

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

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

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *ET AL.*,

Plaintiffs,

vs.

CITICORP NORTH AMERICA, INC., *ET AL.*,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 08-1435-JKO

NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that the Official Committee of Unsecured Creditors of TOUSA, Inc., *et al.*, will take the following deposition, pursuant to the Subpoena to Testify at a Deposition in a Civil Action attached as Exhibit "A." A corresponding Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action is attached as Exhibit "B."

NAME: 40/86 Advisors, Inc.
(by an officer, director, managing agent or other person designated by 40/86 Advisors, Inc. on its behalf about the subject matters set forth in the Subpoena to Testify at a Deposition in a Civil Action attached as Exhibit "A")

DATE and TIME: Tuesday, January 19, 2010
10:00 a.m.

PLACE: Harrison & Moberly, LLP
11611 North Meridian St.
Suite 150
Carmel, IN 46032
Tel. (317) 639-4511

This examination will be taken pursuant to Federal Rules of Civil Procedure 30(b)(6), 45 and 69, made applicable to adversary proceedings by Federal Rules of Bankruptcy Procedure 7030, 7045 and 7069. The deposition may continue from day to day until completed. The deposition will be taken for the purpose of discovery in aid of execution of final judgment or for such other purposes as are permitted under the applicable Rules.

Dated: January 4, 2010

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)
MARTIN SIMKOVIC
(FLORIDA BAR NO. 0870625)
KELLY R. MELCHIONDO
(FLORIDA BAR NO. 0582603)
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/ Lawrence S. Robbins

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
lrobbins@robbinsrussell.com
astrasser@robbinsrussell.com
mwaldman@robbinsrussell.com

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

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2010, I caused a true and correct copy of the foregoing Notice of Taking Deposition in Aid of Execution 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

EXHIBIT A

AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

In re: TOUSA, Inc., et. al.,
Debtors

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

Plaintiff

v.

Citicorp North America, Inc., et. al.,

Defendant

Civil Action No. Chapter 11 Cases
Case No. 08-10928-JKO
Adv. Pro. 08-1435-JKO

(If the action is pending in another district, state where:
United States Bankruptcy Court for the
Southern District of Florida)

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: 40/86 Advisors, Inc.
535 College Drive
Carmel, IN 46032
c/o Eric R. Johnson, President;

and

Corporation Service Company,
Registered Agent,
251 E. Ohio Street, Suite 500,
Indianapolis, IN 46204

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

SEE ATTACHED SCHEDULE A

Place: Harrison & Moberly, LLP 11611 North Meridian Street Suite 150 Carmel, IN 46032 Tel: (317) 639-4511	Date and Time: Tuesday, January 19, 2010 at 10:00 a.m.
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The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ 66.00 .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically

stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A

1. The identity of the general partner or general partners and, if applicable, the officers, directors, members, managers, or partners of the general partner or general partners of Fall Creek CLO, Ltd.
2. The addresses of the principal place of business of the general partners of Fall Creek CLO, Ltd.
3. The addresses of the officers, directors, members, managers or partners of the general partner or general partners of Fall Creek CLO, Ltd.
4. The address of the principal place of business of Fall Creek CLO, Ltd.
5. The name and address of the registered agent for service of process on Fall Creek CLO, Ltd.

EXHIBIT B

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

In re: TOUSA, Inc., et al.,
Debtors

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

Plaintiff

v.

Citicorp North America, Inc., et al.,

Defendant

Civil Action No. Chapter 11 Cases
Case No. 08-10928-JKO
Adv. Pro. 08-1435-JKO

(If the action is pending in another district, state where:
United States Bankruptcy Court for the
Southern District of Florida)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES

To: 40/86 Advisors, Inc.
535 College Drive
Carmel, IN 46032
c/o Eric R. Johnson, President;

and
Corporation Service Company,
Registered Agent
251 E. Ohio Street
Suite 500
Indianapolis, IN 46204

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE A

<p>Place: Harrison & Moberly, LLP 10 West Market Street Suite 700 Indianapolis, IN 46204 Telephone: (317) 639-4511 Attention: Stephen E. Arthur, Esq.</p>	<p>Date and Time: Thursday, January 14, 2010 at 10:00 a.m.</p>
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

<p>Place:</p>	<p>Date and Time:</p>
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: Dec 31, 2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Plaintiff, the Official Committee of Unsecured Creditors of TOUSA, Inc., et. al., , who issues or requests this subpoena, are:

Kelly R. Melchiondo, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 150
Miami, Florida 33130
kmelchiondo@stearnsweaver.com
Tel: (305) 789-3529

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

other *(specify)*: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

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(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

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(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

1. The term "document" includes, without limitation, all written, electronic or electronically stored information, including writings, notes, presentations, memoranda, drawings, graphs, charts, spreadsheets, photographs, sound recordings, images, e-mails, text messages, instant messages and/or other data or data compilations stored in any medium from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" also includes metadata associated with an electronic file.

2. When producing documents, please keep all documents segregated by the file in which the documents are contained in the ordinary course of business, and indicate or identify the name of the file in which the documents are contained.

3. If you withhold any documents on the grounds of a claimed privilege or protection from discovery, please identify the claimed privilege or protection from discovery in writing with respect to each document and provide the following information:

- a. The type of privilege or protection asserted and the reasons you contend the document is privileged or protected;
- b. The factual basis for the claim of privilege or protection, the type of document and the subject matter of the document;
- c. The date of the document;
- d. The author of the document and his or her title or position, the recipient(s) of the document and the recipient's title or position; and
- e. The identity of all persons who have seen the document.

INDIVIDUAL REQUESTS

1. All documents that identify the general partner or general partners, and, if applicable, the officers, directors, members, managers, or partners of the general partner or general partners of Fall Creek CLO, Ltd.
2. All documents that identify the principal place of business of the general partners of Fall Creek CLO, Ltd.
3. All documents that identify the addresses of the officers, directors, members, manager, or partners of the general partner or general partners of Fall Creek CLO, Ltd.
4. All documents that identify the address of the principal place of business of Fall Creek CLO, Ltd.
5. All documents that identify the name and address of the registered agent for service of process on Fall Creek CLO, Ltd.