

Randy T. Kotler and David Keller’s Motion for Relief From The Automatic Stay to Permit Insurer to Advance Certain Defense Costs (the “Lift Stay Motion”).

By the Lift Stay Motion, Randy T. Kotler and David Keller (together, the “Defendants”) seek entry of an order lifting the automatic stay to allow the Debtors’ insurers, Federal Insurance Company (“Federal”) to advance and reimburse additional defense costs incurred by the Defendants in connection with certain pending litigation.

In late 2006 four plaintiffs filed securities lawsuits, which were later consolidated (the “Securities Class Action”) alleging the Defendants violated the Securities Acts of 1933 and 1934 by filing “false and misleading” public statements in connection with the Transeastern Joint Venture. Specifically, the complaint alleges that the public filings were misleading because they stated that the Transeastern debt was non-recourse as to TOUSA, Inc. (“TOUSA”). On October 22, 2009, the Federal District Court for the Southern District of Florida entered a judgment dismissing the case without prejudice. A notice of appeal was filed by the plaintiffs on October 29, 2009.

On September 29, 2008, several EMF Funds filed a lawsuit (the “EMF Action” and, together with the Securities Class Action, the “Pending Litigation”) against four of TOUSA’s current or former officers, including the Defendants alleging fraud in the inducement of contract and negligent misrepresentation. As in the Securities Class Action, the plaintiffs in the EMF Action allege that they were fraudulently or negligently induced into entering certain option agreements by the same allegedly false and misleading statements that the Transeastern debt was non-recourse to TOUSA.

The Bankruptcy Court has entered two previous orders granting Federal relief from the automatic stay to advance a total of \$1.55 million dollars in defense costs incurred by the Defendants and others in connection with the Pending Litigation. The first order, issued on May 12, 2008, permitted Federal to advance up to \$750,000 in defense costs. The second order issued January 9, 2009, authorized Federal to reimburse an additional \$400,000 of defense costs related to the Securities Class Action and \$400,000 of defense costs related to the EMF Action for a total of \$800,000.

In the Lift Stay Motion, the Defendants assert that TOUSA’s certificate of incorporation requires the Debtor indemnify its directors and officers against all costs related the Pending Litigation. Furthermore, the Defendants maintain that the Defendants’ claims to the Federal insurance policy are not disputed by either the Debtors or Federal and, thus, are not entangled in the Debtors’ recently filed adversary complaint against certain of their insurers.

The Debtors have in place seven layers of insurance coverage totaling \$100 million available to cover losses, costs and expenses of the type incurred by the Defendants’ in the Pending Litigation. The Defendants argue that the Lift Stay Motion addresses only the Federal Policy, TOUSA’s \$15 million primary director and officer liability policy, which represents the first of those seven layers of insurance coverage.

The Defendants contend that the Federal insurance policy at issue, Federal Policy No. 8181-4693 (the “Federal Policy”) provides coverage to (i) individual director and officer defendants, (ii)

TOUSA and (iii) TOUSA subsidiaries, via “claims made” insurance coverage during the period December 15, 2005 through December 15, 2006. The insurance is allegedly divided into three types of coverage, Side A coverage, Side B coverage and Side C coverage. According to the Defendants, Side A coverage provides coverage for any loss incurred by *insured persons* for claims made against them if such loss is not indemnified by TOUSA. Side B coverage insures the *organization* to the extent that it indemnifies the insured persons for covered loss, and Side C coverage insures the *organization* against any securities claims brought directly against it. According to the Defendants, the “payment of loss” provision of the Federal Policy provides that in the event Federal must make payment on any claim under the provisions of the policy that would potentially exceed the amount available under the Federal Policy, Federal will first make payment for claims covered under Side A coverage, before making any payment for claims covered under Side B or C coverage essentially subordinating the Debtors’ rights to proceeds from the Federal Policy.

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