

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

)	
In re:)	Chapter 11
)	
UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , ¹)	Case No. 09 - _____ ()
)	
Debtors.)	Joint Administration Pending
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (A) PAYMENT OF PREPETITION (I) WAGES, SALARIES, AND
OTHER COMPENSATION; (II) REIMBURSABLE EMPLOYEE EXPENSES; AND
(III) EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (B) CONTINUATION
OF EMPLOYEE WAGE AND BENEFITS PROGRAMS POSTPETITION**

The above-captioned debtors, as debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and a final order, substantially in the form attached hereto as **Exhibit B** (the “Final Order”), (a) authorizing, but not directing, the Debtors to pay certain prepetition (i) wages, salaries, and other compensation; (ii) reimbursable employee expenses; and (iii) employee medical and similar benefits; (b) authorizing, but not directing, the Debtors to continue such employee wage and benefits programs on a postpetition basis; and (c) scheduling a final hearing (the “Final Hearing”) on the Motion. In support of this Motion, the Debtors respectfully state as follows.

Jurisdiction

1. The United States Bankruptcy Court for the District of Rhode Island has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core

¹ The Debtors in these chapter 11 cases are BLB Management Services, Inc., BLB Worldwide Holdings, Inc., and UTGR, Inc.

proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362, 363, and 507(a)(4)-(5) of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 4001(d), 6003, 7062, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background²

4. The Debtors’ principal asset is Twin River, a greyhound track and casino located in Lincoln, Rhode Island. BLB Investors, L.L.C. (“BLB Investors”), the direct and indirect parent of each of the Debtors, acquired Twin River in 2005. BLB Investors is a joint venture among three of the world’s most accomplished leisure and gaming operators, developers, and managers: Starwood Capital Group I Global, L.L.C., Kerzner International Holdings Ltd., and Waterford Group, LLC. (collectively, the “Sponsors”). The Sponsors purchased Twin River for \$470 million and then invested another \$220 million towards renovating Twin River into a world class facility.

5. Twin River today is the preeminent racing-casino (sometimes referred to as a “racino”) in New England. In many respects, the Debtors’ businesses have been great successes. Since 2005, the Debtors have grown Twin River to over 500,000 square feet, including more than 156,000 square feet of gaming space and over 4,700 slot machines, and have improved revenues year over year as their primary regional competitors’ revenues have slipped.

² The facts and circumstances supporting this Motion are further set forth in the Declaration of George Papanier, President and Chief Operating Officer of UTGR, Inc., in Support of First Day Motions (the “First Day Declaration”), filed contemporaneously herewith.

6. As successful as the Debtors' operations have been, their revenues cannot support the substantial demands imposed by the State of Rhode Island (the "State") tax rate and the Debtors' debt service obligations. Significantly, the State retains 61.5% of every dollar generated at Twin River (after winning customers have been paid), and reimburses Twin River less than 28% of every dollar.

7. Shortly before the filing of these chapter 11 cases (the "Chapter 11 Cases"), the Debtors reached an agreement with holders holding over 50% of the first lien debt and a substantial amount of the second lien debt, and the executive branch of the State on the terms of a preliminary restructuring transaction (the "Restructuring"), which is expected to eliminate approximately \$290 million in debt. The Restructuring provides for approximately \$11 million in annual support from the State in the form of promotional and marketing initiatives. Significantly, the Restructuring is conditioned on obtaining certain legislative enactments and amendments to the Master Video Lottery Terminal Contract (the "VLT Contract") between the State's Division of Lotteries and UTGR, Inc., which, among other things, will eliminate the requirement to maintain greyhound racing, approve 24-hour gaming at the facility, seven days a week, and enable the exercise of extension options under the VLT Contract, thus maintaining the tax rate for the facility. The Restructuring requires the Lenders to conduct a marketing process to identify a new operator of Twin River immediately, so that the Sponsors may transition out of the management and ownership of the facility.

8. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

The Debtors have requested that the Court grant procedural consolidation and joint administration of these Chapter 11 Cases.

The Debtors' Workforce and Wage and Benefit Obligations

9. As of the Petition Date, the Debtors employ approximately 798 employees (collectively, the "Employees"), of whom approximately 357 are part-time Employees.

10. Approximately 500 of the Employees are represented by six local unions with whom the Debtors have collective bargaining agreements, including: Carpenters Union, Laborers Local 71, Plumbers and Pipefitters Union Local 51, SEIU Local 334, Teamsters Local 51, and Unite/Here Local 217.

11. Although the Debtors have paid their wage, salary, and other obligations in accordance with their ordinary compensation schedule prior to the Petition Date, certain prepetition obligations for Employees may nevertheless be due and owing. Further, certain Employees may be entitled to unpaid compensation because (a) discrepancies may exist between the amounts paid and the amounts that should have been paid and (b) some payroll or invoice checks issued to Employees prior to the Petition Date may not have been presented for payment or may not have cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date.

I. Wages, Salaries, and Compensation

A. Wage Obligations

12. The Debtors pay some Employees on a weekly basis and others on a bi-weekly basis. Specifically, BLB Management Services, Inc. pays its seven Employees bi-weekly. UTGR, Inc. pays its 791 Employees on a weekly basis. On average, the Debtors' aggregate monthly payroll is approximately \$3.2 million. The Debtors believe that, as of the Petition Date, approximately \$770,000 in accrued wages, salaries, and other cash compensation (but excluding

severance pay, vacation pay, and reimbursable expenses) earned prior to the Petition Date remains unpaid to Employees (the “Unpaid Compensation”). As of the Petition Date, the Debtors believe that they do not owe any Employees Unpaid Compensation in excess of the \$10,950 cap imposed by section 507(a)(4) of the Bankruptcy Code.

13. The Debtors ask that they be authorized, but not directed, to pay prepetition amounts for Unpaid Compensation in the ordinary course of business consistent with past practice.

14. Moreover, as described in Section III.C of this Motion, the Debtors pay cash on account of Vacation Time (as defined below) only upon an Employee’s termination. To the extent that the Debtors determine that any Employee holds claims greater than \$10,950 against the Debtors for vacation pay, the Debtors seek authority, but not direction, as part of the Final Order only, to (a) permit such Employee to take accrued Vacation Time in the ordinary course of business and/or (b) to pay such Employee cash on account of their accrued Vacation Time upon termination, in the ordinary course of business, in either case regardless of the \$10,950 cap imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors believe that such payments are justified by the critical nature of the services provided by such Employees, and that honoring the established vacation policy will enable the Debtors to satisfy the expectations of the workforce with minimal cash expenditures.

B. Gross Pay Deductions, Governmental Withholdings, and Payroll Taxes

15. The Debtors routinely deduct certain amounts from their Employees’ gross pay, including, without limitation: (a) garnishments, child support, and similar deductions; and (b) other pre-tax and after-tax deductions payable pursuant to the Employee benefit plans discussed herein (e.g., contributions relating to health care benefits, insurance premiums, flexible spending programs, and 401(k) plans) (collectively, the “Deductions”). On a weekly basis, the

Debtors deduct and remit to appropriate third-party recipients approximately \$18,500 from the Employees' paychecks for the Deductions. The Debtors, however, may not have forwarded certain of the Deductions to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority to forward prepetition Deductions (and to continue to forward Deductions on a postpetition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business and consistent with past practice. As of the Petition Date, the Debtors estimate they owe approximately \$160,000 on account of prepetition Deductions.

16. In addition to the Deductions, the Debtors are required by law to withhold amounts related to federal, state, and local income taxes, as well as Social Security and Medicare taxes, for remittance to the appropriate taxing authority (collectively, the "Withheld Amounts"). The Debtors are also required to pay additional amounts for federal and state unemployment insurance (collectively, the "Employer Payroll Taxes," together with the Withheld Amounts, the "Payroll Taxes"). On a weekly basis, the Debtors remit approximately \$148,000 in Payroll Taxes. As of the Petition Date, the Debtors estimate they owe approximately \$312,000 on account of prepetition Payroll Taxes.

II. Reimbursable Expenses

17. Prior to the Petition Date, in the ordinary course of business, the Debtors reimbursed Employees for reasonable and customary expenses incurred on behalf of the Debtors in the scope of their employment, including expenses such as travel, lodging, relocation, entertainment, and business meals (collectively, the "Reimbursable Expenses").

18. Employees must submit an expense report with appropriate supporting documentation to receive reimbursement. Although the Debtors' policy is for reimbursement requests to be submitted promptly, on occasion Employees may not have done so. Thus, the

Debtors are unable to provide a final, detailed listing of unpaid prepetition Reimbursable Expenses at this time because it is likely that Employees will submit requests for expenses incurred prepetition after the Petition Date. Based on historical figures, however, the Debtors estimate they owe approximately \$9,000 on account of prepetition Reimbursable Expenses that remain unpaid.

III. Employee Benefit Plans

19. In the ordinary course of business, the Debtors maintain various employee benefit plans and policies, including, without limitation, health care, prescription drug benefits, dental care, workers' compensation benefits, vacation time and other paid leaves of absence, 401(k) plans, life insurance, accidental death and dismemberment insurance, employee assistance programs, long-term disability insurance, and severance payments (collectively, the "Employee Benefits").

A. Medical, Prescription Drug, and Dental Plans

20. The Debtors provide certain Employees with medical, prescription drug, and dental insurance coverage (collectively, the "Health Benefits").

- a. Medical and Prescription Drug Plans. Blue Cross Blue Shield of Rhode Island administers two medical plans for the Debtors' Employees. The first medical plan is available to full-time, non-union employees who work 32 or more hours per week. The second medical plan is available to Employees who are members of Unite/Here Local 217, SEIU Local 334, or Teamsters Local 51 and who work a minimum average of 28 hours per week per quarter.
- b. Dental Plan. Delta Dental of Rhode Island administers the Debtors' dental plan.

The Debtors' average annual cost to administer the Health Benefits is approximately \$3.1 million. The Debtors do not have any outstanding Health Benefits obligations.

B. Workers' Compensation

21. The Debtors provide workers' compensation insurance for their Employees (the "Workers' Compensation Program") at the statutorily-required level. The Beacon Insurance Company administers and pays the Debtors' workers' compensation claims. For the policy period July 1, 2009 through June 30, 2010 (the "Policy Period"), the Debtors will pay insurance premiums to Beacon Insurance Company in an aggregate amount of approximately \$640,000. The workers' compensation insurance premiums are paid in nine payments spread over the course of the Policy Period. The last workers' compensation insurance premium for the Policy Period was paid on April 1, 2009. As of the Petition Date, the Debtors do not have any outstanding obligations under the Workers' Compensation Program.

C. Vacation and Leaves of Absence

22. The Debtors provide all full-time Employees with vacation time as a paid, time-off benefit (the "Vacation Time"). The amount of available Vacation Time, and the rate at which such Vacation Time accrues, is generally determined by the Employee's length of full-time employment. Full-time Employees receive from 11 to 25 days of vacation a year. Non-union Employees may carry-over a maximum of 160 hours of Vacation Time. If the Debtors terminate an Employee's employment, the Employee's final paycheck will include unused Vacation Time. As of the Petition Date, the Debtors estimate they owe approximately \$1.03 million on account of Vacation Time accrued by Employees during the prepetition period.

23. The Debtors also provide Employees with certain other leaves of absence as required by law (collectively, the "Leaves of Absence"). Leaves of Absence include family medical leave, pregnancy, adoption and foster care leave, military leave, jury duty, voting leave, personal leave, and bereavement leave. The Debtors do not accrue Leaves of Absence for their Employees, and Leaves of Absence are not reflected as a liability on the Debtors' balance sheets.

D. 401(k) Retirement Plan

24. The Debtors maintain a retirement savings plan for the benefit of all eligible Employees that meet the requirements of section 401(k) of the Internal Revenue Code (the “401(k) Plan”). The Debtors have established a limited matching program to induce eligible Employees to participate in this valuable savings opportunity (the “Matching Obligation”).

25. The Debtors withhold approximately \$49,000 in the aggregate each month from participants’ paychecks on account of their 401(k) contributions. On average, the Debtors pay to Employees’ 401(k) accounts approximately \$30,000 per month on account of Matching Obligations. As of the Petition Date, the Debtors owe approximately \$15,000 on account of unpaid Matching Obligations and employee contributions that have not been remitted to the 401(k) Plan.

E. Life Insurance and Disability Benefits

26. The Debtors provide basic term life and accidental death and dismemberment insurance coverage through Prudential and Mutual of Omaha for all of their non-union, full-time Employees and death benefits, which are self-insured, to eligible union member, full-time employees (the “Life Insurance”). On average, this coverage costs the Debtors approximately \$2,000 per month in the aggregate. As of the Petition Date, the Debtors believe they do not have any outstanding Life Insurance obligations.

27. The Debtors also provide long-term disability benefits to all non-union Employees (the “Long-Term Disability Benefits”). Prudential Insurance Company of America underwrites and administers the Debtors’ Long-Term Disability Benefits. This coverage costs the Debtors approximately \$1,630 per month in the aggregate. As of the Petition Date, the Debtors believe they do not have any outstanding Long-Term Disability Benefits obligations.

F. Employee Assistance Program

28. Because personal problems can have an impact on an Employee's effectiveness at work, the Debtors make professional counseling services available to eligible Employees and their dependents through an Employee assistance program (the "Employee Assistance Program"). The Debtors pay approximately \$2,700 on an annual basis to continue the Employee Assistance Program. As of the Petition Date, the Debtors believe they do not have any outstanding obligations under the Employee Assistance Program.

G. Severance Payments

29. In the ordinary course of business, the Debtors offer severance payments (the "Severance Payments") to many Employees whose employment is terminated.

30. By this Motion, pursuant to a Final Order, the Debtors seek authority, but not direction, to continue making Severance Payments and honor their related obligations. The Debtors are not seeking interim authority to make any Severance Payments.

31. BLB Management Services, Inc. has a Severance Payment program that is generally applicable to all full-time employees. BLB Management Services, Inc. employs approximately seven employees, only two of which are insiders. The amounts of Severance Payments are determined by BLB Management Services, Inc.'s senior executives. Historically, Severance Payments have been between three and six months base salary, plus continuing medical coverage during the period in which Severance Payments are made, minus applicable deductions. In 2008, BLB Management Services, Inc. paid approximately \$100,000 of Severance Payments. If either of BLB Management Services, Inc.'s two insiders are severed during the pendency of these Chapter 11 Cases, the Debtors acknowledge that any proposed Severance Payment to such insider must be consistent with the terms of section 503(c)(2) of the Bankruptcy Code, and the Debtors will provide notice to the United States Trustee for the

District of Rhode Island (the “U.S. Trustee”) and any official committee appointed in these Chapter 11 Cases before seeking to make any such Severance Payment to an insider.

32. UTGR, Inc. has a Severance Payment program for certain employees. Approximately 14 to 15 directors³ are eligible for Severance Payments of approximately one month base salary, plus continuing medical coverage during the period in which severance payments are made, minus applicable deductions. Four officers and the Executive Director of Operations⁴ are eligible for Severance Payments of approximately six months base salary, plus continuing medical coverage during the period in which severance payments are made, minus applicable deductions. Approximately 12 managers are eligible for Severance Payments of approximately one month base salary, plus continuing medical coverage during the period in which severance payments are made, minus applicable deductions. In 2008, UTGR, Inc. paid approximately \$168,000 of Severance Payments. To be clear, only non-insiders of UTGR, Inc. qualify for Severance Payments.

33. If the Debtors are unable to continue the these programs, current Employees may question the Debtors’ commitment to the Severance Payments, which is intended to ease Employees’ financial burdens in the event of termination. Moreover, Employee morale and loyalty will be jeopardized at a time when Employee support is critical. As of the Petition Date, the Debtors do not believe they owe any unpaid Severance Payments.

³ For the purpose of clarity, the Debtors note that employees with the title of “director” in this context do not serve on UTGR, Inc.’s Board of Directors. These “director” positions are not held by insiders, as that term is defined by section 101(31) of the Bankruptcy Code.

⁴ Here as well, to clarify, the titles of “officer” and Executive Director of Operations do not indicate that these employees are insiders.

Relief Requested

34. By this Motion, the Debtors seek entry of an interim order granting them authority, in their sole discretion, to pay prepetition claims, honor obligations, and to continue programs postpetition, in the ordinary course of business and consistent with past practice, relating to: (a) Unpaid Compensation, Deductions, and Payroll Taxes; (b) Reimbursable Expenses; and (c) Employee Benefits except for Severance Payments (collectively, the “Employee Obligations”). As of the Petition Date, the Debtors estimate that approximately \$2.3 million in Employee Obligations have accrued and remain unpaid.

35. To the extent any of the Debtors’ Employees are asserting claims under the Workers’ Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code (the “Automatic Stay”) to permit these Employees to proceed with their claims under the Workers’ Compensation Program. This modification of the Automatic Stay pertains solely to claims under the Workers’ Compensation Program. To effectuate the aforementioned modification of the Automatic Stay, the Debtors request that the Court waive the stay of a judgment under Bankruptcy Rule 7062 and the requirements under Bankruptcy Rule 9014 relating to contested matters, solely with respect to claims under the Workers’ Compensation Program.

36. Additionally, the Debtors shall seek entry of a Final Order granting them, in addition to the relief requested above, the authority to: (a) pay prepetition claims, honor obligations, and to continue programs postpetition, in the ordinary course of business and consistent with past practice, relating to Severance Payments; and (b) (i) permit any Employee holding claims greater than \$10,950 against the Debtors for vacation pay to take accrued Vacation Time in the ordinary course of business and/or (ii) pay such Employee cash on account

of their accrued Vacation Time upon termination, in the ordinary course of business, in either case regardless of the \$10,950 cap imposed by sections 507(a)(4) and 507 (a)(5) of the Bankruptcy Code.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor Employee Wage and Benefit Obligations.

A. Certain of the Employee Obligations are Entitled to Priority Treatment.

37. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of Unpaid Compensation and other Employee-related obligations to priority treatment. To confirm a chapter 11 plan, the Debtors must pay priority claims in full. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein only affects the timing of payments to Employees, and does not negatively impact recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of all interested parties.

B. Payment of Certain of the Employee Obligations is Required by Law.

38. The Debtors also seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefits programs and child support and alimony payments, are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. See 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors to withhold certain tax payments

from Employees' paychecks and to pay such amounts to the appropriate taxing authority. See 26 U.S.C. § 6672 and 7501(a); see also City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); In re DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Payroll Taxes to the proper parties in the ordinary course of business.

39. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all workers' compensation amounts, therefore, is crucial to the continued operation of the Debtors' business.

C. Ample Authority Exists to Support Payment of Employee Wage and Benefit Obligations

40. The Debtors respectfully submit the Court may grant the relief requested in this motion pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. First, the Court may rely on its general equitable powers as codified in section 105(a), which provides that the Court may "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (citing Miltenberger v. Logansport, C. & S.W. R.Co., 106 U.S. 286 (1882)). Section 105(a) authorizes a court to "permit pre-plan payment of a pre-petition obligation when essential

to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

41. Application of section 105(a) here is appropriate because the relief requested in the Motion is consistent with the rehabilitative policy of chapter 11 of the Bankruptcy Code. A debtor in possession is a fiduciary with a duty to protect and preserve the estate, including the value of the business as a going concern. In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). Granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation and maximize the value of the estates’ assets, and thus benefit the estates’ creditors and other parties in interest.

42. Second, the Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See Ionosphere Clubs, 98 B.R. at 175 (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b)). To do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” Id. at 175. As discussed herein, payment of the Employee Obligations will benefit the estate and its creditors by maintaining the Debtors’ workforce, which is critical to the Debtors’ businesses.

43. The Debtors’ Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtors are unable to

satisfy such obligations, Employee morale and loyalty will be jeopardized at a time when Employee support is critical. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the insurance programs, the Employees will not receive health coverage and, thus, may become obligated to pay certain health care claims in cases where the Debtors have not paid the respective insurance providers. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency.

44. For all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption. In the absence of such payments, the Debtors believe their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, hinder the Debtors' ability to meet their customer obligations, and likely diminish creditors' confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on stabilizing its operations. Accordingly, the Debtors must be able to pursue all reasonable measures to retain their Employees by, among other things, continuing to honor all wage, benefits, and related obligations, including those that accrued prior to the Petition Date.

45. The importance of a debtor's employees to its operations has been recognized by courts in granting similar relief to that requested herein. See, e.g., In re Pawtuxet Valley Prescription & Surgical Center, Case No. 07-11767 (Bankr. D. R.I. Sept. 6, 2007); In re Iron Age Corp., Case No. 07-40217 (Bankr. D. Mass. Jan. 23, 2007); In re Syratech Corp., Case No. 05-11062 (Bankr. D. Mass. Feb. 18, 2005); In re Plymouth Rubber Co., Case No. 05-16088 (Bankr.

D. Mass. July 7, 2005); In re ACT Manufacturing, Inc., Case No. 01-47641 (Bankr. D. Mass. 2001); In re Portola Packaging, Inc., Case No. 08-12001 (Bankr. D. Del. Aug. 29, 2008); In re Hines Horticulture, Inc., Case No. 08-11922 (Bankr. D. Del. Aug. 22, 2008); In re Pierre Foods Inc., Case No. 08-11480 (Bankr. D. Del. July 16, 2008); In re ACG Holdings, Inc., Case No. 08-11467 (Bankr. D. Del. July 16, 2008); In re Tropicana Entm't, LLC, Case No. 08-10856 (Bankr. D. Del. May 6, 2008); In re Leiner Health Prods. Inc., Case No. 08-10446 (Bankr. D. Del. April 9, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (Bankr. D. Del. Feb. 5, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (Bankr. D. Del. Nov. 21, 2007); In re Delta Fin. Corp., Case No. 07-11880 (Bankr. D. Del. Dec. 19, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (Bankr. D. Del. June 13, 2007).

II. The Debtors Seek a Waiver of the Automatic Stay As It Applies to Workers' Compensation Claims.

46. Section 362(a) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to receive a claim against the debtor that arose before the commencement of the case under this title

11 U.S.C. § 362(a)(1). Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the Automatic Stay for "cause." Id. at § 362(d)(1).

47. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit the Employees to proceed with their workers' compensation claims in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the Automatic Stay because staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees

who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' business to the detriment of all parties in interest.

III. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

48. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

IV. The Debtors Respectfully Assert They Have Satisfied The Requirements of Bankruptcy Rule 6003.

49. Bankruptcy Rule 6003 empowers a court to grant relief within the first 20 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As described above, the Debtors' Employees are integral to their operations. Failure to satisfy their obligations with respect to their Employees in the ordinary course of business during the first 20 days of the Chapter 11 Cases will jeopardize Employee loyalty and trust, possibly causing Employees to leave the Debtors' employ and severely disrupting the Debtors' operations at a critical juncture. Moreover, the Debtors' Employees rely on their compensation, benefits, and reimbursement of expenses to pay their living expenses and the effect could be financially ruinous if the Debtors cannot pay them in the ordinary course of business. Accordingly, the

Debtors submit they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of its Employee Obligations.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

50. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 10-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Reservation of Rights

51. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' or any other party's rights to dispute any claim, or an approval or assumption of any agreement or contract under section 365 of the Bankruptcy Code. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' or any other party's rights to dispute such claim subsequently.

Motion Practice

52. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Motion. Accordingly, the Debtors submit that the Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules and Forms of the United States Bankruptcy Court for the District of Rhode Island.

Notice

53. The Debtors have provided notice of this Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the U.S. Trustee; (b) the entities listed on the Consolidated List of Creditors Holding the 40 Largest Unsecured Claims filed pursuant to

Bankruptcy Rule 1007(d); (c) applicable local, state, and federal regulatory entities; (d) counsel to the Administrative Agents for the First and Second Lien Lenders; (e) counsel to the equity sponsors; (f) counsel to those certain contractors who have asserted mechanic's liens against the Debtors; (g) the Internal Revenue Service; and (h) the Securities and Exchange Commission. Due to the urgency of the circumstances surrounding this Motion (as more fully described in the First Day Declaration) and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Request

54. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: June 23, 2009
Providence, Rhode Island

WINOGRAD, SHINE & ZACKS, P.C.

/s/ Allan M. Shine

Allan M. Shine (Bar No. 0383)
123 Dyer Street
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- and -

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Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

)	
In re:)	Chapter 11
)	
UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , ¹)	Case No. 09 - _____ ()
)	
Debtors.)	Joint Administration Pending
)	

**INTERIM ORDER AUTHORIZING (A) PAYMENT OF PREPETITION (I) WAGES,
SALARIES, AND OTHER COMPENSATION; (II) REIMBURSABLE
EMPLOYEE EXPENSES; AND (III) EMPLOYEE MEDICAL AND SIMILAR
BENEFITS; AND (B) CONTINUATION OF EMPLOYEE WAGE
AND BENEFITS PROGRAMS POSTPETITION**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (the “Interim Order”) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition (a) wages, salaries, and other compensation; (b) reimbursable employee expenses; and (c) employee medical and similar benefits, and as more fully set forth in the Motion; and upon the Declaration of George Papanier, President and Chief Operating Officer of UTGR, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions (the “First Day Declaration”); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found

¹ The Debtors in these chapter 11 cases are BLB Management Services, Inc., BLB Worldwide Holdings, Inc., and UTGR, Inc.

² All capitalized terms used but otherwise not defined herein shall have the meaning ascribed in the Motion.

that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that notice of the Motion and of the hearing on the Motion (the "Hearing") was appropriate under the particular circumstances; and the Court having reviewed the Motion and the First Day Declaration, and having heard the statements in support of the relief requested therein at the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on an interim basis.
2. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.
3. A final hearing shall be held on _____, 2009 at ___:___ a.m./p.m. (prevailing Eastern Time) (the "Final Hearing"). Any objections or responses to the Motion shall be filed on or before ___ business days prior to the Final Hearing and served in accordance with applicable law.
4. The Debtors are authorized, but not directed, to pay prepetition claims, honor obligations, and to continue programs postpetition, in the ordinary course of business and in accordance with the Debtors' prepetition policies and prepetition practices, relating to, without limitation: (a) Unpaid Compensation, Deductions, and Payroll Taxes; (b) Reimbursable Expenses; and (c) all Employee Benefits except for the Severance Payments (collectively, the "Employee Obligations").
5. The Debtors are not authorized to make any Severance Payments to any Employee prior to the Final Hearing and entry of a Final Order authorizing such relief.

6. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

7. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Obligations, including all administrative and processing costs and payments to outside professionals in the ordinary course of business.

8. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts owed to their Employees.

9. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to continue the Workers' Compensation Programs and pay all prepetition amounts relating thereto in the ordinary course of business.

10. Each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the Employee Obligations is directed to honor checks presented for payment and all fund transfer requests made by the Debtors are related to the Employee Obligations to the extent that sufficient funds are on deposit in such accounts.

11. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Obligations.

12. Nothing in the Motion or this Interim Order, nor as a result of the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (a) an

admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' or other parties in interest's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion and the First Day Declaration or otherwise deemed waived.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Interim Order.

Dated: _____, 2009
Providence, Rhode Island

Arthur N. Votolato
United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

)	
In re:)	Chapter 11
)	
UTGR, INC. d/b/a TWIN RIVER, <u>et al.</u> , ¹)	Case No. 09 - _____ ()
)	
Debtors.)	Joint Administration Pending
)	

**FINAL ORDER AUTHORIZING (A) PAYMENT OF PREPETITION (I) WAGES,
SALARIES, AND OTHER COMPENSATION; (II) REIMBURSABLE
EMPLOYEE EXPENSES; AND (III) EMPLOYEE MEDICAL AND SIMILAR
BENEFITS; AND (B) CONTINUATION OF EMPLOYEE WAGE
AND BENEFITS PROGRAMS POSTPETITION**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (the "Final Order") authorizing, but not directing, the Debtors to pay in the ordinary course of business prepetition (a) wages, salaries, and other compensation; (b) reimbursable employee expenses; and (c) employee medical and similar benefits, and as more fully set forth in the Motion; and upon the Declaration of George Papanier, President and Chief Operating Officer of UTGR, Inc., in Support of the Debtors' Chapter 11 Petitions and First Day Motions (the "First Day Declaration"); and the Court having entered an interim order approving the Motion on an interim basis on _____, 2009 [Docket No. __] (the "Interim Order"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this

¹ The Debtors in these chapter 11 cases are BLB Management Services, Inc., BLB Worldwide Holdings, Inc., and UTGR, Inc.

² All capitalized terms used but otherwise not defined herein shall have the meaning ascribed in the Motion.

proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that notice of the Motion and of the hearing on the Motion (the "Hearing") was appropriate under the particular circumstances; and the Court having reviewed the Motion and the First Day Declaration, and having heard the statements in support of the relief requested at the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to pay prepetition claims, honor obligations, and to continue programs postpetition, in the ordinary course of business and in accordance with the Debtors' prepetition policies and prepetition practices, relating to, without limitation: (a) Unpaid Compensation, Deductions, and Payroll Taxes; (b) Reimbursable Expenses; and (c) Employee Benefits, including Severance Payments (collectively, the "Employee Obligations").
3. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.
4. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Obligations, including all administrative and processing costs and payments to outside professionals in the ordinary course of business.

5. The Debtors are authorized, but not directed, to continue to honor their obligations to Employees under the Severance Payments in a manner consistent with the terms of section 503(c)(2) of the Bankruptcy Code, provided, however, that any proposed Severance Payment to an insider must be consistent with the terms of section 503(c)(2) of the Bankruptcy Code, and prior to making such payment, the Debtors must provide notice to the U.S. Trustee and any official committee appointed in these Chapter 11 Cases.

6. The Debtors are authorized to (a) permit any Employee holding claims greater than \$10,950 against the Debtors for Vacation Time to take accrued Vacation Time in the ordinary course of business and/or (b) pay such Employee cash on account of their accrued Vacation Time upon termination, in the ordinary course of business, in either case regardless of the \$10,950 cap imposed by sections 507(a)(4) and 507 (a)(5) of the Bankruptcy Code.

7. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts owed to their Employees.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order.

9. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to continue the Workers' Compensation Programs and pay all prepetition amounts relating thereto in the ordinary course of business.

10. Each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the Employee Obligations is directed to honor checks presented for payment and all fund transfer requests made by the Debtors are related to the Employee Obligations to the extent that sufficient funds are on deposit in such accounts.

11. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Obligations.

12. Nothing in the Motion or this Final Order, nor as a result of the Debtors' payment of claims pursuant to this Final Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' or other parties in interest's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion and the First Day Declaration or otherwise deemed waived.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

15. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Final Order.

Dated: _____, 2009
Providence, Rhode Island

Arthur N. Votolato
United States Bankruptcy Judge