

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> ,	:	
Debtors.	:	Case No. 08-10928-JKO
	:	
	:	Jointly Administered
	:	
OFFICIAL COMMITTEE OF UNSECURED	:	
CREDITORS OF TOUSA, INC., <i>et al.</i> ,	:	Adv. Pro. No. 08-01435
Plaintiff,	:	
v.	:	
CITICORP NORTH AMERICA, INC., <i>et al.</i> ,	:	
Defendants.	:	

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EX PARTE MOTION
TO FILE DOCUMENTS UNDER SEAL**

The Official Committee of Unsecured Creditors (“Committee”) hereby seeks approval, on an *ex parte* basis, of an order, in substantially the form annexed here to as Exhibit A, authorizing the Committee to file the Expert Report of Charles A. Hewlett, the Expert Report of Amy Benbrook, the Expert Report of Kevin P. Clancy, the Expert Report of William Q. Derrough, and Exhibits to Expert Report of William Q. Derrough (collectively “the Documents”) **under seal**. The Documents are Exhibits 2, 3, 4, 5, and 6 to the Official Committee of Unsecured Creditors’ Opposition to Defendants’ Motion Regarding Expert Discovery [DE #326] filed herewith. In support of this motion, the Committee respectfully represents and states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.
3. The bases for the relief requested herein are section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules”), and Rule 5003-1(C)(2) of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida (“Local Rules”).

Basis for Relief Requested

4. A bankruptcy court may upon request, “protect an entity with respect to a trade secret or confidential research, development, or commercial information,” 11 U.S.C. §107(b)(1). Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b), providing that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires... to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” FED. R. BANKR. P. 9018. Additionally, Local Rule 5003-1(C) provides that a motion seeking to file a document under seal may be filed contemporaneously with the sealed document.

5. Commercial information includes, among other things, any information that would cause “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir.1994) (internal quotation marks omitted).

6. The Documents utilize and cite materials designated as confidential under the Stipulated Protective Order entered by this Court. Case 08-10928-JKO, Dkt # 1591. The

Protective Order provides this designation for information that the producing party considers confidential or proprietary.

7. The Committee seeks to use the Documents as Exhibits 2, 3, 4, 5, and 6 of its Opposition to Defendants' Motion Regarding Expert Discovery that is being filed herewith. Because the Documents include confidential information, the Committee is obligated pursuant to the Protective Order to file them under seal.

8. For these reasons, the Committee respectfully requests authority to file the Documents under seal.

WHEREFORE for all of the reasons set forth above, the Committee respectfully requests entry of an order, substantially in the form annexed hereto as Exhibit A, authorizing it to file the Documents under seal and granting further relief as is appropriate.

Dated: April 22, 2009

Respectfully submitted,

I hereby certify that the undersigned attorneys, along with others at their firm, have conferred with Debtors' counsel in a good faith effort to resolve by agreement the issues raised herein, but have been unable to do so.

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
(Florida Bar No. 303739)
DAVID C. POLLACK
(Florida Bar No. 362972)
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
150 West Flagler Street
Miami, FL 33130
Telephone: (305) 789-3553
Facsimile: (305) 789-3395
predmond@swmwas.com

*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

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
astrasser@robbinsrussell.com
mwaldman@robbinsrussell.com

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

EXHIBIT A

2. The Committee is authorized to file the Documents with the Court under seal.
3. The Committee shall provide the Documents to all relevant parties, if not already provided.

The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

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Submitted by:

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**

Patricia A. Redmond (Florida Bar No. 303739)
David C. Pollack (Florida Bar No. 362972)
150 West Flagler, Street
Miami, FL 33130
Telephone: (305) 789-3553
Facsimile: (305) 789-3395
-and-

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

Alan D. Strasser
Michael L. Waldman
1801 K Street N.W., Suite 411-L
Washington, DC 20006
Telephone: (202) 775-4500
Facsimile: (202) 775-4510

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

Copies to:

Patricia A. Redmond

*(Attorney Redmond shall upon receipt serve a copy of this Order upon all interested parties and
file a certificate of service.)*

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2009, I caused a true and correct copy of the Official Committee of Unsecured Creditors of TOUSA, Inc., *et al.*'s Ex Parte Motion to File Documents Under Seal to be served by e-mail on:

Paul Steven Singerman, Esq.
BERGER SINGERMAN P.A.,
200 S. Biscayne Blvd., Suite 1000
Miami, FL 33131
Telephone: 305.775.9500
Facsimile: 305.714.4340

singerman@bergersingerman.com

Paul M. Basta, Esq.
Richard M. Cieri, Esq.
M. Natasha Labovitz, Esq.
KIRKLAND & ELLIS, LLP
153 East 53 Street
New York, NY 10022
Telephone: 212.446.4800
Facsimile: 212.446.4900

pbasta@kirkland.com
rcieri@kirkland.com
nlabovitz@kirkland.com

Jeffrey S. Powell, Esq.
Matthew E. Papez, Esq.
Daniel T. Donovan, Esq.
KIRKLAND & ELLIS, LLP
655 15 Street, NW
Washington DC 20005
Telephone: 202.879.5000
Facsimile: 202.879.5200

jpowell@kirkland.com
mpapez@kirkland.com
ddonovan@kirkland.com

Allan E Wulbern, Esq.
Stephen D. Busey, Esq.
SMITH HULSEY & BUSEY
225 Water Street, Suite 1800
Jacksonville, FL 32202
Telephone: 904.359.7700
Facsimile: 904.359.7708

awulbern@smithhulsey.com
busey@smithhulsey.com

Richard Craig Prosser, Esq.
Harley Edward Riedel, Esq.
Amy D. Harris, Esq.
Edward Peterson, Esq.
STICHTER, RIEDEL, BLAIN & PROSSER, P.A.
110 East Madison Street, Suite 200
Tampa, FL 33602-4718
Telephone: 813.229.0144
Facsimile: 813.229.1811

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

Joseph H. Smolinsky, Esq.
Thomas J. Hall, Esq.
Seven R. Rivera, Esq.
Thomas J. McCormack, Esq.
CHADBOURNE & PARKE LLP
30 Rockefeller Plaza
New York, NY 10112
Telephone: 212.408.5100
Facsimile: 212.541.5369

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

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

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

Edward J. Estrada, Esq.
Jordan W. Siev, Esq.
John L. Scott, Esq.
REED SMITH LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022
Telephone: 212.541.5400
Facsimile: 212.541.5450

eestrada@reedsmith.com
jsiev@reedsmith.com
jscott@reedsmith.com

Evan D. Flaschen, Esq.
Gregory W. Nye, Esq.
Richard Whiteley, Esq.
Daynor M. Carman, Esq.
BRACEWELL & GIULIANI LLP
225 Asylum Street, Suite 2600
Hartford, CT 06013
Telephone: 860.947.9000
Facsimile: 860.246.3201

evan.flaschen@bglp.com
gregory.nye@bglp.com
richard.whiteley@bglp.com
daynor.carman@bglp.com

David M. Levine, Esq. dml@tewlaw.com
Lawrence A. Kellogg, Esq. lak@tewlaw.com
Robin J. Rubens, Esq. rjr@tewlaw.com
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

John H. Genovese, Esq. jgenovese@gjb.com
Paul J. Batista, Esq. pbattista@gjb.com
Heather L. Yonke, Esq. hylonke@gjb.com

GENOVESE JOBLOVE & BATTISTA, P.A.

100 SE 2 Street, 44 Floor
Miami, FL 33131
Telephone: 305.349.2300
Facsimile: 305.349.2310

David S. Rosner, Esq. drosner@kasowitz.com
Andrew K. Glenn, Esq. aglenn@kasowitz.com
Jeffrey R. Gleit, Esq. jgleit@kasowitz.com
Daniel A. Fliman, Esq. dfliman@kasowitz.com
John Minsker, Esq. jminsker@kasowitz.com

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

1633 Broadway
New York, NY 10019
Telephone: 212.506.1700

Michael I Goldberg, Esq. michael.goldberg@akerman.com

AKERMAN SENTERFITT

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

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.

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

kchang@milbank.com

ddunne@milbank.com

aleblanc@milbank.com

abeirne@milbank.com

amiller@milbank.com

dodonnell@milbank.com

deastlake@milbank.com

/s/ Michael L. Waldman

Michael L. Waldman