

Motion of the Debtors for Relief from the Automatic Stay, to the Extent Applicable, to Permit Insurer to Advance Certain Defense Costs of the Debtors' Current and Former Directors and Officers (the "Second Insurance Motion").

By the Second Insurance Motion, the Debtors seek entry of an order lifting the automatic stay, to the extent applicable, to allow their insurance carrier, to advance and reimburse defense costs (the "Defense Costs") incurred by certain of the Debtors' former or current directors and officers (the "Director Defendants"). The Director Defendants are seeking access to funds from the Debtors' \$15 million primary director and officer liability policy (the "Federal Policy") in effect from December 2005 through December 2006 (the "Coverage Period"). The Debtors also maintain excess policies for total coverage of approximately \$100 million.

In late 2006, certain investors (the "Plaintiffs") filed a federal securities class action complaint (the "Durgin Action") against certain of the Debtors, certain of the Debtors' officers and directors, and the parent company of the Debtors (collectively, the "Defendants"). The Durgin Action alleges that the Defendants misled stockholders by failing to disclose liability of certain TOUSA entities in connection with the 2005 acquisition of the Transeastern assets by the Transeastern joint venture (the "Transeastern Acquisition"). Although the Durgin Action has been stayed as to the Debtors in connection with the commencement of the chapter 11 cases, the Plaintiffs have continued their suit against the other defendants, including the Director Defendants. As a result, the Director Defendants have incurred and continue to incur Defense Costs associated with the Durgin Action.

In May 2008, at the Debtors' request and with the Committee's consent, the Court entered an order granting relief from the automatic stay to permit their insurer, Federal Insurance Company ("Federal") to advance up to \$750,000 for the Director Defendants' defense costs in the Durgin Action incurred after March 31, 2008, without prejudice to further requests for payment of additional defense costs (the "Initial Order"). The Debtors assert that the Director Defendants' Defense Costs are now approaching or have exceeded \$750,000.

Although at the time of the Initial Order, the Debtors represented to the Court that additional claims drawing on the Federal Policy would be unlikely because claims filed after the termination of the policy would only be covered if they related to the Durgin Action, the Debtors now believe that an additional lawsuit is covered by the Federal Policy.

On September 29, 2008, EMF Fund III, LLC, EMF Fund IV, LLC and EMF Fund V, LLC filed a lawsuit in the Circuit Court for Broward County, Florida against four of TOUSA's current or former individual officers (the "EMF Action"). The lawsuit, which does not name TOUSA as a defendant, alleges that the plaintiffs entered into an option agreement with TOUSA based on allegedly false oral and written representations attributed to the current or former individual officers. The lawsuit seeks damages, together with interest and costs in an unspecified amount.

By the Second Insurance Motion, the Debtors seek authorization for Federal to advance \$400,000 to cover Defense Costs related to each of the EMF Action and the Durgin Action for an aggregate amount of \$800,000.

The Debtors argue that the relief requested in the Insurance Motion should be granted because (i) the Federal Policy's "Payment of Loss" provision subordinates the Debtors' potential rights to payment to the rights of the Debtors' directors and officers and (ii) the Federal Policy is a "claims made" policy that was in effect from December 15, 2005 through December 15, 2006, and, as the claims asserted in connection with the Durgin Action and EMF Action are the only claims that were made within the coverage period, no new, unrelated claims can be made with respect to the Federal Policy. In addition, the Debtors argue that the directors and officers will suffer personal loss if Federal is not permitted to advance Defense Costs.

A hearing on the Second Insurance Motion has been scheduled for January 9, 2009, with an objection deadline of January 5, 2009.