

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

**EX PARTE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF TOUSA, INC., ET AL. TO SHORTEN NOTICE FOR HEARING ON THE  
COMMITTEE'S MOTION 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 moves for entry of an order in the above-referenced adversary proceeding, substantially in the form annexed hereto as Exhibit A, shortening the notice required with respect to the *Motion of the Official Committee of Unsecured Creditors of TOUSA, Inc., et al. to Lift the Stay and Set an Answer Date*, filed on January 5, 2009 (the "Motion", attached hereto as Exhibit B).<sup>1</sup> (D.E. #37). In support of this motion, the Committee respectfully states as follows:

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth for such terms in the Motion.

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein is Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**Relief Requested**

4. On January 31, 2008, the Court entered an Order Establishing Certain Notice, Case Management and Administrative Procedures (the “Case Management Order”). (D.E. # 100). The Case Management Order established certain procedures (the “Case Management Procedures”) governing the administration of the Debtors’ chapter 11 cases. The Debtors subsequently amended the Case Management Procedures by order dated March 25, 2008. (D.E. #655).

5. As outlined in the Case Management Procedures, motions shall be set for hearing by the clerk of the Court pursuant to the following procedure:

In accordance with Rule 9073-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of Florida . . . the Clerk’s Office shall set motions on the date of the upcoming Omnibus Hearing no less than fifteen (15) days after the next filing of the request for relief.

Case Management Procedures ¶ A(2)(a). The next hearing is scheduled for January 11, 2010 at 1:30 p.m. (the “January 11th Hearing”).

6. Based on the relevant portion of the Case Management Procedures cited in paragraph 5 above, motions and applications to be heard at the January 11th Hearing needed to be filed with the Court and served on (or before) December 27, 2009 (*i.e.*, fifteen days in advance of the January 11th Hearing).

7. At the hearing held on December 29, 2009, in connection with Adversary Proceeding No. 09-02281-JKO (the “Insurance Coverage Dispute”), the Debtors announced that they had reached an agreement with their director and officer liability insurance carriers for the advancement of defense costs in the above-referenced action. This agreement in the Insurance Coverage Dispute from the basis of the relief sought in the Motion. Thus it was not possible to file the Motion in time to provide the 15-day notice required by the Case Management Procedures prior to the January 11<sup>th</sup> Hearing.

8. The Committee provided notice orally at the December 29, 2009 hearing that they intended to seek the relief now sought in the Motion at the January 11<sup>th</sup> Hearing.

9. In light of the foregoing, the Debtors seek entry of an order shortening the notice required with respect to the Motion from 15 days to 5 days. The Debtors submit that the notice period with respect to the relief requested in the Motion is sufficient under the circumstances. The Debtors further submit that no party entitled to notice will be prejudiced by shortening the notice period with respect to the hearing on the Motion.

#### **Notice**

10. Pursuant to Bankruptcy Rule 9006(c)(1), the Court may shorten time without notice. The Debtors nonetheless propose to serve this motion via overnight mail and/or email upon the parties served with the Debtors’ October 30, 2009 Motion to Stay.

WHEREFORE, the Debtors respectfully request that this Court enter an order, in the form attached hereto as Exhibit A (a) allowing for a shortened notice period for the Motion; (b) allowing for the Motion to be set for hearing on January 11, 2010; and (c) granting such other and further relief as would be appropriate under the circumstances.

Dated: January 6, 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.**

By: /s/ Patricia A. Redmond  
Patricia A. Redmond (Florida Bar No. 303739)  
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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.

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Daniel H. Golden (New York Bar No. 1133859)  
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*Co-Counsel to the Official Committee of Unsecured  
Creditors of TOUSA, Inc., et al.*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

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**EX PARTE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., ET AL. TO SHORTEN NOTICE FOR HEARING ON THE COMMITTEE'S MOTION TO LIFT THE STAY AND SET AN ANSWER DATE**

Upon the *ex parte* motion [D.E. #\_\_\_] (the "Motion") of The Official Committee of Unsecured Creditors (the "Committee") of TOUSA, Inc., *et al.* (collectively, the "Debtors") for entry of an order allowing for a shortened notice period for the *Motion of the Official Committee of Unsecured Creditors of TOUSA, Inc., et al. to Lift the Stay and Set an Answer Date*; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estate, their creditors and all other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is **ORDERED** that:

1. The Motion is granted to the extent set forth herein.
2. The hearing on the *Motion of the Official Committee of Unsecured Creditors of TOUSA, Inc., et al. to Lift the Stay and Set an Answer Date* is set for January 11, 2010 at 1:30 p.m., at the United States Courthouse, 299 East Broward Boulevard, #301, Fort Lauderdale, Florida 33301.

# # #

**Exhibit B**

*Motion of the Official Committee of Unsecured Creditors of TOUSA, Inc., et al. to Lift the Stay  
and Set an Answer Date*

UNITED STATES BANKRUPTCY COURT  
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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  
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