

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.

TECHNICAL OLYMPIC, S.A., *et al.*,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 09-01616

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF TOUSA, INC., ET AL. TO LIFT THE STAY AND SET AN ANSWER DATE**

The Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc., *et al.* (collectively, the “Debtors”), by and through its undersigned counsel, hereby requests that the Court lift the stay of the above-referenced adversary proceeding (“Fiduciary Duty Litigation”) granted by the Court’s order dated December 11, 2009 (D.E. #36), and set a deadline to file an answer or other responsive pleading in the Fiduciary duty Litigation for February 1, 2010, or such other date as the Court deems appropriate.

The Committee received standing from the Court to prosecute certain causes of action for breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty on behalf of the Debtors by order dated June 1, 2009 (D.E. #2828), and filed a complaint to prosecute these causes of action on June 9, 2009. (D.E. #1). Following numerous extensions, on November 4,

2009, the Committee agreed with the Debtors to set January 11, 2010 as the answer deadline for all defendants in the Fiduciary Duty Litigation. (D.E. #25, #27).

The Debtors filed a motion to stay the Fiduciary Duty Litigation (“Motion to Stay”) on October 30, 2009, and the Committee filed an Objection on November 30, 2009. (D.E. #22, #33). The Court held a hearing to consider the Motion to Stay on December 4, 2009, and by order dated December 11, 2009 granted in part and denied in part the Motion to Stay. (D.E. #36). The Court ordered that “[t]he Fiduciary Duties Litigation is stayed and continued through this Court’s status conference on January 29, 2010,” that the “stay shall continue in effect until further written order by this Court,” and the “deadline for responsive pleadings in the Fiduciary duty Litigation is extended to a date to be set at the Status Conference” (collectively, the “Stay”). (D.E. #36).

At the hearing held on December 29, 2009, the Debtors announced that they had reached an agreement with their director and officer liability insurance carriers (“D&O Insurers”), by which the D&O Insurers have agreed to advance defense costs to the director defendants (“Director Defendants”) in the Fiduciary Duty Litigation. The Court granted the Motion to Stay pending a determination of the availability of insurance coverage for the Director Defendants, so that the Director Defendants would not have to fund their defense in the Fiduciary Duty Litigation out of pocket. Given the Debtors’ agreement with the D&O Insurers to advance defense costs to the Director Defendants, the grounds upon which the Court granted the Stay no longer exist.

WHEREFORE for the reasons set forth above, the Committee respectfully moves that the Court enter an order lifting the Stay and setting a deadline to file an answer or otherwise

responsive pleading in the Fiduciary Duty Litigation for February 1, 2010, or such other date as the Court deems appropriate.

Dated: January 5, 2010

Respectfully submitted,

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 to practice in this court set forth in Local Rule 2090-1(A).

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

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-and-

We hereby certify that the undersigned attorneys are appearing pro hac vice in this matter pursuant to Court orders dated February 27, 2008, March 3, 2008 and November 9, 2009.

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