

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MIG, INC.,

Debtor.

Chapter 11

Case No. 09-12118 (KG)

**MOTION FOR ENTRY OF ORDER  
AUTHORIZING THE DEBTOR TO PAY  
CERTAIN PRE-PETITION WORKERS' COMPENSATION  
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS  
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE**

MIG, Inc., as debtor and debtor-in-possession (“MIG” or the “Debtor”) hereby moves the Court (the “Motion”) for entry of an order authorizing MIG in its sole discretion, to continue to pay its pre-petition workers’ compensation claims and related obligations, including to the third-party administrators of these claims (the “Workers’ Compensation Obligations”) in the ordinary course of business, pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, MIG respectfully states as follows:

**Status of the Case and Jurisdiction**

1. On June 18, 2009 (the “Petition Date”), MIG filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. MIG has continued in possession of its properties and in operating and managing its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and a creditors' committee has not yet been appointed in this case.

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004(h).

### Background

6. The Debtor and certain of its affiliates hold interests in several leading and innovative telecommunications providers in the Republic of Georgia ("**Georgia**"), a country in the Commonwealth of Independent States in the Caucasus region between Russia, Turkey and Azerbaijan. Over the past two years, the Debtor has defended an appraisal action in the Court of Chancery of the State of Delaware (the "**Chancery Court**") in the matter captioned *In re: Appraisal of Metromedia International Group, Inc.*, Civil Action No. 3351-CC (the "**Appraisal Action**"), brought by a certain group of preferred shareholders (the "**Petitioners**") against the company. The Appraisal Action has resulted in substantial litigation costs and a debilitating \$188 million judgment (the "**Judgment**") entered against MIG on June 5, 2009.

7. The Debtor believes the Judgment is substantially overstated and has appealed the Judgment to the Delaware Supreme Court (the "**Appeal**"). MIG further believes that its assets have value well beyond the Judgment. In fact, two experts recently provided testimony before the Chancery Court that the company's assets have material value in excess of all of the company's liabilities. Yet these assets are illiquid interests in Georgian telecommunications

companies. Fully realizing the value of the Debtor's assets will take time and, because of the political climate in which its major assets operate, requires careful planning and execution.

8. The Petitioners have refused to enter into a consensual stay of execution of the Judgment. The Debtor also has been unsuccessful in its attempts to post a bond or otherwise to secure a judicial stay of execution of the judgment due to its lack of liquid assets, the current economic climate, and the fact that the Debtor's investments are located in an emerging market.

9. Outside of Chapter 11, because no consensual or judicial stay was in place, the Petitioners were entitled to commence execution on the Judgment. A precipitous foreclosure by the Petitioners in the Appraisal Action would pose a serious threat to the Debtor's long-term viability to the detriment of all its constituencies. After careful consideration, and after exhausting available remedies outside of a Chapter 11 filing, MIG has determined that it requires the protection offered by Chapter 11. MIG does not intend to relitigate the Appraisal Action in the Bankruptcy Court, but rather intends to expeditiously pursue the Appeal in state court and use the Chapter 11 process to restructure its balance sheet (whether through new investments or a sale of assets) in an orderly fashion and develop a reorganization plan that will satisfy any final judgment rendered in the Appraisal Action and preserve value for its other creditors and interest holders.

10. A more detailed factual background of the MIG's business and operations, as well as the events precipitating the commencement of this Chapter 11 case, is fully set forth in the *Declaration of Peter Nagle in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.

### MIG's Workers' Compensation Obligations

11. In connection with MIG's past practice of self-insuring workers' compensation in various states including, California, Georgia, Florida, Kentucky, Missouri, New York, Massachusetts, New Jersey, and Pennsylvania, MIG was obligated under the laws of these states to post bonds or another form of collateral to secure all potential workers' compensation claims. As of the Petition Date, MIG had posted a total of approximately \$3.2 million in bonds in these states. Specifically, MIG has posted a total of (i) a \$650,000 bond in Georgia for certain of its Workers' Compensation Obligations arising out of Georgia, (ii) a \$220,000 bond in California; (iii) a \$100,000 bond in Pennsylvania; (iv) a \$180,000 bond in Missouri; (v) a \$525,000 bond in Florida; (vi) two bonds totalling \$609,807 in Kentucky; (vii) a \$350,000 bond in New York; (viii) a \$500,000 bond in Massachusetts; and (ix) a \$100,000 bond in New Jersey. The bonds are 100% collateralized by restricted cash collateral accounts MIG established with Morgan Stanley/Smith Barney, LLC on behalf of Travelers Casualty & Surety Company of America ("**Travelers**"). In states where bonds have been posted and where MIG has determined that it has minimal to zero exposure, MIG has attempted to no avail to persuade the states to reduce the required security based on the unlikelihood that future claims will be reported.

12. Under a reinsurance agreement with Ace American Insurance Company (also known as INA/CIGNA, "**INA/CIGNA**"), MIG was required to post collateral, for exposure in certain states where MIG was unable to self insure. Under this reinsurance agreement, claims were paid directly by the reinsurer who was subsequently reimbursed by MIG. MIG currently has \$200,000 cash collateral being held by INA/CIGNA to secure these Obligations. The most recent claim, in Louisiana, closed during the fourth quarter for 2008 and MIG does not believe there are any open claims with INA/CIGNA as of the Petition Date.

13. In addition to the bond described above, MIG was required to maintain a money market account with US Bank for the benefit of the Insurance Commissioner for the state of Georgia to secure certain of its Workers' Compensation Obligations in Georgia that were previously insured by the Actava Risk Retention Group Captive Insurance Company of Georgia, Inc. ("**Actava**"). Actava was MIG's insurance captive, which formerly insured MIG's workers' compensation claims in the state of Georgia for the years 1988-1993. Actava has since been liquidated. As of the Petition Date, MIG had posted a total of approximately \$100,000 in Georgia in a money market account with US Bank for the Workers' Compensation Obligations arising out of Georgia that were previously insured by Actava. MIG does not believe it has any prepetition liability outstanding to the Georgia Insurance Commissioner in connection with its Workers' Compensation Obligations, previously insured by Actava.

14. MIG makes payments on its open workers' compensation claims against it on a daily, weekly and monthly basis, through its two third-party administrators Crawford & Co. ("**Crawford**") and Cambridge Integrated Services ("**Cambridge**," together with Crawford the "**Third-Party Administrators**") in many of the states where a bond has been posted. MIG facilitates the payment of the Workers' Compensation Obligations in two ways. First, Crawford was given direct access to one of MIG's bank accounts (the "**Workers Comp. Account**"), which was specifically set up for the payment of the such Obligations. Crawford can use this account to initiate an ACH transfer to reimburse itself for any payment made on behalf of MIG to claimants. Second, MIG reimburses payments of Workers' Compensation Obligations made by Cambridge and/or the reinsurer INA/CIGNA through the accounts payable process.

15. MIG requires the Court's authority to continue to satisfy its Workers' Compensation Obligations, allow Crawford access to its Workers Comp. Account and reimburse

INA/CIGNA and Cambridge for payment of Workers' Compensation Obligations. If MIG fails to meet its Workers' Compensation Obligations, the states holding bonds may have the right to draw on the full amount of the bonds posted. As a result, MIG may be required to forfeit the entire amount of cash collateral securing the bonds. Additionally, Travelers may have the right, pursuant to its agreement with MIG, to collect any portion or all of the cash collateral in the relevant Morgan Stanley/Smith Barney account if any one of the states begins to draw on a bond. Should Travelers exhaust the funds in the account for the state where the claim arose, it may then access the other funds being held as cash collateral in the remaining Morgan Stanley/Smith Barney accounts. Currently, MIG has a total of \$3.2 million being held as cash collateral with Morgan Stanley/Smith Barney to secure the bonds issued by Travelers.

16. MIG estimates that its present exposure to Workers' Compensation Obligations totals approximately \$165,364 (based on an actuarial analysis performed in 2006) and that it is liable for approximately \$20,000 in Workers' Compensation Obligations for the month of June, 2009. However, because these Obligations are largely secured, if MIG fails to pay the Workers' Compensation Obligations, it risks losing over \$3.4 million in cash being held by the various third parties, as set forth on Exhibit "A" hereto (the "Restricted Cash").

#### **Relief Requested**

17. By this Motion, the MIG seeks to prevent the forfeiture of the Restricted Cash. MIG therefore seeks an order authorizing it to continue in the ordinary course of business whether arising pre or post petition: (a) to pay its Workers' Compensation Obligations; (b) pay its Third-Party Administrators for the costs incurred in paying the weekly/monthly Workers' Compensation Obligations; (c) allow Crawford access to its accounts to initiate ACH drafts, and (d) reimburse INA/CIGNA or Cambridge for any similar payments for Workers' Compensation

Obligations. Without such authority, MIG will incur significant loss. Payment of these Workers' Compensation Obligations is necessary to MIG's ability to preserve the value of its assets for its constituents.

18. MIG submits that the total amount to be paid for the Workers' Compensation Obligations if the requested relief is granted is minimal compared to the losses MIG may suffer if it is unable to pay or reimburse these parties and the Restricted Cash is drawn upon.

#### **Basis for Relief Requested**

19. Pursuant to sections 363(b), 363(c), and 105(a) of the Bankruptcy Code and the "necessity of payment" doctrine (discussed below), the Debtor seeks authority to pay or honor the obligations described in this Motion. 11 U.S.C. §§ 363(b), 363(c), and 105(a). Section 363(b)(1) of the Bankruptcy Code states in pertinent part that: "The trustee, 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). If the debtor's determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *See, e.g., In re American Home Mortgage Holdings, Inc.*, Case No. 07-11047 (Bankr. D. Del. August 7, 2007) (Sontchi, J.) (authorizing the payment of prepetition wages, salaries, and other compensation); *In re The Holliston Mills, Inc.*, Case No. 07-10687 (Bankr. D. Del. May 23, 2007) (Walrath, C.J.) (same); *In re Earthshell Corp.*, Case No. 07-10086 (Bankr. D. Del. January 24, 2007) (Gross, J.) (same); *In re Sea Containers Ltd.*, Case No. 06-11156 (Bankr. D. Del. October 17, 2006) (Carey, J.) (same); *In re Pliant Corp.*, Case No. 06-10001 (Bankr. D. Del. Jan. 31, 2006) (Walrath, C.J.) (same).

20. Further, the Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment

that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition 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 (Bankr. S.D.N.Y. 1989). Under Section 105(a), a court “can permit pre-plan payment of a prepetition 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) (citing *Ionosphere Clubs*, 98 B.R. at 177).

21. Additionally, the “necessity of payment” doctrine further supports the relief requested in this Motion. The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (the “necessity of payment” doctrine “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization payment may be authorized even if it is made out of corpus”); *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987). This doctrine is consistent with the paramount goal of Chapter 11, namely “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *see also Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (“let [the debtor] once shut down, and it will lose much of its value. . . . Some priority to [the debtor’s pre-petition suppliers] may be essential to preservation of the business”).

22. It is not uncommon for courts to authorize payments to pre-petition creditors, particularly where such creditors hold a lien. *See, e.g., In re VeraSun Energy Corp., et al.*, Case No. 08-12606 (BLS) (Bankr. D. Del. Nov. 4, 2008) (shippers and warehousing claims); *In re*

*Dura Automotive Sys., et al.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Nov. 21, 2006) (shippers and warehousing claims and other statutory lien claims); *In re Waccamaw's HomePlace*, Case No. 01-0181 (PJW) (Bankr. D. Del. January 17, 2001); *In re Penn Traffic Co.*, Case No. 99-462 (PJW) (Bankr. D. Del. March 1, 1999) (critical vendor payments); *In re Discovery Zone, Inc.*, Case No. 99-941 (JJF) (D. Del. April 21, 1999) (critical vendor payments); *see also Dudley v. Mealey*, 147 F.2d at 271.

23. MIG submits that paying the Workers' Compensation Obligations whether arising pre or post petition in the ordinary course is critical to its business, as not doing so would almost certainly be more costly. In order for MIG to preserve the value of its assets while it restructures its balance sheet (whether through new investments or a sale of assets) in an orderly fashion and develops a reorganization plan, it must ensure that the estate does not incur any significant losses, such as the forfeiture of the Restricted Cash. The payment of the Workers' Compensation Obligations is essential to the maintenance of the value of its estate. The only way for MIG to ensure the timely and proper payment of the Workers' Compensation Obligations is by continuing to use the services of the Third-Party Administrators and INA/CIGNA. In addition, while MIG will continue its efforts to reduce the level of the cash collateral and bonds posted with the various parties, an Order from this Court permitting it to continue to pay the Workers' Compensation Obligations would facilitate MIG's efforts. The Court should exercise its equitable power to grant the relief requested in this Motion. If this Motion is not granted, MIG's efforts to preserve the value of its estate for the benefit of all creditors will be drastically disrupted and its business severely jeopardized.

### **Bankruptcy Rule 6003 Satisfied and Request for Waiver of Stay**

24. MIG further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to MIG for the reasons set forth herein and in the First Day Declaration, Rule 6003 of the Bankruptcy Rules has been satisfied and the relief requested herein should be granted.

25. MIG further seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of ten (10) days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent irreparable damage to the value of MIG’s estate, and ability to reorganize. Accordingly, MIG submits that ample cause exists to justify a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

### **Notice**

26. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) creditors holding the thirty (30) largest unsecured claims as set forth in the list filed with MIG’s petition; (c) the Office of the United States Attorney General for the District of Delaware; (d) the Internal Revenue Service; and (e) the Third-Party Administrators, Travelers and INA/CIGNA. As the Motion is seeking “first day” relief, within two business days of the hearing on the Motion, MIG will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules. MIG submits that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

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

WHEREFORE, MIG respectfully requests that this Court enter an order granting the relief requested herein and that it grant MIG such other and further relief as is just and proper.

Dated: JUNE 19, 2009

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Proposed Counsel for the Debtor  
and Debtor-in-Possession

# **EXHIBIT A**

**Exhibit A**

<b>Insurance Entity</b>	<b>Third-Party Administrator (if applicable)</b>	<b>Depository</b>	<b>Current Cash Collateral</b>
Travelers Casualty & Surety Company of America	Crawford & Co.	Morgan Stanley/Smith Barney	\$3,234,807.00
INA/CIGNA	N/A	INA/CIGNA	\$200,000.00
<b>TOTAL</b>			<b>\$3,434,807.00</b>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MIG, INC.,

Debtor.

Chapter 11

Case No. 09-12118 (KG)

**ORDER AUTHORIZING THE DEBTOR TO PAY  
CERTAIN PRE-PETITION WORKERS' COMPENSATION  
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS  
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE**

Upon the motion (the "**Motion**")<sup>1</sup> filed by the above-captioned debtor and debtor-in-possession ("**MIG**" or the "**Debtor**") seeking entry of an order: authorizing MIG in its sole discretion, to pay certain pre-petition Workers' Compensation Obligations in the ordinary course of business, pursuant to sections 105(a) and 363 of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**") and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and the Court, having reviewed the Motion and the First Day Declaration and having heard the statements of counsel in support of the relief requested in the Motion at the hearing before the Court (the "**Hearing**"), finds that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, that this is a core matter pursuant to 28 U.S.C. § 157(b)(2), that notice of the Motion and the Hearing were sufficient under the circumstances and that no further notice need be given; and the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is Granted.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. MIG is authorized, but not directed to continue to pay its Workers' Compensation Obligations in the ordinary course of business, whether accruing pre- or post-petition.

3. MIG is authorized to allow Crawford access its Workers Comp. Account and initiate ACH transfers to reimburse itself for any payments made on behalf of MIG for Workers' Compensation Obligations and Crawford is authorized access MIG's Workers Comp. Account and initiate ACH transfers to reimburse itself for any payments made on behalf of MIG for Workers' Compensation Obligations.

4. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, MIG is authorized to reimburse Cambridge and INA/CIGNA in order to pay the Workers' Compensation Obligations.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE