

Emergency Motion for Entry of an Order (A) Establishing Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates and (B) Granting Related Relief *Nunc Pro Tunc* to the Petition Date (the "Claims Trading Motion").

By the Claims Trading Motion, the Debtors seek entry of an order to impose certain restrictions on trading of unsecured claims against the Debtors' estates in order to protect these tax attributes and prevent a change in ownership of the Debtors ("Change of Ownership"). Specifically, the Debtors assert that these restrictions are necessary to protect the NOLs discussed above.

The procedures that the Debtors propose are as follows:

- Owners (the "Substantial Claimholders") holding more than \$52 million in unsecured claims (the "Threshold Amount") against the Debtors' estates will be required to provide limited information concerning the Substantial Claimholders' holdings to the Debtors and their counsel, within fifteen days of entry of the Claims Trading Order, or within fifteen days of becoming a Substantial Claimholder. The notice may redact the Substantial Claimholder's name and taxpayer identification number. The Debtors reserve the right to increase the Threshold Amount during the chapter 11 cases, and in any disclosure statement.
- Any disclosure statement filed by the Debtors that describes a plan of reorganization premised on Section 382(1)(5) of the IRC shall include, without limitation, the following disclosures: (i) the net present value of the projected tax savings of the 382(1)(5) plan as compared to a 382(1)(6) plan based on the financial projections included in such disclosure statement; (ii) a description of the restrictions on trading with respect to the common stock and any other securities of the reorganized Debtors (the "Affected Securities") that will be required or imposed under the 382(1)(5) plan after consummation thereof to preserve such tax savings and the circumstances under which such restrictions will be lifted; (iii) the projected value of the Affected Securities in the aggregate; and (iv) the projected tax savings of the 382(1)(5) plan as a percentage of the aggregate value of the Affected Securities.
- If the Debtors propose a 382(1)(5) plan, the Debtors shall file with the Bankruptcy Court and serve on any Substantial Claimholder that has identified itself to the Debtors, no later than twenty calendar days after the date on which the Bankruptcy Court enters an order approving a disclosure statement, a notice establishing the record date (the "Record Date"), and the most current Threshold Amount. No later than fifteen days after service, the Substantial Claimholder will serve on the Debtors' counsel, notice of the nature and amount of the Substantial Claimholder's claims. This notice may redact the Substantial Claimholder's name and taxpayer identification number. The Debtors may forward any notices to anonymous Substantial Claimholders through the Committee.
- No later than ten days after the Record Date, the Debtors shall serve notice (i) explaining the calculations to derive the amount of new TOUSA common stock the Substantial Claimholder may retain to avoid a violation of 382(1)(5), and (ii) provide notice that pursuant to the Final Order, all Substantial Claimholders must comply with the notice (the "Sell-Down Notice").
- Based on the information provided to the Debtors by the Substantial Claimholders, the Debtors will calculate the amount of claims the Substantial Claimholders must sell in

order to effectuate the 382(1)(5) plan (the “Sell-Down Amount”). A Substantial Claimholder will never be compelled to sell down below the amount the party owned at the Petition Date (the “Protected Amount”).

- Objections to the Sell-Down Notice must be filed within ten days from service of the Sell-Down Notice. Substantial Claimholders objecting must disclose their holdings to the Debtors.
- The Substantial Claimholder must also serve notice on the Debtors that it has complied with the Sell-Down Notice.
- If the Substantial Claimholder does not sell down its holdings, it will not receive any stock associated with the unsold claims, and the unsold claims will be extinguished. The Debtors may also seek damages against Substantial Claimholders who fail to comply with the foregoing procedures.

The Debtors submit that the proposed procedures are narrowly tailored and will not inhibit claims trading during the cases. Further, the Debtors believe that these procedures will give claimholders adequate time to sell down claims in a methodical and economical manner prior to confirmation of a plan.

An interim order approving the Claims Trading Motion was entered on March 6, 2008.