

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *et al.*,

Plaintiffs,

v.

CITICORP NORTH AMERICA, INC., *et al.*,

Defendants.

Chapter 11 cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-01435

**MOTION FOR ORDER APPROVING STIPULATIONS FOR JOINDER
OF CASTLERIGG MASTER INVESTMENTS, LTD., HELIOS FUNDING, LLC,
MCDONNELL LOAN OPPORTUNITY, LTD. AND SOF INVESTMENTS, L.P.**

The Official Committee of Unsecured Creditors of TOUSA, Inc., *et al.* moves for an Order approving the Stipulations for Joinder between the Committee and Castlerigg Master Investments, Ltd., Helios Funding, LLC, McDonnell Loan Opportunity, Ltd., and SOF Investments, L.P. (each a "Joining Defendant"), and adopting portions thereof as its Order, and states:

1. The Committee named each Joining Defendant, each of which was a lender under the First Lien Term Loan, as a defendant in the First Amended Adversary Complaint (D.E. # 120), and filed a certificate of service (D.E. # 143) indicating that on October 29, 2008, it served a copy of the First Amended Adversary Complaint on each Joining Defendant.

2. After trial of the Adversary Proceeding, this Court entered its Findings of Fact and Conclusions of Law (D.E. 658) and Final Judgment (DE 659) (together, the "Original Findings and Judgment"), and its Amended Findings of Fact and Conclusions of Law (D.E. 722) and Amended Final Judgment (DE 721) (together, the "Amended Findings and Judgment").

3. On October 23, 2009, the First Lien Term Loan Lenders filed an accounting which noted that there were "Non-Appearing Lenders" who had received principal and interest payments. (D.E. 697).

4. The Joining Defendants were among the Non-Appearing Lenders. Each Joining Defendant asserts that it has no record of service, and none of the Joining Defendants appeared as a party or otherwise participated in the Adversary Proceeding.

5. Citicorp North America, Inc. (as administrative agent for the First Lien Term Loan and the First Lien Term Loan lender defendants who had appeared in the adversary proceeding) filed timely Notices of Appeal of the Original Findings and Judgment (D.E. # 668) and of the Amended Findings and Judgment (D.E. # 748)(collectively the "Appearing First Lien Defendants' Appeals").

6. After the Appearing First Lien Defendants appealed, this Court entered its Order on Motions for Stay Pending Appeal (DE 723), the United States District Court for the Southern District of Florida entered its Order Granting in Part Motions for Stay & Closing Cases (D.E. # 20 in Case No. 09-23425), and this Court entered its Order Granting Motion to Modify Order for Stay Pending Appeal (D.E. # 837)(collectively the "Stay Orders"). The Stay Orders provide the Appearing First Lien Lenders a stay of enforcement of the monetary portion of the Final Judgment and Amended Final Judgment conditioned upon the posting of bonds or cash in the

amount of 110% of the payments made to the Appearing First Lien Defendants under the First Lien Term Loan.

7. After entry of the Original and the Amended Findings and Judgment, the Committee discussed, with each Joining Defendant, its non-appearance. Those discussions led to the execution of the Stipulations between the Committee and Helios (D.E. # 866), the Committee and SOF (D.E. # 867), the Committee and Castlerigg (D.E. # 868), and the Committee and McDonnell (D.E. # 883). In summary, each Stipulation provides:

- the Joining Defendant appears in the Adversary Proceeding and is bound by the Original Findings and Judgment, the Amended Findings and Judgment, and any subsequent findings of fact and conclusions of law or final judgment issued by the Court (the “Further Findings and Judgment” and, collectively with the Original Findings and Judgment and the Amended Findings and Judgment, the “Judgment), effective as of the date the Court approves the Stipulations and authorizes the joinder of the Joining Defendant as a defendant in its capacity as a First Lien Term Loan lender (the “Effective Date”);
- the Committee waives and shall not seek a default judgment against the Joining Defendant;
- the Joining Defendant shall be bound by the Judgment as of the Effective Date as if it had appeared and defended the Adversary Proceeding in its capacity as a First Lien Term Loan lender, and shall be treated for all purposes as if it had appeared and defended the Adversary Proceeding as a First Lien Term Loan lender, including for any calculation of pre-judgment interest;

- the Joining Defendant will file a Notice of Appeal within fourteen days of the Effective Date, and such filing shall be deemed timely;
- the Committee and the Joining Defendant will seek to consolidate the Joining Defendant's appeal with the Appearing First Defendants' Appeals; and
- upon filing the Notice of Appeal, the Joining Defendant shall be deemed to be a party to the Stay Orders and shall have thirty days from the Effective Date to post a supersedeas bond or cash to satisfy the Stay Orders; and the Committee shall have fifteen days to challenge any such bond.

8. Each Stipulation sets forth the amount of the supersedeas bond or cash the Joining Defendant must post to satisfy the Stay orders. Those amounts are:

- Helios, 110% of \$275,691.98, or \$303,260.84.
- SOF, 110% of \$461,785.07, or \$507,963.57.
- Castlerigg, 110% of \$487,337.45, or \$536,071.19.
- McDonnell, 110% of \$112,339.67, or \$123,573.63.

7. Approval of the Stipulations will facilitate the orderly conduct of further proceedings in and appeals from this Adversary Proceeding, and conserve the time and resources of this Court and of the parties by avoiding the necessity for contested proceedings about the Committee's service of original process and applications for the entry of defaults. No party will be prejudiced by the entry of an order approving the Stipulations and adopting their material provisions as the order of this Court. A proposed order granting the requested relief will be uploaded.

WHEREFORE, the Committee requests that the Court grant its Motion, approve the Stipulations between the Committee and the Joining Defendants, adopt the material provisions of the Stipulations as its Order, and grant such additional relief as it deems just and proper.

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 28, 2010, I caused a true and correct copy of the foregoing Agreed Motion For Order Adopting Stipulation to be served by notice of electronic filing or by e-mail on the parties named on the attached service list.

/s/ Patricia A. Redmond

Patricia A. Redmond