Olson, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

In re: : Case No. 08-10928-BKC-JKO  
: :  
TOUSA, INC., et al. : Chapter 11  
: :  
Debtors. : Jointly Administered

\_\_\_\_\_ :  
In re: :  
: :  
OFFICIAL COMMITTEE OF UNSECURED :  
CREDITORS OF TOUSA, INC., et al., :  
: :  
Plaintiff, :  
: :  
v. :  
: :  
CITICORP NORTH AMERICA, INC., et al., :  
: :  
Defendants. :  
\_\_\_\_\_ :

08-1435  
Adv. Pro. No.: 08-01453-JKO-A

**ORDER ENTERING JUDGMENT UNDER RULE 54(B)**  
**FOR CLAIMS UNDER THE AMENDED REVOLVER AGREEMENT**

**THIS MATTER** came before the Court on December 4, 2008, upon the motion to dismiss<sup>1</sup> filed by Citicorp North America, Inc. (“Citicorp”) in its capacity as administrative agent for the Amended Revolver Agreement. For the reasons stated in open court, the Court granted that motion and dismissed with prejudice plaintiff’s claims under the Revolving Credit Facility, except that the Court granted plaintiff leave to amend the complaint to seek to avoid transfers of liens on real property first perfected on or after July 31, 2007, or liens on categories of collateral, other than real property, first perfected on or after July 31, 2007. The Committee has requested that the Court enter an order under Fed. R. Civ. P. 54(b), made applicable to this proceeding by Bankr. R. 7054(a), that would permit an immediate appeal of the Court’s Order. Having reviewed the Committee’s request, it is **ORDERED** that:

1. The Committee’s request is **GRANTED**.
2. The Court’s has the effect of dismissing the vast majority of claims that arise under the Revolving Credit Facility against Citicorp and the Lenders under Amended Revolver Agreement, as defined in the First Amended Complaint (“FAC”). Other defendants and claims remain in the case.
3. Claims involving the Revolving Credit Facility are separable from the other claims in the case.
4. The Court further finds that there is no just reason to delay entry of a final judgment on these claims. Liens under the Revolving Credit Facility, according to the First Amended Complaint, secure more than \$316 million in respect of revolving loans and letters of credit as of the date of the filing of the petition in bankruptcy. (FAC, ¶ 32 n. 7) Uncertainty about any appeal and review of this ruling may impede the progress of this case and may interfere with efforts by the parties to the adversary proceeding to resolve the case consensually. Furthermore, re-trial of the claims relating to liens under the Revolving Credit Facility of collateral that was encumbered prior to July 31, 2007 would involve much of the same evidence about the solvency of the Debtors that would be required at the trial of the remaining

---

<sup>1</sup> Motion by Citicorp North America, Inc., In Its Capacity As Administrative Agent For The Revolving Credit Facility, To Dismiss (Adv. Pro. D.E. 148) The First Amended Adversary Complaint (Adv. Pro. D. E. No. 133) (hereafter, “Mot.”).

claims, so that a separate trial of the claims arising from the Revolving Credit Facility would duplicate in large part the trial of many of the claims arising from the First Lien Term Loan and the Second Lien Term Loan Agreements. Finally, reinstatement of claims under the Revolving Credit Facility after the confirmation of a plan of reorganization would pose numerous practical obstacles to the enforcement of any judgment in favor of the Committee and thus may interfere with efforts to create an acceptable plan of reorganization for the Debtors.

5. The Court directs entry of a judgment dismissing all claims under the Revolving Credit Facility that seek to avoid transfers and obligations, except for transfers of liens on real property first perfected on or after July 31, 2007 or liens on categories of collateral, other than real property, first perfected after July 31, 2007.

###

Copies furnished to:

Patricia A Redmond, Esq  
150 W Flagler St #2500  
Miami, FL 33130

Attorney Redmond is directed to serve a conformed copy of this order on all interested parties.

# **EXHIBIT B**

Form CGFD62 (9/19/08)

United States Bankruptcy Court  
Southern District of Florida  
www.flsb.uscourts.gov

Case Number: 08-10928-JKO

Adversary Number: 08-01435-JKO

In re:

Name of Debtor(s): TOUSA, Inc.

-----/

Official Committee of Unsecured Creditors of TOUSA, Inc., et al

Plaintiff(s)

VS.

Citicorp North America, Inc., Wells Fargo Bank, N.A., Doe New Lenders Nos. 1-100, Doe New Subordinated Notes Successor Trustee, Doe New Subordinated Noteholders Nos. 101-200, 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., Bank of America, N.A., 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., Tincum 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, Goldman Sachs Credit Partner, L.P., 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, JPMorganChase Bank, N.A., 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, Van Kampen Senior Loan Fund, Van Kampen Dynamic Credit Opportunities Fund, Van Kampen Senior Income Trust, The Foothills Group, Inc., Senior Transeastern Lenders, Morgan Stanley Senior Funding Inc, Castlerigg Master Investments Ltd, Chicago Fundamental Investment Partners LLC, CGDO LLC, Citibank N.A., Covalent Partners LLC, Esperance C/O Scotiabank (Ireland) Limited, REOPICYM, Fortress Credit Investments I LTD, Fortress Credit Investments II LTD, Grand Central Asset Trust, Gaia Series, Grand Central Asset Trust, SIL Series, HBK Master Fund LP, Helios Funding LLC, Investment CBNA Loan Funding LLC, JP Morgan Whitefriars Inc, Lehman Commerical Paper Inc, Marathon Financing I., B.V., McDonnell Loan Opportunity LTD, Perry Principals, L.L.C., Promethean I Master LTD, Royal Bank of Canada, SOF Investments L.P., STRLRRE, Taconic Capital Partners 1.5 L.P., Taconic Opportunity Fund L.P., Tennebaum Multi-Strategy Master Fund, Trilogy Portfolio Company LLC, 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., Merrill Lynch Pierce Fenner & Smith Inc, Monarch Master Funding LTD, 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, VALIC Company II High Yield Bond Fund, Bank of the West, Bank United, Branch Banking and Trust Co, Comerica Bank DB Services New Jersey Inc, Compass Bank, DK Acquisition Partners L.P., Guaranty Group, Jeffries Buckeye Master Fund LTD, Lispenard, NATIXIS, PNC Bank N.A., Quattro Global Capital LLC, Grand Central Asset Trust, San Series, Grand Central Asset Trust, VCM Series, National City, Raymond James, Sovereign Bank, TRS Venor LLC, UBS, US Bank, Venor Capital Master Fund LTD, Wachovia Bank N.A., Washington Mutual, Doe Successor Trustee, Jasper CLO, Ltd. Loan Funding VII LLC, Second Lien Lenders, Satascosa Investments, LLC, Fidelity Fixed Income Trust: Fidelity Strategic Real Return Fund, REOI Cayman Ltd. and CFIP Master Fund, Ltd.

Defendant(s)

-----/

## NOTICE OF ENTRY ON DOCKET OF JUDGMENT/ORDER

Notice is hereby provided pursuant to Bankruptcy Rule 9022 that the Judgment/Order titled **Order Entering Judgment Under Rule 54(B) For Claims Under The Amended Revolver Agreement** (copy attached) was entered on the docket on **2/25/09** .

Dated: **2/26/09**

CLERK OF COURT

By: Amelia Rodriguez

Deputy Clerk (954) 769-5700

The clerk shall serve a copy of this notice on all interested parties.

ORDERED in the Southern District of Florida on Feb 25, 2009



*John K. Olson*

John K. Olson, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

In re: : Case No. 08-10928-BKC-JKO  
: :  
TOUSA, INC., et al. : Chapter 11  
: :  
Debtors. : Jointly Administered

\_\_\_\_\_ :  
In re: :  
: :  
OFFICIAL COMMITTEE OF UNSECURED :  
CREDITORS OF TOUSA, INC., et al., :  
: :  
Plaintiff, :  
: :  
v. :  
: :  
CITICORP NORTH AMERICA, INC., et al., :  
: :  
Defendants. :  
\_\_\_\_\_ :

08-1435  
Adv. Pro. No.: 08-01453-JKO-A

**ORDER ENTERING JUDGMENT UNDER RULE 54(B)**  
**FOR CLAIMS UNDER THE AMENDED REVOLVER AGREEMENT**

**THIS MATTER** came before the Court on December 4, 2008, upon the motion to dismiss<sup>1</sup> filed by Citicorp North America, Inc. (“Citicorp”) in its capacity as administrative agent for the Amended Revolver Agreement. For the reasons stated in open court, the Court granted that motion and dismissed with prejudice plaintiff’s claims under the Revolving Credit Facility, except that the Court granted plaintiff leave to amend the complaint to seek to avoid transfers of liens on real property first perfected on or after July 31, 2007, or liens on categories of collateral, other than real property, first perfected on or after July 31, 2007. The Committee has requested that the Court enter an order under Fed. R. Civ. P. 54(b), made applicable to this proceeding by Bankr. R. 7054(a), that would permit an immediate appeal of the Court’s Order. Having reviewed the Committee’s request, it is **ORDERED** that:

1. The Committee’s request is **GRANTED**.
2. The Court’s has the effect of dismissing the vast majority of claims that arise under the Revolving Credit Facility against Citicorp and the Lenders under Amended Revolver Agreement, as defined in the First Amended Complaint (“FAC”). Other defendants and claims remain in the case.
3. Claims involving the Revolving Credit Facility are separable from the other claims in the case.
4. The Court further finds that there is no just reason to delay entry of a final judgment on these claims. Liens under the Revolving Credit Facility, according to the First Amended Complaint, secure more than \$316 million in respect of revolving loans and letters of credit as of the date of the filing of the petition in bankruptcy. (FAC, ¶ 32 n. 7) Uncertainty about any appeal and review of this ruling may impede the progress of this case and may interfere with efforts by the parties to the adversary proceeding to resolve the case consensually. Furthermore, re-trial of the claims relating to liens under the Revolving Credit Facility of collateral that was encumbered prior to July 31, 2007 would involve much of the same evidence about the solvency of the Debtors that would be required at the trial of the remaining

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<sup>1</sup> Motion by Citicorp North America, Inc., In Its Capacity As Administrative Agent For The Revolving Credit Facility, To Dismiss (Adv. Pro. D.E. 148) The First Amended Adversary Complaint (Adv. Pro. D. E. No. 133) (hereafter, “Mot.”).

claims, so that a separate trial of the claims arising from the Revolving Credit Facility would duplicate in large part the trial of many of the claims arising from the First Lien Term Loan and the Second Lien Term Loan Agreements. Finally, reinstatement of claims under the Revolving Credit Facility after the confirmation of a plan of reorganization would pose numerous practical obstacles to the enforcement of any judgment in favor of the Committee and thus may interfere with efforts to create an acceptable plan of reorganization for the Debtors.

5. The Court directs entry of a judgment dismissing all claims under the Revolving Credit Facility that seek to avoid transfers and obligations, except for transfers of liens on real property first perfected on or after July 31, 2007 or liens on categories of collateral, other than real property, first perfected after July 31, 2007.

###

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Attorney Redmond is directed to serve a conformed copy of this order on all interested parties.

CGFA1 (9/19/08)

**United States Bankruptcy Court  
Southern District of Florida  
www.flsb.uscourts.gov**

Case Number: 08-10928-JKO

Adversary Number: 08-01435-JKO

In re:

Name of Debtor(s): TOUSA, Inc.

-----/

Official Committee of Unsecured Creditors of TOUSA, Inc., et al

Plaintiff(s)

VS.

Citicorp North America, Inc., Wells Fargo Bank, N.A., Doe New Lenders Nos. 1-100, Doe New Subordinated Notes Successor Trustee, Doe New Subordinated Noteholders Nos. 101-200, 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., Bank of America, N.A., 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., Tincum 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, Goldman Sachs Credit Partner, L.P., 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, JPMorganChase Bank, N.A., 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, Van Kampen Senior Loan Fund, Van Kampen Dynamic Credit Opportunities Fund, Van Kampen Senior Income Trust, The Foothills Group, Inc., Senior Transeastern Lenders, Morgan Stanley Senior Funding Inc, Castlerigg Master Investments Ltd, Chicago Fundamental Investment Partners LLC, CGDO LLC, Citibank N.A., Covalent Partners LLC, Esperance C/O Scotiabank (Ireland) Limited, REOPICYM, Fortress Credit Investments I LTD, Fortress Credit Investments II LTD, Grand Central Asset Trust, Gaia Series, Grand Central Asset Trust, SIL Series, HBK Master Fund LP, Helios Funding LLC, Investment CBNA Loan Funding LLC, JP Morgan Whitefriars Inc, Lehman Commerical Paper Inc, Marathon Financing I., B.V., McDonnell Loan Opportunity LTD, Perry Principals, L.L.C., Promethean I Master LTD, Royal Bank of Canada, SOF Investments L.P., STRLRRE, Taconic Capital Partners 1.5 L.P., Taconic Opportunity Fund L.P., Tennebaum Multi-Strategy Master Fund, Trilogly Portfolio Company LLC, 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 Patnrns QP, LP, Longacre Master Fund LTD, M.D.

Sass Re/Enterprise Portfolio Company, L.P., Merrill Lynch Pierce Fenner & Smith Inc, Monarch Master Funding LTD, 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, VALIC Company II High Yield Bond Fund, Bank of the West, Bank United, Branch Banking and Trust Co, Comerica Bank DB Services New Jersey Inc, Compass Bank, DK Acquisition Partners L.P., Guaranty Group, Jeffries Buckeye Master Fund LTD, Lispenard, NATIXIS, PNC Bank N.A., Quattro Global Capital LLC, Grand Central Asset Trust, San Series, Grand Central Asset Trust, VCM Series, National City, Raymond James, Sovereign Bank, TRS Venor LLC, UBS, US Bank, Venor Capital Master Fund LTD, Wachovia Bank N.A., Washington Mutual, Doe Successor Trustee, Jasper CLO, Ltd. Loan Funding VII LLC, Second Lien Lenders, Satascosa Investments, LLC, Fidelity Fixed Income Trust: Fidelity Strategic Real Return Fund, REOI Cayman Ltd. and CFIP Master Fund, Ltd.

Defendant(s)

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### Clerk's Certificate of Mailing of Notice of Appeal

To:

Office of the U.S. Trustee, Room 1204 Claude Pepper Federal Bldg 51 SW 1st Ave Miami FL 33130

Citicorp North America, Inc.  
Allan Wulbern  
225 Water St #1800  
Jacksonville FL 32202

Alan Strasser  
1801 K St #411-L  
Washington DC 20006

Amy D Harris  
110 E Madison St #200  
Tampa FL 33602-4718

Joseph H Smolinsky  
30 Rockefeller Plaza  
New York NY 10112

Patricia Redmond  
150 W Flagler St  
Miami FL 33130

Paul Singerman  
200 S Biscayne Blvd #1000  
Miami FL 33131

Paul M Basta  
153 E 53 St  
New York NY 10022

Jeffrey S Powell  
655 15 St NW  
Washington DC 20005

Scott Baena  
200 S Biscayne Blvd #2500  
Miami FL 33131

Edward J Estrada  
599 Lexington Ave 22 Flr  
New York NY 10022

Evan D Flaschen  
225 Asylum St #2600  
Hartford CT 06013

David M Levine  
1441 Brickell Ave  
Miami FL 33131-3407

John H Genovese  
100 SE 2 St 44 Flr  
Miami FL 33131

David S Rosner  
1633 Broadway  
New York NY 10019

Michael I Goldberg  
350 E Las Olas Blvd #1600  
Ft Lauderdale FL 33301-2229

Andrew Beirne  
1 Chase Manhattan Plaza  
New York NY 10005

I hereby certify, that pursuant to Bankruptcy Rule 8004, a copy of the attached Notice of Appeal filed on 3/9/09 was mailed on **3/12/09** to the above named parties.

**Dated: 3/10/09**

**CLERK OF COURT**

By: Amelia Rodriguez

Deputy Clerk (954) 769-5700

**Enclosures:** *Clerk's Instructions for Appeals*  
*Appeal Information Sheet*  
*Copy of Appeal*

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**United States Bankruptcy Court  
Southern District of Florida  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

**CLERK'S INSTRUCTIONS FOR APPEALS**

Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely motion of a type specified in Bankruptcy Rule 8002(b) (whichever is later), or entry of an order by the District Court granting leave to appeal, the appellant shall file with the clerk of the bankruptcy court a designation of the items to be included in the record on appeal and a statement of issues to be presented (Bankruptcy Rule 8006). **Failure to timely file this designation may result in dismissal of the appeal pursuant to this court's Local Rule 8006–1(A) and Local Rule 87.4(B), United States District Court, Southern District of Florida.** The designation shall include the title and docket number of each paper designated.

1. Within 10 days after the service of the designation and the statement of issues the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal, and if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of issues to be presented on the cross appeal, and a designation of additional items to be included in the record. The appellee's designation shall include the title and docket number of each additional item designated.
2. If any transcripts of untranscribed proceedings are designated by a party, that party shall immediately, upon the filing of the designation, order the transcript(s) from the court reporter and make satisfactory arrangements for payment of its costs. All transcript orders must be made on the local form "Appeal Information Sheet" enclosed for this purpose, and a copy filed with the clerk at the time of filing the designation (Bankruptcy Rule 8006) . On receipt of a request for a transcript, the reporter shall complete the Reporter's Acknowledgment and file a copy with the clerk (Bankruptcy Rule 8007). [See also Administrative Order 07–05.]
3. When the record is complete for purposes of the appeal, the bankruptcy clerk will electronically transmit the record to the clerk of the district court. Once the record has been transmitted to the district court, any subsequently filed document relating to the appeal must be filed in the district court.
4. Motions For Leave To Appeal (Bankruptcy Rule 8003). The clerk will electronically transmit the motion, notice of appeal and any answer to the clerk of the district court as soon as all parties have filed answers or the time for filing an answer has expired. The designation and statement of the issues should not be filed with the clerk of the bankruptcy court as required under Bankruptcy Rule 8006, until entry of an order by the district court granting leave to appeal (Local Rule 8003–1(B)).

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***The following U.S. Bankruptcy Court, SDFL Local Rules pertaining to appeals have been reproduced to assist you in preparing your appeal.***

**Rule 8001–1. Notice of Appeal. Required Content and Fee.** A notice of appeal shall contain the title and date of the order being appealed and shall be accompanied by a copy of the order being appealed and the prescribed fee. A separate notice of appeal and filing fee is required for each order being appealed other than appeals of an order and subsequent orders entered relating to the underlying order or judgment.

If the prescribed fee does not accompany the notice of appeal, upon service by the clerk of a fee due notice, the appeal shall be dismissed by this court as authorized by District Court Local Rule 87.4(B).

2008 Amendment: Amended to clarify that clerk serves a fee due notice.

**Rule 8002–1. Time for Filing Notice of Appeal.**

- (A) **Dismissal of Untimely Appeal.** A notice of appeal filed after the time period specified in Bankruptcy Rule 8002 will be dismissed by this court as authorized by District Court Local Rule 87.4(B).
- (B) **Premature Appeal.** If a notice of appeal is filed after the announcement of a ruling by the court but before entry on the docket of the written judgment, order, or decree, the notice will be docketed but not served in accordance with Bankruptcy Rule 8004. Once the judgment is entered on the docket, the notice of appeal will be served by the clerk, noting the date the judgment was entered on the docket as the filing date of the notice of appeal.

**Rule 8003–1. Motions for Leave to Appeal.**

- (A) **Fee Required.** A motion for leave to appeal shall be accompanied by the prescribed filing fee. A motion for leave to appeal not accompanied by the fee shall be dismissed by this court after service of notice by the clerk of the fee requirement, as authorized by District Court Local Rule 87.4(B).
- (B) **No Designation Required Until Leave to Appeal Docketed.** The filing deadlines set forth in Bankruptcy Rule 8006 shall not begin until the district court order granting the motion is docketed in the bankruptcy court. Within five business days from the entry of the district court order granting a motion for leave to appeal, the appellant shall pay the prescribed appellate docketing fee to the clerk of the bankruptcy court.

*[Comment: See "Clerk's Instructions for Appeals".]*

**Rule 8005–1. Motions for Stay.** Motions for stay which request relief from the District Court must be filed directly with the district court in accordance with District Court Local Rule 87.4(C). If a stay has been granted by the district court it shall be incumbent upon the movant to immediately file a copy of the district court ruling with the clerk of the bankruptcy court.

*[Comment: See Local Rule 7069–1(F). (Writs shall issue absent entry of an order granting stay of execution).]*

**Rule 8006–1. Record and Issues on Appeal.**

- (A) **Dismissal for Failure to File Designation of Record or Statement of Issues.** If the appellant fails to file a designation of record or statement of the issues as required by Bankruptcy Rule 8006, this court shall dismiss the appeal as authorized by District Court Local Rule 87.4(B).
- (B) **Ordering Transcripts.** The Local Form "Appeal Information Sheet" provided by the clerk shall be used to order any untranscribed portion of the record. Charges for transcripts shall be in

accordance with the rates adopted by administrative order of this court.

[Comment: See "Clerk's Instructions for Appeals".]

2008 Amendment: Amended to abrogate local rule requiring copies of the designated items to be submitted within 15 calendar days and dismissing appeal for failure to submit official court copies of designated items, and to reference revised "Clerk's Instructions for Appeals" establishing new procedures for electronic transmittal of record on appeal to the district court; amended to also reference Administrative Order adopting Judicial Conference transcript rates.

**Rule 8011–3. Determination of Motion – Appeal.** A motion to dismiss or other request for intermediate relief as contemplated under Bankruptcy Rule 8007(C), shall be filed directly with the district court in accordance with District Court Local Rule 87.4(C).

**Rule 8011–4. Emergency Motion – Appeal; Request to Expedite Appeal.** Bankruptcy appeals requiring expeditious treatment by the district court shall be brought to the attention of the clerk of the bankruptcy court by filing the Local Form "Request to Expedite Appeal" at any time prior to transmittal of the record. This request shall be brought to the attention of the clerk of the district court by the clerk of the bankruptcy court upon transmittal of the record on appeal.

**Rule 8014–1. Taxation of Appellate Costs by Clerk; Motion for Fees and Costs.**

- (A) **Authority to Tax Costs.** The clerk shall only tax those costs as permitted by Bankruptcy Rule 8014 and the court's "Guidelines for Taxation of Costs".
- (B) **Bill of Costs.** A party eligible for costs shall submit a bill substantially conforming to the Local Form "Bill of Costs". The bill of costs shall be served by the requesting party on all interested parties. The clerk may require the submission of supporting documentation prior to determination of the bill of costs.
- (C) **Deadline for Filing.** The bill of costs shall be filed not later than 30 calendar days after entry of the judgment or order of the district court.

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- (D) **Notice to Parties of Costs Taxed by Clerk.** The clerk shall review the bill of costs and enter the amount of costs allowed on the bill. A copy of the bill of costs with the clerk's determination shall be served by the clerk on all interested parties.
- (E) **Objection to Taxation of Costs by Clerk.** On an objection served within five business days after entry of the bill of costs, the action of the clerk shall be reviewed by the court.

- (F) **Motion for Fees and Costs Not Taxable by Clerk.** Fees and costs which the clerk is not authorized to tax pursuant to subdivision (A), shall be considered only upon motion to the court filed within 30 calendar days after entry of the judgment or order.

*[Comment: See also Bankruptcy Rule 7054 and Local Rule 7054-1 (taxation of costs in adversary proceeding) and 28 U.S.C. §§1920 – 1924.]*

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***Local Rule 87.4, U.S. District Court, pertaining to bankruptcy appeals has been reproduced to assist you in preparing your appeal.***

***RULE 87.4 BANKRUPTCY APPEALS***

Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy Procedure, particularly Rules 8001 through 8020, and the Local Rules of the Bankruptcy Court. As is authorized by Federal Rule of Bankruptcy Procedure 8018, those rules are supplemented as follows:

- (A) **Assignment.** Appeals from orders or judgments entered by the Bankruptcy Court shall generally be assigned in accordance with Local Rule 3.4. Appeals from orders in a bankruptcy case or proceeding in which appeals have been taken from prior orders in the same case or proceeding shall be regarded as similar actions and proceedings under Local Rule 3.8 and it will be the continuing obligation of the Clerk of the District Court and the attorneys of record to comply with Local Rule 3.8.
- (B) **Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court.** The Bankruptcy Court is authorized and directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Federal Rule of Bankruptcy Procedure 8002,; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Federal Rule of Bankruptcy Procedure 8006, and Local Bankruptcy Rule 8006-1. The Bankruptcy Court is further authorized and directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy Court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within ten days after entry of the order sought to be reviewed pursuant to subsection C of this Local Rule.
- (C) **Motions for Stay and Other Intermediate Requests for Relief.** Motions for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005, motions to review Bankruptcy Court orders entered under Federal Rule of Bankruptcy Procedure 9006(b), and other motions requesting intermediate relief as set forth in Federal Rule of Bankruptcy Procedure 8007(c), shall be accepted for filing in the District Court and shall be assigned a miscellaneous memo case number which will apply only to the motion. No filing fee shall be charged in the District Court. The Clerk of the District Court shall immediately notify the Clerk of the Bankruptcy Court of the assigned case number and Judge. When the record on appeal is transmitted it will be assigned a new case number but will be assigned to the same Judge who considered the motion. The movant shall provide copies of any relevant portions of the Bankruptcy Court record necessary for the District Court to rule on the motion. It shall be the duty of the Clerk of the District Court to immediately transmit a copy of the order ruling on said motion to the Clerk of the Bankruptcy Court.

Local Rule 7.1 shall apply to motions for stay and other motions seeking intermediate appellate relief from the District Court.

- (D) **Motions for Leave to Appeal.** A motion for leave to appeal shall be filed in the Bankruptcy Court pursuant to Local Bankruptcy Rule 8003-1. Upon transmittal of the motion and related documents to the District Court the matter shall be assigned in the same manner as other miscellaneous motions described in subsection C above.

Upon disposition of the motion, the Clerk of the District Court shall immediately transmit a copy of the the District Court order to the Clerk of the Bankruptcy Court. If the motion is granted the Clerk of the Bankruptcy Court will proceed to prepare and transmit the record on appeal. A new District Court case number will be assigned to the appeal but it will be assigned to the same Judge who granted the motion for leave to appeal.

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- (E) **Briefs.**

- (1.) **Briefing Schedule.** The briefing schedule specified by Federal Rule of Bankruptcy Procedure 8009, may be altered only by order of the District Court. If the Clerk of the District Court does not receive appellant's brief within the time specified by Federal Rule of Bankruptcy Procedure 8009, and there is no motion for extension of time

*pending, the Clerk of the District Court shall furnish to the Judge to whom the appeal is assigned a proposed order for dismissal of the appeal.*

**(2.) Length of Briefs.** *Absent prior permission from the District Court, the appellant's initial or principal briefs and the appellee's response or principal brief shall not exceed twenty-five pages in length, and appellant's reply briefs, if any, shall not exceed fifteen pages.*

**(F.) Oral Argument.** *Any party requesting oral argument shall make the request within the body of the principal or reply brief, not by separate motion. The setting of oral argument is within the discretion of the District Court.*

**(G.) Judgment.** *Upon receipt of the District Court's opinion, the Clerk of the District Court shall enter judgment in accordance with Federal Rule of Bankruptcy Procedure 8016(a), and in accordance with Federal Rule of Bankruptcy Procedure 8016(b), shall immediately transmit to each party and to the Clerk of the Bankruptcy Court a notice of entry together with a copy of the District Court's opinion.*

**(H.) Appeal.** *If an appeal remains pending three months after its entry on the District Court docket, the Clerk of the District Court shall advise the Judge of the status of the appeal.*

**(I.) Notice.** *The Clerk of the Bankruptcy Court is directed to enclose a copy of this Local Rule with the notice of appeal provided to each party in accordance with Federal Rule of Bankruptcy Procedure 8004. Failure to receive such a copy will not excuse compliance with all provisions of this Local Rule.*

**(J.) Court Discretion.** *This Local Rule is not intended to exhaust or restrict the District Court's discretion as to any aspect of any appeal.*

*Former Local Rule 87.2 amended and renumbered as new Local Rule 87.4, effective April 15, 1996; amended effective April 15, 1999; April 15, 2007.*

### **Authority**

*Former Local Rule 27; (1996) renumbered from Local Rule 87.2 (1993).*

### **Comments**

*(1996)A. This revision clarifies the procedure for assignment of appeals from subsequent orders in a bankruptcy case or proceeding in which there have been appeals of prior orders. The appeals of subsequent orders will be randomly assigned but treated as "similar actions" under Local Rule.*

*B. This Local Rule has been amended to expand the Bankruptcy Court's authority to dismiss an appeal for the appellant's failure to pay the filing fee required for a notice of appeal and failure to provide copies of every item designated as required by Federal Rule of Bankruptcy Procedure 8006. It also clarifies the means for review of orders entered under Federal Rule of Bankruptcy Procedure 9006(b), by referencing new subsection C below.*

### **Page 7 of 10**

*C. This procedure provides a means for litigants to request intermediate relief from the District Court after the notice of appeal has been filed but before the record on appeal is transmitted to the District Court. It also clarifies that no fee will be charged in the District Court for these intermediate requests for relief.*

*This rule further provides for the subsequent assignment of the appeal to the same District Judge. This should conserve judicial resources since, for example, the disposition of a motion for stay pending appeal will usually require the District Judge to become familiar with the issues on appeal.*

*D. Adds reference to the local bankruptcy rule for filing motions for leave to appeal, provides for assignment in the District Court and clarifies that a new case number will be assigned for the appeal.*

*This rule further provides for the subsequent assignment of the appeal to the same District Judge. This should conserve judicial resources since the disposition of a motion for leave to appeal will usually require the District Judge to become familiar with the issues on appeal.*

*E. Replaces old Local Rule 87.2.C. Federal Rule of Bankruptcy Procedure 8010(c) provides authority to the District Court to specify different page limits for briefs. This rule supersedes the page limit specified in Federal Rule of Bankruptcy Procedure 8010. This Local Rule also distinguishes the page limitations for bankruptcy appellate briefs from memoranda of law as provided in Local Rule 7.1.C.2.*

*Also, minor stylistic revisions to entire Local Rule.*

*(1999) Amended to reflect renumbered Local Bankruptcy Rules effective December 1, 1998.*

**APPEAL INFORMATION SHEET**

**PART I:** Appellant's Purchase Order for Transcript:

1. Debtor's Name: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Date Notice of Appeal Filed: \_\_\_\_\_

Plaintiff (if applicable): \_\_\_\_\_

Defendant (if applicable): \_\_\_\_\_

Adversary Case No.: \_\_\_\_\_

2. Complete One:

- No transcript is required for this appeal.
- All necessary transcripts are already on file with the Bankruptcy Court.
- Request is hereby made for transcription of the following proceedings:

Hearing Date: \_\_\_\_\_

Proceeding \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. I certify that I have personally contacted the court reporter and that satisfactory financial arrangements have been made for the preparation and filing of the transcript(s).

Ordering Counsel  
(or party if not  
represented by  
Counsel.)

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Name of Firm (or Individual)

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City State Telephone No.

Date:\_\_\_\_\_

Signed:\_\_\_\_\_

Attorney for:\_\_\_\_\_

**NOTE:** PART I MUST BE COMPLETED AND RETURNED TO THE COURT REPORTER NOT LATER THAN 10 DAYS FROM THE FILING OF THE NOTICE OF APPEAL IN ALL CASES, INCLUDING THOSE FOR WHICH A TRANSCRIPT IS NOT ORDERED.

**PART II: REPORTER'S ACKNOWLEDGMENT**

1. The foregoing transcript order received on\_\_\_\_\_
2. Satisfactory arrangements ( ) have ( ) have not been made for payment of the transcript cost. These financial arrangements were completed on\_\_\_\_\_
3. Estimated completion date\_\_\_\_\_

Date:\_\_\_\_\_

Signed:\_\_\_\_\_

**Court Reporter Name and Address**

**NOTE:** This form will be provided to parties to an appeal by the clerk's office.