

**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. 09-12418 (ANV)
)	
Debtors.)	Jointly Administered
)	

**DEBTORS’ OMNIBUS REPLY TO RESPONSES AND OBJECTIONS TO DEBTORS’
MOTIONS AND APPLICATIONS TO BE HEARD AT JULY 14, 2009 HEARING**

As indicated on the proposed agenda filed on July 10, 2009,² the above-captioned debtors and debtors in possession (collectively, the “Debtors”), have filed a series of motions and applications to be heard by this Court at the July 14, 2009 hearing (the “July 14 Hearing”). Certain parties have filed responses or objections to the Debtors’ pleadings, to which the Debtors respectfully submit this reply, in omnibus form, for the convenience of the Court and parties in interest. In support of this reply, and in further support of their motions and applications, the Debtors respectfully state as follows:

A. Cash Collateral

1. The United States Trustee (the “U.S. Trustee”) filed a response to the Debtors’ Cash Collateral Motion,³ asserting the following objections:

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

² Proposed Agenda for July 14, 2009 Hearing [Docket No. 133]. The Debtors will file an updated agenda on July 13, 2009 that includes all pleadings submitted to date for the July 14 Hearing.

³ Debtors’ Motion for Interim and Final Orders (A) Authorizing the Use of Cash Collateral; (B) Granting Adequate Protection to Prepetition Secured Parties; and (C) Scheduling a Final Hearing, filed June 23, 2009 [Docket No. 6] (the “Cash Collateral Motion”); Response of the United States Trustee to Debtors’ Motion for Entry of an Order Authorizing the Use of Cash Collateral, filed July 9, 2009 (the “Cash Collateral Objection”) [Docket No. 131].

- the fees to be paid to any chapter 7 trustee and any professionals employed by a chapter 7 trustee are unreasonably limited;
- to the extent the Debtors and their secured lenders are seeking to limit any section 506(c) claims, such limitation is inappropriate; and
- to the extent the Debtors and their secured lenders are seeking to impair or limit the claims of the Debtors' employees or wage earners in the event of a default under the cash collateral agreement or other wind down of the Debtors' businesses, such limitation is inappropriate.

2. At the Debtors' "first day" hearing on June 23, 2009 (the "First Day Hearing"), the Court entered a bench order authorizing the Debtors' interim use of Cash Collateral. On July 2, 2009, the Court entered the Amended Interim Order (A) Authorizing Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Scheduling a Final Hearing [Docket No. 99].

3. The Debtors' Cash Collateral Motion originally proposed to have this Court consider a Final Cash Collateral Order at the July 14 Hearing. Notably, however, the U.S. Trustee recently appointed an Official Committee of Unsecured Creditors (the "Committee") in these cases.⁴ At the request of the Committee, which sought additional time to review and discuss various aspects of the proposed Final Cash Collateral Order, the Debtors—along with counsel to the First Lien Agent (as defined in the Cash Collateral Motion) and the Department of Revenue and Department of Business Regulation of the Rhode Island Department of Administration—agreed to accommodate the Committee by proceeding at the July 14 Hearing with consideration

⁴ Appointment of an Official Committee of Unsecured Creditors, filed June 30, 2009 [Docket No. 85].

of a proposed Second Interim Cash Collateral Order, and postponing consideration of the proposed Final Cash Collateral Order to the Debtors' next omnibus hearing.

4. Accordingly, the Debtors respectfully submit that the U.S. Trustee's response should not preclude entry of the Second Interim Cash Collateral Order. First, the Debtors' key economic constituencies agree that the proposed Second Interim Cash Collateral Order represents an appropriate arrangement to provide the Debtors with sufficient access to cash collateral for approximately the next month, while protecting the rights of relevant parties during this brief extension to continue to negotiate towards consensual agreement on a Final Order. Second, the proposed Second Interim Cash Collateral Order is the same as the First Amended Interim Cash Collateral Order on the specific points raised in the U.S. Trustee's response, and the Debtors suggest that continuation of the status quo for approximately another month is sufficiently protective of the U.S. Trustee's concerns—especially insofar as those concerns are largely based on contingencies in the event these chapter 11 cases are converted to chapter 7 proceedings, a prospect that no party has asserted is realistic, much less likely. Lastly, the Debtors will continue their dialogue with the U.S. Trustee up to, during, and beyond the July 14 Hearing to address the issues raised by the U.S. Trustee and hopefully reach a consensual resolution.

5. Lastly, Dimeo Construction Company ("Dimeo") filed an objection to the Cash Collateral Motion as well.⁵ It is the Debtors' understanding that the Dimeo Objection has been

⁵ Limited Objection of Dimeo Construction Company to Debtors' Motion for Entry of a Final Order (A) Authorizing the Use of Cash Collateral, and (B) Granting Adequate Protection to Prepetition Secured Parties, filed July 7, 2009 (the "Dimeo Objection") [Docket No. 113].

resolved by the inclusion of requested language in the proposed Second Interim Cash Collateral Order.

B. Utilities

6. National Grid filed an objection to the Debtors' Utilities Motion, which the Court granted on an interim basis at the First Day Hearing, and of which the Debtors are requesting approval on a final basis at the July 14 Hearing.⁶ The crux of National Grid's objection is a request for additional adequate assurance beyond the two-week aggregate deposit proposed by the Debtors. The Debtors have spoken with counsel for National Grid and the parties have agreed to treat the objection as a request for adequate assurance to be handled pursuant to the procedures set forth in the interim and final orders, with National Grid reserving all rights. Accordingly, the Debtors submit that National Grid's objection does not preclude entry of the proposed Utilities final order.

C. K&E Retention Application

7. The U.S. Trustee filed an objection to the application of Kirkland & Ellis LLP ("K&E") to be retained as the Debtors' restructuring counsel.⁷ The stated ground for the U.S. Trustee's objection is that the terms of K&E's engagement letter and the declaration of Paul M. Basta in support of K&E's application purportedly indicate that K&E could simply keep the

⁶ Debtors' Motion for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services, filed June 23, 2009 (the "Utilities Motion") [Docket No. 14]; Objection of National Grid to Debtors' Motion for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services, filed July 7, 2009 [Docket No. 114].

⁷ Application to Employ Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date, filed July 1, 2009 (the "K&E Retention Application") [Docket No. 98]; Objection of the United States Trustee to Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis, LLP as Attorneys for the Debtors and Debtors in Possession *Nunc Pro Tunc* to Petition Date, filed July 9, 2009 [Docket No. 128].

approximately \$436,000 retainer amount remaining as of the petition date, without ever applying this amount to invoiced fees and expenses. To clarify any uncertainty on this point, attached hereto as **Exhibit A** is a Supplemental Declaration of Paul M. Basta that states K&E shall use the prepetition retainer balance only as follows:

- First, to satisfy any prepetition fees and expenses that were not received prior to the petition date.
- Second, to satisfy any fees and expenses that may be billed to the Debtors after these chapter 11 cases have concluded.
- Third, in the event that K&E's representation of the Debtors ends before these chapter 11 cases have concluded, to satisfy any accrued but unpaid fees and expenses, subject to this Court's approval.

8. In sum, the prepetition retainer balance will be used by K&E only as payment for invoiced fees and expenses—prepetition, postpetition, and/or post-bankruptcy—and any amounts remaining after final payment of all such outstanding fees and expenses shall be returned to the Debtors or the post-chapter 11 reorganized Debtors, as the case may be. The Debtors therefore submit the U.S. Trustee's objection should not preclude approval of K&E's retention application.

D. Lazard and Zolfo Cooper Retention Applications

9. The U.S. Trustee filed a joint objection to the retention applications of both Lazard Freres & Co. ("Lazard") and Zolfo Cooper, LLC ("Zolfo Cooper").⁸

10. Most significantly, the U.S. Trustee questions whether the services provided by Lazard (as investment banker) and Zolfo Cooper (as restructuring advisor) are duplicative. In

⁸ Application to Employ Lazard Freres & Co. LLC as Investment Banker and Financial Advisor, filed July 1, 2009 [Docket No. 94]; Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Zolfo Cooper, LLC as their Bankruptcy Consultants and Special Financial Advisors *Nunc Pro Tunc* to the Petition Date, filed July 1, 2009 [Docket No. 97]; Objection of the United States Trustee to Debtors' Applications to Employ Lazard Freres & Co. LLC and Zolfo Cooper, LLC, filed July 9, 2009 [Docket No. 130].

response, the Debtors are providing the below summary of the distinctions between Lazard’s and Zolfo Cooper’s roles:

Zolfo Cooper	Lazard
<ul style="list-style-type: none"> Develop Cash Flow Projections and Long Term Business Plan to provide basis to restructure Debtors’ operations 	<ul style="list-style-type: none"> Provide advice and assistance to the Debtors in connection with analyzing, structuring, negotiating, and effecting any restructuring of the Company’s outstanding indebtedness
<ul style="list-style-type: none"> Monitor actual cash flow and operating performance against projections and develop corrective actions to address variances 	<ul style="list-style-type: none"> Review and analyze the Debtors’ business, operations, and financial projections, and provide financial advice
<ul style="list-style-type: none"> Prepare SOFAs, Schedules of Assets and Liabilities, Monthly Operating Reports and other reports required by Court, U.S. Trustee or creditors 	<ul style="list-style-type: none"> Perform valuation analysis to determine range of values for Debtors on a going concern basis, and assist the Debtors in the identification, evaluation and negotiation of asset sales, if necessary
<ul style="list-style-type: none"> Perform claims analyses, reconciliations and negotiate with vendors on claims 	<ul style="list-style-type: none"> Work with constituents to develop appropriate capital structure
<ul style="list-style-type: none"> Analyze leases, and contracts and prepare information to support rejection decisions 	<ul style="list-style-type: none"> Obtain and negotiate any debtor-in-possession or exit financing
<ul style="list-style-type: none"> Monitor compliance with financial covenants 	<ul style="list-style-type: none"> Advise and assist the Debtors with negotiations with all parties in interest including the State of Rhode Island and lenders
<ul style="list-style-type: none"> Prepare liquidation analysis to support the best interests test 	<ul style="list-style-type: none"> Assist with the preparation of Plan of Reorganization and Disclosure Statement, and provide expert testimony regarding valuation, debt capacity and feasibility of Plan
<ul style="list-style-type: none"> Assist Company in analyzing and implementing cost reduction initiatives 	<ul style="list-style-type: none"> Attend Board of Directors meetings with respect to any restructuring matters
<ul style="list-style-type: none"> Assist the Company in its day-to-day operations 	<ul style="list-style-type: none"> Assist with sourcing of alternative service providers and subsequent negotiations
<ul style="list-style-type: none"> Meet with lenders and Creditors’ Committee regarding actions to be taken by the Debtors 	<ul style="list-style-type: none"> Advise the Debtors on tactics and strategies for negotiating rejection of leases and executory contracts

11. The Debtors assert that the services to be provided by Lazard and Zolfo Cooper are discrete and independent. Each firm's responsibilities has been negotiated carefully and designed to avoid duplication, pursuant to a specific set of advisory services typically provided by Lazard and Zolfo Cooper to debtors facing similarly large and complex financial and operational challenges. For these reasons, the Debtors require the assistance of an investment banker as well as a restructuring advisor to help guide them through the chapter 11 process. Lazard and Zolfo Cooper are highly qualified to provide the Debtors with critical advisory services that are distinct and tailored towards their respective fields of expertise as well as the exigencies and demands of these cases. Together, the specialized restructuring roles of Lazard (investment banking and capital markets) and Zolfo Cooper ("on the ground" assistance to chapter 11 debtors) are needed to help the Debtors maximize the value of their enterprise and successfully restructure their businesses.

12. The U.S. Trustee's other objections to Lazard's and Zolfo Cooper's retention applications are more specific. As to Lazard, the U.S. Trustee requests more information on Lazard's fee structure, which the Debtors will provide in advance of the July 14 Hearing. Next, the U.S. Trustee states Lazard seeks a waiver of the requirement to maintain detailed time records for this engagement, yet the Debtors note that paragraph 6 of the proposed order attached to the Lazard Application provides that Lazard (which does not bill its clients hourly) shall submit time records in one-half hour increments.

13. As to Zolfo Cooper, the U.S. Trustee's objection raises a series of points, each of which Zolfo Cooper addresses in the Certification of Elizabeth S. Kardos in Response to Objection of the United States Trustee to Debtors' Application to Employ Zolfo Cooper, LLC

(the “Kardos Certification”), attached hereto as **Exhibit B**. Specifically, the Kardos Certification provides:

- Zolfo Cooper is seeking to be compensated on an hourly basis, based upon the actual number of hours expended, and its work efforts will be directed by the Debtors. As Zolfo Cooper is unaware at this time of the issues that may be raised in the Chapter 11 Cases, or the work efforts the Debtors may request, Zolfo Cooper is unable to provide projected costs at this time.
- Zolfo Cooper does not intend to apply its retainer to any outstanding prepetition fees or expenses. In the event any unknown prepetition fees or expenses become known to Zolfo Cooper, Zolfo Cooper will seek Court approval before applying the retainer to such prepetition fees or expenses.
- Zolfo Cooper acknowledges the typographical error in the Engagement Letter and submits that jurisdiction in the Chapter 11 Cases shall reside in the United States Bankruptcy Court for the District of Rhode Island.
- Zolfo Cooper confirms it is not seeking modification of any reasonableness standard applied by the Court in approving the reimbursement of expenses.
- Zolfo Cooper acknowledges the typographical errors in the Golmont Declaration and all references in the Golmont Declaration to “HT” should be to “ZC.”

14. Accordingly, the Debtors submit the U.S. Trustee’s objection should not preclude approval of the Lazard and Zolfo Cooper retention applications.

E. Ordinary Course Professionals

15. The U.S. Trustee also has filed an objection to the Debtors’ motion to retain ordinary course professionals (the “OCP Motion”).⁹ In the OCP Objection, the U.S. Trustee takes issue

⁹ Debtors’ Motion for Entry of an Order Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business, filed July 1, 2009 (the “OCP Motion”) [Docket No. 93]; Objection of the United States Trustee to Debtors’ Motion for Entry of an Order Authorizing the Retention and Compensation of
(Continued...)

with the OCP Motion as a whole and argues that all professionals to be employed by the Debtors should comply with the requirements of sections 327 and 330 of the Bankruptcy Code. The Debtors reply, however, that OCPs should not be considered “professionals” under section 327 of the Bankruptcy Code and thus should not be subject to the same requirements for authorizing the retention of a professional. In determining whether an entity is a “professional” within the meaning of section 327, and therefore must be retained by express approval of the court, courts consider the following:

- whether the entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor’s reorganization;
- whether the entity is involved in negotiating the terms of a plan of reorganization;
- whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate;
- the extent of the entity’s involvement in the administration of the debtor’s estate; and
- whether the entity’s services involve some degree of special knowledge or skill, such that it can be considered a “professional” within the ordinary meaning of the term.

See, e.g., In re First Merchs. Acceptance Corp., 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997); In re Fretheim, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (only those professionals involved in the actual reorganization effort, rather than the debtor’s ongoing business, require approval under

Professionals Utilized in the Ordinary Course of Business, filed July 9, 2009 (the “OCP Objection”) [Docket No. 129].

section 327); In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (same); see also In re That's Entm't Mktg. Group, 168 B.R. 226, 230 (Bankr. N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under section 327).

16. The foregoing factors should be considered as a whole when determining if an entity is a "professional" under section 327, with none of the factors alone being dispositive. Considering all of the factors, the Debtors do not believe the proposed OCPs are "professionals" within the meaning of section 327. The OCPs will not be involved in the administration of the chapter 11 cases, but rather will provide services in connection with the Debtors' ongoing business operations, which services are ordinarily provided by non-bankruptcy professionals.

17. Considering the time and expense associated with the preparation of individual retention applications, requiring each OCP to submit a retention application pursuant to section 327 will increase the costs of administering these chapter 11 cases. The Debtors assert it would be unnecessarily expensive to require the Debtors to prepare and submit individual applications and proposed retention orders for each OCP whenever the need arises for one to perform work for the Debtors, no matter how minor. In addition, concerns the U.S. Trustee may have with respect to whether the OCPs have an interest adverse to the estate and are disinterested are addressed by the procedures put in place by the OCP Motion. The required declaration of disinterestedness requires each OCP to state the amount of any prepetition debt, which is likely to be minimal, and affirmatively state that they do not hold an interest materially adverse to the Debtors.

18. Notably, other courts in this Circuit have granted relief that is substantially similar to the relief requested by the Debtors in similarly large chapter 11 cases.¹⁰ See, e.g., In re Educ. Res. Inst., Case No. 08-12540 (Bankr. D. Mass. June 11, 2008) (approving OCPs including attorneys and actuaries unrelated to the administration of the debtor's estate); In re Syratech Corp., Case No. 05-11062 (Bankr. D. Mass. Feb. 22, 2005) (approving OCPs including attorneys, tax advisors, accountants, and public relations specialist unrelated to the administration of the debtor's estate). The Debtors therefore request the OCP Motion be granted.

F. Lease Rejection Procedures

19. The Rhode Island Greyhound Owners Association objected to the Debtors' Lease Rejection Procedures Motion on the ground it does not provide for discovery by the counterparty to an executory contract or unexpired lease that the Debtors may seek to reject.¹¹ This objection is premature, insofar as the Debtors have not filed any rejection motions, and does not preclude entry of the proposed order, which does not contain any limits on a rejection counterparty's discovery rights.

¹⁰ As cited in the OCP Motion, Courts in other Circuits also have granted similar relief. See, e.g., In re Visteon Corp., Case No. 09-11786 (Bankr. D. Del. June 19, 2009); In re Muzak Holdings LLC, Case No. 09-10422 (Bankr. D. Del. Mar. 12, 2009); In re Hines Horticulture, Inc., No. 08-11922 (Bankr. D. Del. Sept. 9, 2008); In re Pierre Foods, Inc., No. 08-11480 (Bankr. D. Del. Aug. 14, 2008); In re ACG Holdings, Inc., No. 08-11467 (Bankr. D. Del. Aug. 12, 2008); In re Gen. Growth Props., Case No. 09-11977 (Bankr. S.D.N.Y. July 7, 2009); In re Old Carco LLC (f/k/a/ Chrysler LLC), Case No. 09-50002 (Bankr. S.D.N.Y. May 20, 2009); In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 13, 2009); In re Charter Commc'ns, Inc., Case No. 09-11435 (Bankr. S.D.N.Y. Apr. 15, 2009).

¹¹ Motion for Entry of an Order Authorizing and Approving Procedures for Rejecting Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property, filed July 1, 2009 [Docket No. 95] (the "Lease Rejection Procedures Motion"); Objection of Rhode Island Greyhound Owners Association to Debtors' Motion for Entry of an Order Authorizing and Approving Procedures for Rejecting Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property, filed July 9, 2009 [Docket No. 127].

CONCLUSION

20. For the reasons set forth herein, the Debtors respectfully request that the Court overrule any pending objections and grant the relief requested in the motions and applications to be heard at the July 14 Hearing.

Dated: July 13, 2009
Providence, Rhode Island

WINOGRAD, SHINE & ZACKS, P.C.

Allan M. Shine (Bar No. 0383)
123 Dyer Street
Providence, RI 02903
Telephone: (401) 273-8300
Facsimile: (401) 272-5728

- and -

KIRKLAND & ELLIS LLP

/s/ Paul M. Basta

Paul M. Basta (*pro hac vice* pending)
Stephen E. Hessler (*pro hac vice* pending)
601 Lexington Avenue
New York, NY 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
paul.basta@kirkland.com
stephen.hessler@kirkland.com

Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Supplemental Declaration of Paul M. Basta

**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. 09-12418 (ANV)
)	
Debtors.)	Jointly Administered
)	

**FIRST SUPPLEMENTAL DECLARATION OF PAUL M. BASTA IN SUPPORT OF
THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
EMPLOYMENT AND RETENTION OF KIRKLAND & ELLIS LLP AS
ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION
NUNC PRO TUNC TO THE PETITION DATE**

I, Paul M. Basta, being duly sworn, state the following under penalty of perjury:

1. I am a partner in the law firm of Kirkland & Ellis LLP ("K&E"), with an office at 601 Lexington Avenue, New York, New York 10022. I am a member in good standing of the Bars of the States of Rhode Island (inactive status), Massachusetts, and New York. On June 23, 2009 and July 1, 2009, the Debtors filed a motion and an amended motion for my admission pro hac vice to practice before the United States District Court for the District of Rhode Island [Docket Nos. 4 and 90]. In addition, there are no disciplinary proceedings pending against me.

2. On June 23, 2009 (the "Petition Date"), the above-captioned debtors (collectively, the "Debtors") filed petitions with this Court under title 11 of the United States Code (the "Bankruptcy Code").

3. On July 1, 2009, the Debtors filed with this Court: (a) the Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as

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

Attorneys for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date [Docket No. 98] (the “Application”) and (b) the Declaration of Paul M. Basta in Support of the Application [Docket No. 98] (the “Original Declaration”), in connection with the above-captioned chapter 11 cases (the “Chapter 11 Cases”)

4. I am familiar with the Original Declaration. I submit this first supplemental declaration (the “First Supplemental Declaration”) in connection with the Application to provide additional disclosure required by Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure.

Additional Disclosures

5. K&E intends to use the prepetition retainer balance, of approximately \$436,000, only as follows: (a) to satisfy any prepetition fees and expenses that were not received prior to the Petition Date; (b) to satisfy any fees and expenses that may be billed to the Debtors after these Chapter 11 Cases have concluded; and (c) in the event that K&E’s representation of the Debtors ends before these Chapter 11 Cases have concluded, to satisfy any accrued but unpaid fees and expenses, subject to this Court’s approval. In sum, the prepetition retainer balance will be used by K&E only as payment for K&E’s invoiced fees and expenses—prepetition, postpetition, and/or post-bankruptcy—and any amounts remaining after final payment of all such outstanding fees and expenses shall be returned to the Debtors or the post-chapter 11 reorganized Debtors, as the case may be.

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

Dated: July 13, 2009
New York, New York

Respectfully submitted,

/s/ Paul M. Basta

Paul M. Basta
Partner, Kirkland & Ellis LLP

EXHIBIT B

Certification of Elizabeth S. Kardos

**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> ,)	Case No. 09-12418 (ANV)
)	
Debtors.)	
)	

**CERTIFICATION OF ELIZABETH S. KARDOS IN RESPONSE
TO OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS’
APPLICATION TO EMPLOY ZOLFO COOPER, LLC**

Elizabeth S. Kardos, hereby certifies as follows:

1. I am an attorney, admitted to practice law in the states of New York and New Jersey, and am the in-house, General Counsel of Zolfo Cooper, LLC (“Zolfo Cooper”), a New Jersey limited liability company. I am authorized to make this Certification in response to the Objection of the United States Trustee (Doc. # 128) (the “Objection”), to Debtors Application for Entry of an Order Authorizing the Employment and Retention of Zolfo Cooper, LLC as their Bankruptcy Consultants and Special Financial Advisors Nunc Pro Tunc to the Petition Date (Doc. #97) (the “Application”).

2. The Objection raised various concerns with respect to Zolfo Cooper’s retention, each of which is addressed below.

3. At paragraph 6, the Objection requests that Zolfo Cooper provide staffing and cost estimates. The proposed staffing of Zolfo Cooper professionals on this matter is as follows:

<u>Professional</u>	<u>7/1/09 Rate¹</u>	<u>Title</u>
Kevin Golmont	\$775	Managing Director
Robert Cotton	\$640	Director
Patrick Farley	\$465	Manager
Ishank Shah	\$150	Analyst

4. It should be noted that during our prepetition engagement period over the last 18 months, Zolfo Cooper has been responsive to the Debtor's staffing requirements on this case and had made every effort to limit the number of professionals. As our prepetition invoices demonstrate, Zolfo Cooper staffed approximately three to four professionals in April through June, 2008 to assist the Debtor in developing the 2008-2009 Business Plan. After June of 2008, the staffing was reduced to one to two people in July and August of 2008, and thereafter, Zolfo Cooper minimally staffed the matter on an as-needed basis while the Debtor negotiated with the State of Rhode Island. In April of 2009, Zolfo Cooper's staffing increased to two or three professionals at the request of the Debtor as it prepared for the bankruptcy filing.

5. It should be noted that Zolfo Cooper is seeking to be compensated on a rates times hours basis, based upon the actual number of hours expended. Moreover, Zolfo Cooper's work efforts will be directed by the Debtor. Therefore, since Zolfo Cooper is unaware at this time of the issues that may be raised in the case, or the work efforts that the Debtor may request, Zolfo Cooper is unable to provided projected costs at this time. However, it should be noted that whenever possible, Zolfo Cooper assigns tasks to the lowest cost professional as is appropriate for that particular assignment. Zolfo Cooper will continue to review the staffing needs of the case and adjust its staff accordingly.

¹ As set forth in the Application and Engagement Letter dated June 22, 2009, attached to the Application, Zolfo Cooper billing rates are subject to adjustment semi-annually.

6. At paragraph 7 of the Objection, the United States Trustee raises a question about the application of the prepetition retainer. Zolfo Cooper does not intend to further apply its retainer to any prepetition fees, nor does Zolfo Cooper believe the language of paragraph 6 of the Application requests such authority. Zolfo Cooper received a prepetition retainer on March 28, 2008, in the amount of \$100,000.00, of which Zolfo Cooper applied \$10,145.59 to outstanding fees and expenses, refunded \$85,000 and held \$4,854.41 on retainer. Thereafter, on April 30, 2009, Zolfo Cooper received a retainer in the amount of \$100,000.00. Immediately prior to the Chapter 11 filing, Zolfo Cooper drew down its prepetition retainer to cover all outstanding and incurred prepetition fees and expenses. Therefore, as of the Petition Date, Zolfo Cooper is holding a retainer of \$61,952.79. Zolfo Cooper does not intend to draw on this retainer for any additional prepetition fees and expenses. However, in the event that any unknown prepetition fees or expenses become known to Zolfo Cooper, Zolfo Cooper will seek Court approval before applying the retainer to such prepetition fees or expenses.

7. In paragraphs 8 and 10 to the Objection, the United States Trustee requests clarification of certain typographical errors. Zolfo Cooper acknowledges the typographical errors on page 2 of the Engagement Letter and in Schedule 1 of the Declaration of Kevin Golmont in Support of Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Zolfo Cooper, LLC as their Bankruptcy Consultants and Special Financial Advisors Nunc Pro Tunc to the Petition Date, dated June 30, 2009 (the "Golmont Declaration"). In particular, Zolfo Cooper acknowledges that jurisdiction in this case shall reside with the Bankruptcy Court for the District of Rhode Island, and that all references in the Golmont Declaration to "HT" should be to "ZC".

8. In response to the concerns raised in paragraph 9 of the Objection, Zolfo Cooper hereby represents that it will not use private aircraft on this case. Moreover, Zolfo Cooper has

negotiated a hotel rate of \$130.00 per night. Zolfo Cooper believes that such a rate is reasonable. Moreover, Zolfo Cooper hereby confirms that it is not seeking modification of any reasonable standard otherwise applied by this Court in approving the reimbursement of expenses.

9. Finally, in paragraph 3 of the Objection, the United States Trustee makes a reference to the possibility of duplication of effort between and among Zolfo Cooper, Lazard and Kirkland & Ellis. Zolfo Cooper is not licensed to render legal advice and, accordingly, does not anticipate that there would be any overlap with Kirkland & Ellis. With regard to Lazard, the advisory services to be provided by Lazard and Zolfo Cooper are discreet and independent from each other. Zolfo Cooper's primary function will be to serve as the day-to-day advisor to management and the Debtor, whereas Lazard will serve in the more traditional restructuring investment banking role. These are separate and distinct spheres of responsibility and Zolfo Cooper and Lazard will work in tandem to minimize any potential duplication of efforts.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 13, 2009
Roseland, New Jersey

/s/ Elizabeth S. Kardos
Elizabeth S. Kardos, Esq.