

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
TWG CAPITAL, INC.,) Case No. 12-11019-BHL-11
)
Debtor.)

**DEBTOR'S APPLICATION FOR ORDER APPROVING THE RETENTION OF
PETERS, BROWNING & CO., P.C. AS FINANCIAL ADVISORS TO THE DEBTOR
PURSUANT TO 11 U.S.C. § 327(a) *NUNC PRO TUNC* TO THE PETITION DATE IN
ACCORDANCE WITH FED. R. BANKR. P. 6003**

TWG Capital, Inc. (the "Debtor"), the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), by counsel, hereby files this Debtor's Application For Order Approving The Retention Of Peters, Browning & Co., P.C. As Financial Advisors To The Debtor Pursuant To 11 U.S.C. § 327(a) *Nunc Pro Tunc* To The Petition Date In Accordance With Fed. R. Bankr. P. 6003 (the "Application"). In support of the Application, the Debtor relies upon the Affidavit Of Gary Peters In Support Of Debtor's Application For Order Approving The Retention Of Peters, Browning & Co., P.C. As Financial Advisors To The Debtor Pursuant To 11 U.S.C. § 327(a) *Nunc Pro Tunc* To The Petition Date In Accordance With Fed. R. Bankr. P. 6003 (the "Peters Affidavit").

JURISDICTION

1. On September 14, 2012 (the "Petition Date"), the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court"), its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* as amended (the "Bankruptcy Code") commencing the Chapter 11 Case.
2. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND AND EVENTS LEADING TO FILING

4. As more fully set forth in the Declaration of Mark P. Nondorf in Support of Chapter 11 Petition and First Day Applications and Motions (the "Nondorf Declaration"), the Debtor is a specialty finance company that services the insurance industry. Insurance agents and agencies own predictable renewal commission rights on certain types of insurance policies ("Insurance Commission Receivables," commonly referred to in the industry as "ICRs") that generate significant cash flows over extended periods of time. The Debtor provides a range of products and services based on the value of the ICRs.

5. The Debtor's business consists of three primary segments. The Debtor's most significant line of business is providing liquidity to insurance agents and agencies by serving as an originator to special purpose vehicles ("SPVs") for the purchase of ICRs at a rate less than the expected value of their future cash flows. The Debtor earns origination fees for this service. Second, the Debtor services on behalf of SPVs and other parties ICR asset portfolios, using proprietary technology. The Debtor earns a servicing fee for this service. Finally, the Debtor's wholly owned subsidiary, IR Finance 1, LLC ("IR Finance") makes loans to insurance agencies and collateralizes the loans with future insurance commissions. The Debtor services the loan assets and insurance commission collateral on behalf of IR Finance.

6. On or around July 12, 2007, the Debtor entered into an origination and servicing contract with its wholly owned subsidiary, Insurance Receivables 7, LLC ("IR7"), whereby the Debtor would receive (i) an origination fee for purchases placed in IR7's debt

facility and (ii) a servicing fee for monitoring and processing commission payments that were received under the purchases (the "IR7 Servicing Agreement"). On or around May 13, 2008, the Debtor, Inservico, Inc. ("Inservico") and other parties, including lenders to IR7 (the "IR7 Lenders") entered into that certain Back-Up Servicing Agreement (the "Back-Up Servicing Agreement"). On August 13, 2010, the Debtor was terminated as the IR7 servicer and pursuant to the Back-Up Servicing Agreement, the IR7 Lenders purportedly appointed Inservico as successor to the Debtor as the servicer with respect to the IR7 Servicing Agreement. Inservico disputes any allegation that it has any obligations under the Back-Up Servicing Agreement or the IR7 Servicing Agreement. With reservation of Inservico's position, by that certain Subservicing Agreement between Inservico and the Debtor dated effective as of September 13, 2012, Inservico has subcontracted the servicing of IR7 to the Debtor. The origination and servicing fees from IR7 are currently the Debtor's primary source of revenue. Inservico is a 62.47% owner of the Debtor.

7. The prolonged impact of the financial crisis that hit in 2008 has impaired the performance of the Debtor's purchased asset portfolio, and the Debtor has sustained significant losses as a result. The financial crisis has also impacted the insurance industry as a whole, which caused the Debtor to experience lower than projected cash flows. The Debtor has also been required to sustain unexpected costs of litigation, including arbitration resulting from the Debtor's discovery of misrepresentations by the seller in the purchase of Medicare Supplemental policies (the "AIMC Arbitration"). During the AIMC Arbitration, the senior lenders on the IR7 debt facility declared an event of default that resulted in the immediate termination of new originations within the IR7 debt facility, thereby further impairing the Debtor's cash flow.

8. The Debtor has taken many measures to prevent the filing of the Chapter 11 Case. The Debtor has worked with investment bankers for over three years to develop and execute recapitalization strategies. However, traditional financing sources have been constrained, and the Debtor has been unable to raise sufficient capital to implement its business plan.

9. A more in depth discussion of the Debtor's business and the circumstances precipitating the filing of the Chapter 11 Case is set forth in the Nondorf Declaration, which is incorporated by reference herein.

RELIEF REQUESTED

A. Summary of Relief

10. The Debtor seeks entry of an order authorizing the Debtor's retention and employment of Peters, Browning & Co., P.C. ("Peters Browning") as financial advisors to the Debtor *nunc pro tunc* to the Petition Date.

B. Basis for Relief

11. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor's] duties under this title.

12. Rule 2014(a) of the Federal Rules of Bankruptcy Procedure requires that the application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person

employed in the office of the United States trustee.

13. The Debtor believes that Peters Browning and its financial advisors and accountants have considerable experience in these matters, have extensive knowledge of the Debtor's complex business, and are well qualified to act as financial advisors to the Debtor.

14. Professional services to be rendered by Peters Browning in the Chapter 11 Case include: advising the Debtor on bankruptcy accounting and bankruptcy tax matters, completing the filing of the Debtor's federal and state tax returns, providing general accounting services, and providing the Debtor and the Debtor's counsel such other assistance and services as the Debtor, its creditors, or the Court may request that are appropriate and necessary depending on the specific facts, issues, and circumstances during the course of the Chapter 11 Case.

15. Subject to Court approval, and in accordance with Section 330(a) of the Bankruptcy Code, and any order authorizing interim compensation procedures by this Court, the Debtor desires to employ Peters Browning on an hourly fee basis at its rates for similar employment, plus reimbursement of all actual and necessary expenses incurred by Peters Browning, including telephone charges, mailing or delivery charges, photocopying, travel, "working meals," and computerized research. The primary advisors and accountants within Peters Browning who will assist the Debtor and their current standard hourly rates are: Gary Peters, \$225 per hour; Steve Cannedy, \$165 per hour; and Lee Ann Heckman, \$56 per hour. The hourly rates are subject to periodic adjustments to reflect economic and other conditions, and other advisors and accountants may from time to time serve the Debtor in connection with matters described in this Application.

16. Prior to the Petition Date, Peters Browning received a prepetition retainer in the amount of \$5,000.00 for services to be rendered in connection with this case (the

"Retainer"). Pursuant to Local Bankruptcy Rule B-2014-1(d), Peters Browning requests authority to hold the Retainer without any application to payment of fees and expenses until approval by the Court of Peters Browning' final application for fees and expenses. Peters Browning requests that any allowed interim fees and expenses be paid pursuant to the terms of any order entered by the Court authorizing the payment of interim compensation with such interim compensation to be paid from other estate assets. The Retainer is held by Peters Browning in its trust account, subject to Court order.

17. To the best of the Debtor's knowledge and except as set forth in the Peters Affidavit, Peters Browning has no connection with the creditors or other parties in interest or their respective attorneys. Peters Browning does not hold or represent any interest adverse to the Debtor's estate. Peters Browning is a disinterested person as that term is defined in Section 101(14) of the Bankruptcy Code.

18. To the best of the Debtor's knowledge, neither Peters Browning nor any other member, associate or professional employee thereof, is a relative of, or connected now or in the past with the Judge of this Court making the appointment or approving the employment.

19. The fees and actual necessary expenses of Peters Browning are allowable under 11 U.S.C. § 507(a)(2).

NOTICE

20. The Debtor has provided or will provide notice of the Application and any hearing thereon by telephone, telecopy, electronic mail, overnight delivery service or hand delivery to (i) the office of the United States Trustee for the Southern District of Indiana; (ii) the Internal Revenue Service; (iii) the Debtor's twenty (20) largest general unsecured creditors; (iv) all secured creditors; and (v) any party who has filed an appearance and served same on the Debtor prior to service.

NO PRIOR REQUEST

21. No previous application for the relief requested herein has been made to the Court in the Chapter 11 Case.

WHEREFORE, the Debtor respectfully requests entry of an order authorizing retention of Peters, Browning & Co., P.C. on a general retainer, pursuant to 11 U.S.C. §§ 327 and 330, and grant such other relief to which the Debtor may be entitled.

Respectfully submitted,

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