

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

IN RE:

**UTGR, INC.
Its Affiliates and Subsidiaries,
Including
TWIN RIVER CASINO**

No. 09-12418

**MOTION FOR RELIEF FROM AUTOMATIC STAY
PURSUANT TO 11 U.S.C. SECTION 362**

Now come Edward and Kevin Barrows, by and through their counsel, and move this honorable court to vacate or relieve them from any further proceedings in the matter captioned above. The grounds for relief are set forth below.

Edward and Kevin Barrows are plaintiffs in a civil action pending in the Superior Court for Providence County, State of Rhode Island and Providence Plantations, in a matter captioned Kevin Barrows and Edward Barrows vs. UTGR, Inc., d/b/a Twin River Casino, Nicholas Santoro, and John Doe, C.A. 09-0563 (the "Barrows Action"). The action alleges false imprisonment, extortion, and negligence, in connection with an incident at the Twin River Casino in November, 2008.

On Nov. 1, 2008, Kevin Barrows and his father Edward visited Twin River for an evening of gaming and entertainment. Kevin was detained by security officials after employees of Twin River wrongfully alleged that he had taken a gaming voucher left in a pari-mutuel machine by a Twin River employee. Twin River security officials disregarded written policies and demanded that Kevin Barrows pay the sum of \$309, or face arrest and prosecution. Edward Barrows was brought by security officials to a

private office where a police officer was present. The security officials again demanded that the sum of \$309 be paid by the Barrows family or threatened that Kevin would be arrested. Upon seeing that his son was about to be charged with theft, Edward Barrows paid the amount demanded by the security officials.

Within a few days Twin River officials acknowledged that Kevin Barrows had been wrongly accused, and that video surveillance monitors in the facility showed that another person was responsible for taking the voucher. Kevin and Edward Barrows filed suit on January 30, 2009, in the superior court of Providence county, alleging negligence, intentional infliction of emotional distress, extortion and false imprisonment. They are seeking compensatory and punitive damages.

The defendants in the Barrows action answered the complaint and discovery proceeded. Depositions of a security officer and Edward Barrows have been completed, and both parties have exchanged written discovery and noticed additional depositions. Several questions remain about the actions of the defendants and the persons responsible for Kevin Barrows's detention.

Defendant UTGR, Inc., d/b/a Twin River Casino, filed a petition seeking protection from creditors in this court on June 23, 2009, pursuant to Chapter 11 of the United States Bankruptcy Code. However, discovery in the Barrows action continued after the filing. The defendants took the deposition of Edward Barrows on August 13, 2009. On September 15, 2009, the defendants filed a Notice of Bankruptcy in the Superior Court, invoking the automatic stay provisions of 11 U.S.C. § 362.

Section 362(d) of the Bankruptcy Code affords relief from the automatic stay, providing in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization[.]

In this context, the Bankruptcy Code does not define the term “for cause,” but courts recognize that “it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties in their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.” In re Pro Football Weekly Inc., 60 Bankr. 824, 826 (N.D. Ill. 1986). The key question for a bankruptcy court in considering a motion for relief under 362(d) is whether a creditor’s claim to estate property is colorable, and not whether the creditor will ultimately recover. Grella v. Salem Five Cent Savings Bank, 42 F.3d 26, 32-34 (1st Cir. 1994).

As grounds for relief from the stay in this action, the plaintiffs aver and state that the defendants are covered by insurance in connection with the Barrows claim. According to the defendants’ answers to interrogatories in the Barrows Action, the defendants are insured by American Guarantee & Liability Insurance Company, with a

policy that affords coverage of \$1,000,000.00 for each occurrence and \$2,000,000.00 as a general aggregate limit. Defendants proceeded with litigation in the Barrows Action even after filing the above-captioned bankruptcy matter in this court. Defendants, through counsel retained by their insurer, deposed Edward Barrows on August 13, 2009, well after bankruptcy proceedings commenced in this case on June 23, 2009.

The defendants in the Barrows Action, including UTGR, Inc., are not prejudiced by further proceedings.¹ The defendants are represented by counsel, and have the benefit of an insurance policy that appears to cover their willful and malicious conduct. In contrast, the plaintiffs are likely to suffer harm as time passes, witnesses become unavailable, memories fade, and it becomes more difficult to ascertain the truth about defendants' conduct. Kevin and Edward Barrows respectfully submit that they have established "cause" within the meaning of section 362(d).

Respectfully submitted,
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¹ To the extent that the plaintiffs seek exemplary or punitive damages, such damages are not dischargeable, even if they are not covered by insurance. Willful and malicious injuries by a debtor are not dischargeable under Bankruptcy Code section 523 (a)(6). See also Printy v. Dean Witter Reynolds, Inc., 110 F.3d 853 (1st Cir. 1997).

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