

**The CIT Group/Business Credit Inc.’s Motion to Allow Late Filed Proofs of Claim Timely Filed (the “CIT Motion”).**

By the CIT Motion, CIT Group/Business Credit (“CIT”) seeks entry of an order deeming its recently filed proofs of claim timely filed.

On November 13, 2009, CIT filed three proofs of claim (collectively, the “CIT Claims”) seeking reimbursement of \$437,176.00 in attorneys’ fees incurred in connection with CIT’s defense in the Committee’s avoidance action (the “Committee Action”). CIT alleges that it is entitled to such fees pursuant to indemnity provisions of (i) the Senior Credit Agreement, dated August 1, 2005 between CIT as successor administrative agent, EHT/Transeastern, LLC and TE/TOUSA Senior LLC, as borrowers, TOUSA, Inc. (“TOUSA”), as guarantor, and the lenders party thereto (the “Credit Agreement”) and (ii) the Mutual Release and Consent Agreement, dated July 31, 2007. The CIT Claims are asserted against TOUSA, TOUSA Homes LP, and TOUSA Homes Florida LP.

CIT asserts that it should be given leave to file the late CIT Claims because (i) the circumstances of the Debtors’ cases did not previously warrant CIT filing proofs of claim or, in the alternative, (ii) CIT has demonstrated “excusable neglect” in filing the late proofs of claim.

CIT asserts a three-pronged argument in contending that it was not previously required to file the CIT Claims. First, CIT alleges that the Debtors failed to notify CIT or its counsel of the Bar Date. According to CIT, CIT’s administrative agent fees had been paid in full six months prior to the commencement of the Debtors’ chapter 11 cases and, therefore, as of such date, CIT was not a creditor of the Debtors. Second, CIT contends that its claim for attorneys’ fees did not arise until after the Bar Date because the Committee Action was not filed until July 14, 2008, two months after the Bar Date. Finally, CIT alleges that it would have been accused of filing a fraudulent proof of claim if, before the Bar Date and before the Committee Action was filed, CIT preemptively filed a proof of claim based on the “premonition that it might be sued for an alleged fraudulent transfer at some future date in the bankruptcy.”

Alternatively, CIT argues that if the Bankruptcy Court finds CIT should have filed the CIT Claims prior to the Bar Date, the CIT Claims should be deemed timely filed based on the theory of “excusable neglect.” Along these lines, CIT contends that as soon as it was sued in the Committee Action, it aggressively sought to protect its indemnity claim through participation in the Committee Action. CIT argues that it was only after it was dismissed from the Committee Action on June 27, 2009 that CIT found it necessary to protect its indemnity rights under the Credit Agreement through the claims process. As such, CIT believes that a five month delay between the time of dismissal from the Committee Action and the time of filing of the CIT Claims is “excusable neglect.”

***A hearing on the CIT Motion has been scheduled for December 4, 2009 at 9:30 a.m. (ET).***