

**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 EMERGENCY HEARING
ON FIRST DAY MOTIONS AND APPLICATIONS**

TO THE HONORABLE ARTHUR N. VOTOLATO, UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors, as debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) respectfully asking the Court to schedule an emergency hearing to consider the Debtors’ motions and applications (the “First Day Motions”), which were filed contemporaneously herewith. In support of the 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 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.

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

3. This Motion is filed and the relief requested herein is pursuant to Rule 9013-2(e) of the Local Bankruptcy Rules and Forms of the United States Bankruptcy Court for the District of Rhode Island (the “Local 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.

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

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.

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.

Relief Requested

9. By this Motion, the Debtors request an emergency hearing, pursuant to Local Bankruptcy Rule 9013-2(e), to consider the Debtors' First Day Motions earlier than five business days after the First Day Motions were filed.

10. Specifically, in addition to this Motion, the Debtors filed the following First Day Motions on the Petition Date:

I. Financing Motion

- (a) Debtors' Motion for Entry of 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 (the "Cash Collateral Motion").

II. Procedural Motions

- (a) Debtors' Motion for Entry of an Order Pursuant to Fed. R. Bankr. P. 1015(b) Directing Joint Administration (the "Joint Administration Motion");
- (b) Debtors' Motion for Entry of an Order Establishing Certain Notice, Case Management and Administrative Procedures (the "Case Management Motion");
- (c) Debtors' Application for Entry of an Order Authorizing and Approving the Retention of Donlin, Recano & Company, Inc. ("Donlin Recano") as Notice and Claims Agent for the Debtors (the "Claims Agent Retention Motion"); and
- (d) Debtors' Motion for Entry of an Order Extending Deadline to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs (the "SOFA Extension Motion").

III. Operational Motions

- (a) 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 "Wages Motion");

- (b) Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Maintain Customer Programs and Honor Related Prepetition Obligations (the "Customer Programs Motion");
- (c) Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to (A) Continue Using Their Existing Cash Management System, Bank Accounts, and Business Forms; (B) Maintain Existing Investment Practices; and (C) Continue Performing Ordinary Course Intercompany Transactions (the "Cash Management Motion");
- (d) Debtors' Motion for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services (the "Utilities Motion");
- (e) Debtors' Motion for Entry of an Order Authorizing Debtors to (A) Continue Prepetition Insurance Coverage and (B) Maintain Postpetition Financing Of Insurance Premiums (the "Insurance Motion"); and
- (f) Debtors' Motion for Entry of an Order Authorizing Debtors to Remit and Pay Certain Taxes and Fees (the "Taxes Motion").

Basis for Relief

11. Pursuant to Local Bankruptcy Rule 9013-2(e), a debtor may request an emergency hearing to consider a motion earlier than five business days after the motion is filed. In accordance with Local Bankruptcy Rule 9013-2(e), the Debtors request that the Court schedule an emergency hearing to consider the Debtors' First Day Motions on June 23, 2009.

12. The scheduling of an emergency hearing on June 23, 2009 by the Court is warranted to prevent irreparable harm and to facilitate the entry of critical orders in connection with the First Day Motions. The Debtors believe that an emergency hearing on the First Day Motions is essential to enable the Debtors to maintain and operate their businesses without disruption and to avoid delay in the administration of these Chapter 11 Cases.

A. Financing Motion

13. The Debtors respectfully request that the Court hear the Debtors' Cash Collateral Motion on an emergency basis so as to prevent immediate and irreparable harm to the Debtors' estates. Without use of cash collateral, the Debtors will have little or no cash to pay trade

creditors and, therefore, the Debtors' trade creditors may cease to provide goods and services to the Debtors on credit. The inevitable result is the Debtors will not be able to pay their payroll and other direct operating expenses or obtain goods and services needed to run their businesses and meet customer demands in a manner that will avoid immediate and irreparable harm to the Debtors' estates. The Debtors' ability to finance their operations and the availability to the Debtors of sufficient working capital and liquidity through the use of cash collateral is vital to the confidence of the Debtors' employees, major suppliers, and to the preservation and maintenance of the going-concern values and other values of the Debtors' estates. The Debtors, therefore, seek that the Court hear the Cash Collateral Motion on an emergency basis.

B. Procedural Motions

14. An emergency hearing on the Joint Administration Motion and the entry of an order directing joint administration of the Chapter 11 Cases will reduce unnecessary administrative fees and costs by avoiding duplicative filings and objections. Joint administration of the Chapter 11 Cases will also allow the Office of the United States Trustee for the District of Rhode Island (the "U.S. Trustee") and all parties in interest to monitor the Debtors' Chapter 11 Cases with considerably greater ease and efficiency.

15. An emergency hearing on the Case Management Motion will promote the efficient and orderly administration of the Debtors' Chapter 11 Cases by: (a) limiting service of the documents to those parties that have an interest in the subject matter thereof; (b) authorizing electronic service; and (c) fixing monthly omnibus hearings. Additionally, parties in interest will have the opportunity to bring emergency matters before this Court on an expedited basis pursuant to the Local Bankruptcy Rules and Case Management Motion. For these reasons, it is important that the Case Management Motion be heard on the first day of the Chapter 11 Cases.

16. The Debtors believe that an emergency hearing on the Claims Agent Retention Motion is appropriate. This retention is the most effective and efficient manner of noticing the hundreds of creditors and other parties in interest of the commencement and other developments in the Chapter 11 Cases. In that capacity, Donlin Recano will also, among other tasks, transmit, receive, docket, and maintain proofs of claim filed in connection with the Chapter 11 Cases. Many of Donlin Recano's services will be required immediately upon the filing of the Chapter 11 Cases, thus making an emergency hearing on the Claims Agent Retention Motion necessary.

17. The Debtors respectfully request that the Court grant an emergency hearing on the SOFA Extension Motion. The substantial size, scope and complexity of the Chapter 11 Cases, the volume of material that must be compiled and reviewed by the Debtors' staff in order to complete the Schedules and Statements for each Debtor, and the operational and other demands on the Debtors' key personnel during the initial days of the Chapter 11 Cases provides ample cause for granting the requested 45-day extension of the deadline for the Debtors to file the Schedules and Statements. It is imperative that the Debtors know at the onset of the Chapter 11 Cases whether the Court is willing to grant such an extension so that the Debtors are fully aware of the time available to prepare these sizable and complex documents.

C. Operational Motions

18. The Court should schedule an emergency hearing to consider the Wages Motion. Many of the Debtors' employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these 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. Thus, it is imperative the Wages Motion be heard on an emergency basis.

19. An emergency hearing to consider the Debtors' Customer Programs Motion is warranted. If the Debtors do not honor their customer programs in the ordinary course of business, the Debtors would be significantly less competitive, which undoubtedly would contribute to a decrease in business. Moreover, the Debtors would risk alienating certain customer constituencies or, possibly, encourage them to initiate business relationships with the Debtors' competitors. Failure to honor prepetition obligations related to the customer programs could erode the Debtors' hard-earned reputation and brand loyalty, which in turn could adversely affect the Debtors' prospects for a successful reorganization.

20. The Debtors' also request to have their Cash Management Motion heard on an emergency basis. This motion, among other things, allows the Debtors to continue operating their cash management system in substantially the same form as before the chapter 11 filings. Given the Debtors' corporate and financial structure, it would be nearly impossible to establish an entirely new cash management system for each Debtor entity. The delays that would result from opening new accounts and revising cash management procedures would hinder the Debtors' businesses at this critical time. For the above reasons, the relief requested by the Cash Management Motion is needed immediately upon filing of the Chapter 11 Cases.

21. An emergency hearing on the Utilities Motion would be appropriate because any disruption in the Debtors' ability to obtain those services may result in an immediate interruption or diminution in the Debtors' business operations, to the detriment of their estates and all parties in interest in the Chapter 11 Cases. The Debtors cannot operate their businesses without the benefit of electricity, water, sewer, and the like.

22. An emergency hearing on the Insurance Motion should be granted because failure to pay premiums and related expenses (including broker's fees) when due may harm the Debtors' estates in several ways. First, the Debtors' insurance companies or its broker may refuse to renew or assist in renewing the Debtors' policies, which will require the Debtors to obtain replacement policies and possibly to reconfigure their risk management program. That, in turn, will require significant resources and may result in less favorable coverage or terms from the Debtors' insurers. Second, the Debtors' insurers may attempt to terminate the Debtors' existing policies, which may create uncertainty as to the Debtors' ability to continue operating their businesses given the myriad regulatory and contractual requirements imposed on the Debtors to maintain specific amounts and types of insurance coverage. Any purported termination of the Debtors' policies or any material change in the terms of those policies may also place additional strain on the Debtors' relationships with key employees, who benefit from the Debtors' insurance coverage. For these reasons, it is necessary that the Court consider the Insurance Motion on an expedited basis.

23. Finally, the Debtors request an emergency motion to consider the Taxes Motion. The Debtors have determined, in their sound business judgment, that payment of taxes and fees is essential to the Debtors' day-to-day operations and to ensure that the value of the businesses as a going concern is preserved through the pendency of the Chapter 11 Cases. Further, the failure to pay Taxes and Fees would cause immediate and irreparable harm to the Debtors' restructuring efforts. Specifically, some or all of the Taxes and Fees are or may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, therefore, must be paid in full under section 1129(a)(9)(C) of the Bankruptcy Code to confirm any chapter 11 plan. Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the applicable governmental units may attempt to assess interest and penalties.

For the reasons discussed herein, among others, it is in the best interests of the Debtors' estates to eliminate the possibility of these distractions as soon as possible.

Motion Practice

24. 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.

Notice

25. The Debtors have provided notice of this Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the Office of the United States Trustee for the District of Rhode Island; (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.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court grant an emergency hearing to consider the Debtors' First Day Motions.

Dated: June 23, 2009
Providence, Rhode Island

WINOGRAD, SHINE & ZACKS, P.C.

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