

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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TOISA LIMITED, <i>et al.</i> ,	:	Case No. 17-10184 (SCC)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
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**DECLARATION OF JAMIE O’CONNELL  
IN SUPPORT OF CONFIRMATION OF THIRD AMENDED  
JOINT PLAN OF LIQUIDATION FOR TOISA LIMITED AND CERTAIN OF  
ITS AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Pursuant to 28 U.S.C. § 1746, I, John James O’Connell III, hereby declare as follows:

1. I am a partner in the Restructuring and Special Situations Group (the “Restructuring Group”)<sup>2</sup> at PJT Partners LP (“PJT”), which serves as the investment banker for Toisa Limited (“Toisa”) and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”).<sup>3</sup>

2. PJT is an investment banking firm listed on the New York Stock Exchange with its principal offices at 280 Park Avenue, New York, New York 10017.

<sup>1</sup> The Debtors in these chapter 11 cases are as follows: Trade Prosperity, Inc.; Toisa Limited; United Courage, Inc.; Trade Vision, Inc.; United Journey, Inc.; United Kalavryta, Inc.; Trade Sky, Inc.; Trade Industrial Development Corporation; United Honor, Inc.; Trade Will, Inc.; United Leadership Inc.; United Seas, Inc.; United Dynamic, Inc.; United Emblem, Inc.; United Ideal Inc.; Trade Unity, Inc.; Trade Quest, Inc.; Trade Spirit, Inc.; Trade Resource, Inc.; United Ambassador, Inc.; Edgewater Offshore Shipping, Ltd.; United Banner, Inc.; Toisa Horizon, Inc.; and Trade and Transport Inc.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan (as defined below).

<sup>3</sup> PJT was retained in these cases pursuant to an interim order entered on May 22, 2017 [Docket No. 175] and a final order entered on July 24, 2017 [Docket No. 250].



PJT was spun off from The Blackstone Group L.P. ("Blackstone") effective October 1, 2015. Upon the consummation of the spin-off, the Restructuring Group became a part of PJT, and Blackstone's restructuring professionals became employees of PJT. The senior professionals at PJT have extensive experience in the reorganization and restructuring of distressed companies, both out of court and in chapter 11 proceedings. PJT has over 585 employees located in New York, San Francisco, Boston, Chicago, London, Sydney, Hong Kong, and Madrid. PJT is a registered broker-dealer with the United States Securities and Exchange Commission, is a member of the Securities Investor Protection Corporation, and is regulated by the Financial Industry Regulatory Authority.

3. Prior to joining PJT, I was a Senior Managing Director at Blackstone, where I worked in the Restructuring Group from 2004 – 2015. Previously, I worked at Dolphin Equity Partners LP and in the Corporate Recovery Services group of Arthur Andersen LLP.

4. I have over 20 years of corporate restructuring experience and have served as a financial advisor in numerous chapter 11 matters, advising debtors, creditors and other parties in interest. I also have significant experience advising on shipping restructurings in court and out of court. More specific to this matter, I have advised on the following chapter 11 cases filed in the United States District Court for the Southern District of New York involving shipping companies: Genco Shipping & Trading Limited (Company), Nautilus Holdings Limited (Company), Aegean Marine Petroleum Network Inc. (Official Committee of Unsecured Creditors), Excel Maritime Carriers, Inc. (Secured Lenders) and Ultrapetrol Bahamas Limited (Bondholders).

5. I hold a Bachelor of Business Administration degree *magna cum laude* in Accountancy from the University of Notre Dame and a Master of Business

Administration degree with honors in Finance and Strategic Management from the Wharton School of the University of Pennsylvania. I have spoken on restructuring topics at numerous conferences in the U.S. and abroad. Since 2013, I have served as a guest lecturer in both the *Advanced Bankruptcy: Deals and Issues in the Current Environment* seminar at Columbia Law School and the *Creating Value Through Corporate Restructuring* MBA course at Harvard Business School.

6. I submit this declaration in support of confirmation of the *Third Amended Joint Plan of Liquidation for Toisa Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, dated March 12, 2019 (as may be amended, modified, or supplemented from time to time, the "Plan"). I have reviewed, and I am generally familiar with the terms and provisions of the Plan, the Disclosure Statement in respect of the Plan, and the requirements for confirmation of the Plan under section 1129 of the Bankruptcy Code.

7. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, discussion with the Debtors' other advisors and other members of the PJT team involved in this matter, my review of relevant documents, information provided by the Debtors, or my opinion based on my experience and familiarity with the Debtors' assets, business, operations, and financial conditions. If called upon to testify, I can and will testify competently as to the facts and opinions set forth herein.

### **Introduction**

8. Over the past year, PJT has performed extensive analysis on claims, cash amounts and recoveries in order to facilitate discussion and seek agreement amongst the Debtors, the Secured Lenders, and the Creditors' Committee on a methodology to distribute the value of the Debtors' estate. The Plan reflects a global

settlement on that methodology between the Debtors and the Secured Lenders. The Plan also provides for a recovery to unsecured creditors who, it is my understanding, would otherwise receive no value under the Bankruptcy Code's absolute priority rule.

**Secured Lenders' Superpriority Claims**

9. Pursuant to the Cash Collateral Orders entered in these Chapter 11 Cases, as adequate protection for the Debtors' use of their collateral, the Secured Lenders are entitled to Superpriority Claims for any diminution in value of their interest in their respective collateral. Distributable value at Toisa is not sufficient to pay the Secured Lenders' Superpriority Claims against Toisa in full, which in turn leaves no value available for Toisa's general unsecured creditors.

10. Prior to PJT's retention in these Chapter 11 Cases, the Debtors filed their Schedule of Assets and Liabilities (the "Schedules") on March 31, 2017. The Schedules set forth values for the Debtors' Oceangoing Vessels and Offshore Vessels (collectively, the "Vessels").<sup>4</sup>

11. With the consent of the Creditors' Committee and the Informal Committee, on March 30, 2018, the Court approved the Debtors' motion [Docket No. 507] seeking approval of procedures for the sale of their Oceangoing Vessels pursuant to section 363 of the Bankruptcy Code and the assignment of the Newbuild Tanker Construction Contracts pursuant to section 365 of the Bankruptcy Code [Docket No. 526] (the "Oceangoing Sale Procedures").

12. In accordance with the Oceangoing Sale Procedures, and in consultation with the Creditors' Committee and the Informal Committee, the Debtors

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<sup>4</sup> As PJT had not yet been engaged at the time to provide services to the Debtors, PJT had no involvement in determining the values for the Vessels set forth in the Schedules.

have sold all 20 Oceangoing Vessels for aggregate gross sale proceeds of \$413.3 million. The total Secured Claims of the Secured Lenders related to those 20 Oceangoing Vessels is approximately \$423.9 million. When taking into account (a) the actual sale prices and (b) the lesser of petition date collateral values as reflected in the Schedules or claim amounts, the Oceangoing Silos have total Superpriority Claims against Toisa of approximately \$62.0 million.

13. There are also Newbuild Tanker Construction Contracts on the Oceangoing side that have been assigned for gross consideration totaling \$9.2 million of cash and the assumption of the Debtors' \$271.0 million in obligations to the shipyard. The cash proceeds from the assumption and assignment of the Newbuild Tanker Construction Contracts are subject to approximately \$29.6 million of Secured Claims held by Export-Import Bank of China and Citibank, N.A., London Branch. When taking into account (a) the actual sale prices and (b) the lesser of petition date collateral values or claim amounts, those lenders have total Superpriority Claims against Toisa of approximately \$18.7 million using the methodology as agreed among the Debtors and the Secured Lenders in the Plan.

14. On July 3, 2018, the Court approved the Debtors' motion [Docket No. 635] seeking approval of similar sale procedures regarding the solicitation of offers for certain of the Offshore Vessels pursuant to section 363 of the Bankruptcy Code [Docket No. 671] (the "Offshore Sale Procedures," together with the Oceangoing Sale Procedures, the "Vessel Sale Procedures").

15. In accordance with the Offshore Sale Procedures, and in consultation with the Creditors' Committee and the Informal Committee, the Debtors have sold 16 Offshore Vessels to date for aggregate gross sale proceeds of \$113.1 million. The Debtors are in the process of selling the remaining 9 Offshore Vessels. The

total Secured Claims of the Secured Lenders related to the Offshore Vessels is approximately \$515.6 million.<sup>5</sup> When taking into account (a) actual sale prices and (b) the lesser of petition date collateral values as reflected in the Schedules or claim amounts, the Offshore Silos have total Superpriority Claims against Toisa of approximately \$354.3 million.

16. As such, in the aggregate, the Secured Lenders' Superpriority Claims against Toisa using the methodology set forth above are estimated to be as much as \$435.0 million.

17. The Debtors project that, as of the current expected Effective Date of the Plan, March 29, 2019, the value available for distribution to creditors of Toisa will be approximately \$35.6 million. This amount includes the proceeds of all asset sales (including the sale of the Vessels and the sale of the G-IV Aircraft), settlement proceeds received from HHI and Shanghai Zhenhua as well as expected settlement proceeds from Diavaz and QWHI.

18. As a consequence, there is not sufficient value to satisfy the Secured Lenders' Superpriority Claims in full. As noted, and as I have been advised by Debtors' counsel, the Secured Lenders' diminution claims are treated as Superpriority Claims under the Cash Collateral Orders and the Plan. Accordingly, those claims are senior to all unsecured claims, including General Unsecured Claims asserted against Toisa, the Holders of which would receive no recovery but for the Secured Lenders' agreement to establish the General Unsecured Claims Distribution Reserve under the Plan.

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<sup>5</sup> Excludes Secured Claims from Silo #14 – DNB Tanker on one Offshore Vessel, the *Toisa Invincible*, as silo collateral along with 3 Oceangoing Vessels.

**Best Interest of Creditors Test**

19. I understand that the Bankruptcy Code requires that, with respect to each impaired Class of Claims and Interests, each holder of such Claim or Interest must either (a) accept the Plan or (b) receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

20. Here, the “best interests” test is satisfied as to each member of an Impaired Class that has rejected (or is deemed to reject) the Plan. Liquidation under chapter 7 of the Bankruptcy Code would only increase administrative costs in the form of statutory chapter 7 trustee’s fees and other professional fees while delaying the administration of these cases and delaying distributions to Holders of Allowed Claims. Moreover, the various settlements reached under the Plan that enhance distributions to Holders of General Unsecured Claims would not be available in a chapter 7 case. As such, the General Unsecured Claims Distribution Reserve, as set forth in Section 6.7 of the Plan, would be unavailable to unsecured creditors outside the context of the Plan. As discussed above, the Superpriority Claims of the Secured Lenders are far in excess of the cash available for distribution to general unsecured creditors; consequently, there would be no recovery for Holders of General Unsecured Claims but for the settlements under the Plan. Accordingly, I believe the Plan satisfies the “best interests” test under section 1129(a)(7) of the Bankruptcy Code.

***[Concluded on the Following Page]***

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 12, 2019

New York, New York

Respectfully submitted,

/s/ John James O'Connell III  
John James O'Connell III