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Frank A. Oswald
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Hearing Date: December 17, 2020 at 10:00 a.m. (E.T.)
Objection Deadline: December 10, 2020 at 4:00 p.m. (E.T.)

Counsel to the Post-Effective Date Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
TOISA LIMITED, <i>et al.</i> ,	:	Case No. 17-10184 (SCC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
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DEBTORS’ OBJECTION TO CLAIM NO. 27 FILED BY PAUL A. HERBERT

TO THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE:

Toisa Limited (“Toisa”) and certain of its affiliates, the post-effective date debtors of the above-captioned cases (collectively, the “Debtors”), by and through their undersigned counsel, hereby submit this objection (the “Objection”) to Claim No. 27, filed by Paul A. Herbert, and respectfully state:

¹ The Post-Effective Date 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. Final decrees have been entered in each of these chapter 11 cases except Toisa Limited [Docket No. 1158], which case remains open for implementing the Plan and for which Post-Effective Toisa (as defined in the Plan) is the post-confirmation Debtor.

² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Plan (as hereinafter defined).



JURISDICTION

1. This Court has jurisdiction to consider this objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are sections 105 and 502 of the Bankruptcy Code.

BACKGROUND

3. In May 2011, Mr. Hebert commenced a tort action against Toisa, BP America, Inc., BP Exploration & Production, Inc., BP P.L.C., Wood Group Production Services Inc., and Sealion Shipping LTD in the District Court for the Eastern District of Louisiana, Case No 11-01200, based upon personal injuries he allegedly sustained on the vessel Toisa Pisces when that vessel provided disaster mitigation for the explosion and fire on the offshore drilling rig, Deepwater Horizon, on April 20, 2010 (the "State Court Action").
4. On January 29, 2017 (the "Petition Date"), the Debtors each filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.
5. On July 31, 2017, Mr. Herbert filed a proof of claim (No. 27) in these chapter 11 cases asserting an unsecured claim seeking damages in the amount of \$25 million against Debtor Toisa based upon the same transaction and occurrence as alleged in the State Court Action (the "Claim").
6. The Debtors dispute any liability in whole or in part for the damages sought in the Claim, because, among other things, the Debtors' vessel was chartered by BP America, Inc. ("BP"), which has acknowledged it would indemnify Toisa for any liabilities as per their charter agreement.

7. Prior to the Petition Date, the Debtors maintained certain protection and indemnity coverage under certain insurance policies which may be applicable to the Claim (the “Insurance Policies”).

8. On March 15, 2019, the Court entered its *Finding of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Plan of Liquidation for Toisa Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Dkt. No. 1126] (the “Confirmation Order”), which confirmed the *Third Amended Joint Plan of Liquidation for Toisa Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”).

RELIEF REQUESTED

9. Pursuant to sections 105(a) and 502 of the Bankruptcy Code and the Plan, the Debtors seek entry of an order, substantially in the form annexed hereto as Exhibit “A” (the “Proposed Order”), disallowing and expunging the Claim.

BASIS OF OBJECTION

10. Section 3.4(m) of the Plan, entitled *Treatment of Classes*, provides the following treatment for Personal Injury Claims:

All injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date or the date indicated in any order providing for such injunction or stay; *provided, however*, that upon such conditions precedent being satisfied, Holders of Allowed Personal Injury Claims shall have recourse on account of such Allowed Personal Injury Claims only to the applicable insurance policy, subject to the terms and conditions of any applicable insurance policy and the full reservation of rights of any insurer with respect to the insured portion, if any, of such Claims. Nothing shall preclude the Holder of a Personal Injury Claim from pursuing any applicable insurance after the injunction or stay is no longer in full force and effect, or from seeking discovery in actions against third parties, or from pursuing third-party insurance that does not cover Claims against the Debtors. Any Holder of a Personal Injury Claim (or portion thereof) that is not the subject of insurance

coverage, can elect to fix their claim to be treated as a Class 29 General Unsecured Claim, subject to ratable distribution from the General Unsecured Claims Distribution Reserve up to the total amount of such Allowed Personal Injury Claim in full and final satisfaction of such Claim, payable on the initial Distribution Date in accordance with this Plan. In no event shall the Holder of an Allowed Personal Injury Claim receive Distributions on account of such Claim in excess of the Allowed amount of such Claim.

11. As such, the confirmed Plan provides that holders of Personal Injury Claims, such as the Claimant, are classified in Class 30 (Personal Injury Claims) and may recover from the applicable Insurance Policy or, if no insurance coverage is available, may elect to fix their claim to be treated as a Class 29 General Unsecured Claim (as defined in the Plan), subject to ratable distribution from the General Unsecured Claims Distribution Reserve (as defined in the Plan) in full and final satisfaction of such claim.

12. By this Objection, the Debtors seek to disallow the Claim in its entirety on the basis that the Claimant may, pursuant to the Plan, pursue any applicable Insurance Policy or indemnification in satisfaction of the Claim. Accordingly, the Claim should be expunged in its entirety.

NOTICE

13. Notice of this Objection and has been given to (a) the Claimant; (b) the United States Trustee; and (c) any other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b) and which has filed a notice of appearance in these Chapter 11 Cases. The Debtors submit that no other or further notice of this Objection need be provided.

NO PREVIOUS REQUEST

14. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

DATED: New York, New York
November 13, 2020

TOGUT, SEGAL & SEGAL LLP
Counsel to the Debtors
By:

/s/ Brian F. Moore

FRANK A. OSWALD

BRIAN F. MOORE

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New York, New York 10119

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Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	
TOISA LIMITED, <i>et al.</i> ,	:	Case No. 17-10184 (SCC)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
-----	X	

**ORDER GRANTING DEBTORS’ OBJECTION
 TO CLAIM NO. 27 FILED BY PAUL HERBERT**

Upon the claim objection (the “Claim Objection”)² of Toisa Limited, Inc. and certain of its affiliates, the post-effective date debtors in the above-captioned cases (collectively, the “Debtors”), for entry of an order, pursuant to sections 105 and 502 of the Bankruptcy Code and the Plan, to disallow and expunge the Claim; and it appearing that the Court has jurisdiction over the Claim Objection pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and good and sufficient notice of the Claim Objection having been given and no other or further notice being necessary; and upon the hearing conducted before the Court to consider the Claim Objection (the “Hearing”); and upon the record made at the Hearing and the decision reached at the conclusion thereof; and upon all

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Claim Objection.

of the prior proceedings had herein; and good and sufficient cause appearing therefore; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The relief requested in the Claim Objection is granted to the extent provided herein.
2. The Claim is hereby disallowed and expunged in its entirety. The Claimant shall be entitled to no distribution from the Debtors or from the General Unsecured Claims Distribution Reserve on account of the Claim.
3. The Claimant may pursue the State Court Action, but any recovery against the Debtors (by verdict, settlement, or otherwise) shall be limited to the extent of any available proceeds under any applicable insurance policies or available indemnification.
4. Nothing herein shall affect the rights and insurer or indemnifying party to assert any defenses to the Claim, the State Court Action, or any other action or proceeding.
5. Kurtzman Carson Consultants, the claims agent retained in the Debtors' above-captioned Chapter 11 cases, is authorized to reflect the treatment of the Claim on the official claims register maintained for the Debtors' cases.
6. The terms of this Order are effective immediately upon entry.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2020

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

TOGUT, SEGAL & SEGAL LLP
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Frank A. Oswald
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Hearing Date: December 17, 2020 at 10:00 a.m. (E.T.)
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Counsel to the Post-Effective Date Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	:
TOISA LIMITED, <i>et al.</i> ,	: Case No. 17-10184 (SCC)
	:
Debtors. ¹	: (Jointly Administered)
	:
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**NOTICE OF HEARING TO CONSIDER THE
DEBTORS’ OBJECTION TO CLAIM NO. 27 FILED BY PAUL A. HERBERT**

PLEASE TAKE NOTICE that a telephonic hearing to consider the *Debtors’ Objection to Claim No. 27, filed by Paul A. Herbert* (the “Objection”) will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004 on December 17, 2020 at 10:00 a.m. (E.T.) (the “Hearing”) or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Objection shall be made in writing, shall conform to the Federal Rules of

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Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interests, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 upon: (i) the Office of the United States Trustee for Region 2, Attn: Paul Schwartzberg, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014; and (ii) any such other party entitled to notice pursuant to Local Bankruptcy Rule for the United States Bankruptcy Court for the Southern District of New York 9013-1(b), so as to be so filed and received no later than December 10, 2020 at 4:00 p.m. (E..T.) (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Objection, with proof of service, is filed with the Bankruptcy Court and a courtesy copy delivered to the Honorable Shelley C. Chapman's chambers by the Objection Deadline, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order attached to the Objection, which order may be entered with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that any parties wishing to appear telephonically must refer to Judge Chapman's guidelines for telephonic appearances and must make arrangements with Court Solutions LLC in accordance with the Gen. Ord. M-543 *Coronavirus/COVID-19 Pandemic, Court Operations Under the Exigent Circumstances Created by COVID-19*, a copy of which is annexed hereto.

DATED: New York, New York
November 13, 2020

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Counsel to the Debtors
By:

/s/ Brian F. Moore

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