

**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 GRANTING LIMITED RELIEF  
FROM THE AUTOMATIC STAY PURSUANT TO  
SECTION 362(d) OF THE BANKRUPTCY CODE TO APPEAL  
JUDGMENT OF COURT OF CHANCERY OF STATE OF DELAWARE**

MIG, Inc., as debtor and debtor-in-possession (“MIG” or the “Debtor”) hereby moves the Court (the “**Motion**”) for entry of an order pursuant to section 362(d) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), granting limited relief from the automatic stay for MIG to pursue its appeal of the Judgment (as defined below) entered by the Court of Chancery of the State of Delaware (the “**Chancery Court**”), and to allow the Petitioners (as defined below) to file any cross-appeal in connection with the Appeal. 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 is section 362 of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001-1.

### 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 Caucus 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 Debtor'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.

11. As described in greater detail in the First Day Declaration, in August, 2007, MIG was acquired by CaucusCom Mergerco Corp. (“**MergerSub**”), a wholly-owned subsidiary of CaucusCom Ventures, L.P. (“**CaususCom**”), pursuant to a merger agreement with CaucusCom in which MergerSub would conduct a tender offer for all outstanding common shares of MIG followed by a back-end short-form merger. Pursuant to the terms of the merger agreement, MIG gave MergerSub an option to purchase additional common shares (the “**Top-Up Option**”) that were authorized for issuance, but not issued and outstanding, following the completing of the tender offer. The Top-Up Option could be exercised only if it would result in MergerSub owing in excess of 90% of the outstanding common shares. The merger agreement also provided that MergerSub would merge with and into MIG with MIG continuing as the surviving corporation. MergerSub exercised the Top-Up Option, and merged into MIG with MIG as the surviving entity.

12. The exercise of the Top-Up Option caused a group of preferred shareholders<sup>1</sup> (the “**Petitioners**”) to bring an appraisal action against MIG in the Chancery Court in the case captioned In re: Appraisal of Metromedia International Group, Inc., Civil Action No. 3351-CC (the “**Appraisal Action**”), to determine the value of the preferred shares held by the Petitioners.

13. On April 16, 2009, the Chancery Court issued an opinion (the “**Opinion**”) finding that the value of each preferred share was \$38.93 on August 22, 2007 (the “**Appraisal Date**”).<sup>2</sup>

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<sup>1</sup> The preferred shareholders who participated in bring the appraisal action consist of: Gracie Capital, LP, Gracie Capital, LP, II, Gracie Capital Opportunities Master Fund, LP, Gracie Capital International, Ltd, Gracie Capital International, II, Ltd, GPC XLII, LLC, Zazove Associates LLC, Private Management Group Inc., Black Horse Capital LP, Black Horse Capital QP LP, Black Horse Capital Offshore Ltd., Cohanzick Management LLC, Lanphier Capital Management Inc., Milestone Vimba Fund LP, Ingalls & Snyder LLC, MSF 93 LP, Hedgehog Capital LLC, Patrick Conlin, Farallon Capital Partners, L.P., Farallon Capital Institutional Partners, L.P., Farallon Capital Institutional Partners II, L.P., Farallon Capital Institutional Partners III, L.P., Tincum Partners, L.P., Farallon Capital Offshore Partners II, L.P., Noonday Capital Partners, L.L.C., Farallon Capital Offshore Investors, Inc., and Noonday Offshore, Inc.

<sup>2</sup> *In re Appraisal Metromedia International Group, Inc.*, Civ. 3351 (Del. Ch. April, 16, 2009).

Subsequently on May 5, 2009 the Petitioners made a motion for reconsideration to the Chancery Court. After considering the motion, the Chancery Court revised its Opinion on May 28, 2009 finding that the value of each preferred share was \$47.47 on August 22, 2007. The Chancery Court entered the judgment (the “**Judgment**”) in the Appraisal Action on June 5, 2009, in the total amount of \$188,367,736.47. The Debtor believes that the Judgment is substantially overstated and intends to vigorously pursue the Appeal. On June 12, 2009, the Debtor filed its Notice of Appeal in the Supreme Court of Delaware.

#### **Relief Requested**

14. MIG seeks entry of an order granting limited relief from the automatic stay to continue with its appeal of the Judgment entered by the Chancery Court on the basis that the Judgment is substantially overstated, and to allow the Petitioners to file any cross-appeal in connection with the Appeal; however, the modification of the stay shall not extend to permit the Petitioners the right to execute on, or take any action to enforce the Judgment without further order of this Court.

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

15. Section 362(d) of the Bankruptcy Code provides that the bankruptcy court shall, for “cause,” grant relief from the automatic stay, including “terminating, annulling, modifying, or conditioning such stay. 11 U.S.C. § 362(d)(1). Specifically, section 362(d) provides, in pertinent part:

On request of a party in interest an 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 . . . .

11 U.S.C. § 362(d)(1).

16. Although “cause” is not defined by the Bankruptcy Code, the Bankruptcy Court has discretion in determining whether cause exists to modify the stay. *See e.g., In re The SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (“Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay.”); *In re Rexene Prod. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (“‘cause’ is not defined in the Code; it must be ‘determined on a case by case basis.’”); *In re Continental Airlines, Inc.*, 152 B.R. 420, 424 (D. Del. 1993). Courts have wide latitude in crafting relief from the automatic stay. *See Bladino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Siciliano*, 13 F.3d 748, 751 (3d Cir. 1994).

**A. Cause Exists to Lift, Modify or Amend the Automatic Stay as to the Appeal of the Judgment Entered by the Chancery Court**

17. In resolving motions for relief from the automatic stay “for cause,” courts generally consider the totality of the circumstances in each particular case. *In re Wilson*, 116 F.3d 87,90 (3d Cir. 1997) (*citing In re Trident Assocs.*, 52 F.3d 127 (6<sup>th</sup> Cir. 1995)). One of the most important factors courts consider in deciding whether to lift an automatic stay is judicial economy. *See e.g., In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992) (bankruptcy court correctly found that lifting the stay would promote judicial economy). Further, courts consider the policies underlying the automatic stay, in addition to the competing interests of the debtor and the movant. *In re Continental Airlines, Inc.*, 152 B.R. at 424. In balancing the competing interests, courts consider three factors: (1) the prejudice that would be suffered should the stay be lifted; (2) the balance of the hardships facing the parties; and (3) the probable success on the merits if the stay is lifted. *See Continental Airlines*, 152 B.R. at 424. Each of these factors

weighs in favor of lifting the automatic stay and permitting the Debtor to proceed with the Appeal.

(1) **Judicial Economy Weighs Heavily in Favor of Relief from the Stay**

18. Considerations of judicial economy weigh heavily in favor of relief from the stay. As discussed above, MIG believes that the Judgment entered by the Chancery Court is substantially overstated. If MIG is not permitted to continue the Appeal this Court will have to estimate the Petitioner's claims. Allowing MIG to pursue its appeal of the Judgment will more accurately and fairly depict MIG and the Petitioner's relative rights on a final basis with respect to the Judgment and the amount of the Petitioners' claims.

19. Indeed, the legislative history of section 362(d)(1) emphasizes the benefit of allowing actions to proceed in the forum in which they were originally filed, indicating that, "it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estates would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handles elsewhere." H.R. Rep. No. 595, 95th Cong., 1st Sess., 341 (1977); *see also Robbins*, 964 F.2d at 345. Here, the Appraisal Action is already under way, the Judgment has been appealed, and the Delaware state courts are competent to determine matters arising under state law, especially whereas here, the Delaware courts have a great deal of experience in corporate law appraisal actions. Lifting the automatic stay will also have the additional benefit of unburdening this Court with belated involvement in a complex set of facts whose intricacies are of ordinary course to the state courts in Delaware.

(2) **Competing Interests Weigh in Favor of Relief from the Stay**

20. The analysis of competing interests compels modifying the automatic stay in a situation where, as here, the Debtor is seeking to lift the automatic stay. MIG believes that no

party-in-interest in this case will be prejudiced or will suffer should the automatic stay be lifted. Determining respective rights of the Debtor and the Petitioners will inure to the benefit of all of MIG's creditor constituencies. Finally, because MIG believes the Judgment is substantially overstated, adjusting the amount of the Petitioners' claims will benefit all of MIG's creditor constituencies and parties-in-interest in this case.

21. Based on the foregoing, MIG submits that cause exists to allow MIG to pursue the Appeal the Judgment entered by the Chancery Court.

**Notice**

22. 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) counsel to the Petitioners in the Appraisal Action; (c) creditors holding the thirty (30) largest unsecured claims as set forth in the list filed with the Debtor's petition; (d) the Office of the United States Attorney General for the District of Delaware; and (e) the Internal Revenue Service. As the Motion is seeking "first day" relief, within two business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

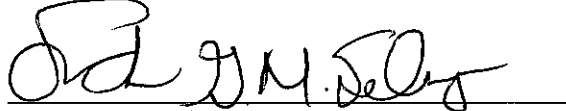
**No Prior Request**

23. 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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MIG, INC.,

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**ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE TO  
APPEAL JUDGMENT OF COURT OF CHANCERY OF STATE OF DELAWARE**

Upon the motion (the “**Motion**”)<sup>1</sup> filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) seeking entry of an order, granting limited relief from the automatic stay to appeal the Judgment entered by the Court of Chancery of the State of Delaware, pursuant to section 362(d) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001 of the Local Rules for the United States Bankruptcy Court District of Delaware (the “**Local Rules**”); and the Court, having reviewed the Motion 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. Pursuant to section 362(d) of the Bankruptcy Code, relief from the automatic stay is granted and the automatic stay is modified to allow MIG to pursue its appeal of the Judgment entered by the Chancery Court.

3. Pursuant to section 362(d) of the Bankruptcy Code, relief from the automatic stay is granted and the automatic stay is modified to allow the Petitioners to file any cross-appeal in connection with the Judgment; however, the modification of the stay shall not extend to permit the Petitioners the right to execute on, or take any action to enforce the Judgment without further order of this Court.

4. 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