

**Debtors' Motion for an Order Approving Agreement Between TOUSA Homes, Inc. and Masco Corporation and Certain of its Subsidiaries to (A) Settle and Set Off Certain Prepetition Obligations and (B) Assume Certain Prepetition Contracts (the "Masco Motion").**

By the Masco Motion, the Debtors seek entry of an order (a) authorizing the Debtors to enter into an agreement (the "Agreement") with Masco Corporation ("Masco") to set off and settle certain prepetition obligations, (b) modifying the automatic stay in the chapter 11 cases solely for the purpose of allowing the parties to implement the setoff contemplated in the Agreement, and (c) approving the Debtors' assumption of certain prepetition contracts referenced in the Agreement.

The Debtors purchase materials and services from Masco in the ordinary course of business. The contracts that govern the Debtors' relationship with Masco (the "Masco Contracts") include:

- Masco Contractor Services Technical Olympic Growth Incentive Program, dated as of January 17, 2005 (the "National Incentive Agreement") which provides for: (i) quarterly incentive payments to the Debtors based on the volume of products purchased; and (ii) special discounts on Masco products.
- TOUSA Homes, Inc. – Delta Faucet Company Agreement, dated as of November 2, 2005 (the "Delta Agreement") which provides for: (i) quarterly incentive payments based on the closing of homes in which Delta products are used; (ii) a \$75,000 annual loyalty bonus; (iii) long term price protections; and (iv) an indemnity in favor of the Debtors related to damage from Masco's products and services.
- Master Agreement with certain unionized Masco entities, dated July 16, 2007 and amended December 21, 2007 (the "Union Master Agreement") which governs the terms and conditions for union work provided by Masco for the Debtors including: (i) an indemnity from Masco to the Debtors; (ii) insurance certificates; and (iii) state specific schedules which provide additional terms and conditions.
- Master Agreement with certain non-unionized Masco entities, dated July 16, 2007 and amended December 21, 2007 (the "Non-Union Master Agreement") which provides the same type of terms as the Union Master Agreement for non-union work.

Masco has established a Masco Builder Program pursuant to which certain Masco Companies offer rebates and incentives. Masco administers all of its rebate programs, including those described in the Masco Agreements, through an online claims submissions process associated with the Masco Builder Program.

The Debtors assert that they have been attempting to reconcile the amounts due to and owing from Masco under the Masco Contracts and the Masco Builder Program and that the Agreement is the culmination of such efforts. On May 28, 2008, the Debtors sent a letter to Masco (the "Demand Letter"), seeking payment of rebates and incentives in the amount of \$1,520,068 consisting of (a) \$328,803 for rebates and incentives for the first quarter of 2008 and (b) \$1,200,265 for 2007. Masco responded that such amounts were not owing because Masco has

the right to (i) set off amounts owed to any Masco entity and (ii) prevent rebates from being earned if a customer's account is in default.

According to the Debtors' schedules of liabilities, as of the petition date, the Debtors had contingent obligations to Masco of approximately \$262,000. In addition, a Masco entity, Builder Services Group, filed two proofs of claim after the bar date alleging liability in excess of \$95,000. The Debtors allege that they owe Masco approximately \$6,700 for prepetition obligations, though Masco counters that the obligation for prepetition goods and services is approximately \$10,670.

The terms of the Agreement described in the Masco Motion are as follows:

- Payment to the Debtors: Masco will pay the Debtors the total amount of \$1,518,440.10 (the "Agreed Rebate Amount") which is comprised of: (i) \$328,803 for rebates and incentives for the first quarter of 2008; (ii) \$1,200,265 of rebates and incentives for 2007 minus (iii) \$6,700 owed to Masco according to the Debtors' books and records and minus (iv) \$3,927.71 of disputed invoices which Masco alleges evidence amounts owed by the Debtors.
- Escrow: Upon entry into the Agreement, Masco will transfer the Agreed Rebate Amount to non-Debtor Universal Land Title to hold in escrow pending Bankruptcy Court approval of the Agreement.
- Releases: The Debtors will release all claims against Masco arising before April 1, 2008 and Masco will release all claims against the Debtors arising before the petition date, including the late filed proofs of claim.
- Amendment to the Masco Contracts: The Debtors and Masco will Amend the Non-Union and Union Master Agreements to ensure their enforceability. The Debtors and Masco will also amend the National Incentive Agreement through December 31, 2008. The Debtors and Masco will also clarify the applicability of the terms and conditions listed on Masco's website to the Masco Contracts.
- Assumption of the Masco Contracts: The Debtors agree to assume the Masco Contracts and Masco agrees that no defaults, other than the amount to be set off, are required to be cured in connection with the assumption.
- Court Approval: The Agreement is subject the approval of the Bankruptcy Court.

***A hearing on the Masco Motion is scheduled for August 25, 2008, with a corresponding objection deadline of August 21, 2008.***