

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

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

**MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS
PURSUANT TO RULE 9019**

TWG Capital, Inc. ("TWG" or the "Debtor"), the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), files this Motion for Approval of Settlement of Claims Pursuant to Rule 9019 (the "9019 Motion"). In support thereof, TWG respectfully states:

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. TWG continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

2. This Court has jurisdiction over this Motion 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). Venue is proper under 28 U.S.C. §§ 1448 and 1409.

3. The statutory basis for the relief requested herein is sections 363 and 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Preliminary Statement

4. As explained in further detail below, this 9019 Motion bears on two motions presently pending before the Court: (i) the *Motion For Entry Of An Order (I) Approving Asset Purchase Agreement; (II) Authorizing The Sale Of Substantially All Of The Assets Of The Debtor's Estate Free And Clear Of All Liens, Claims And Encumbrances; And (III) Authorizing The Assumption And Assignment Of Leases And Contracts*, filed September 14, 2012 (the "Sale Motion") [Docket No.14.], set for hearing November 8, 2012 (the "Sale Hearing"), and (ii) the *Motion To Authorize The Rejection Of Certain Agreements*, filed October 3, 2012 [Docket No. 73] (the "Rejection Motion"), seeking rejection of (i) that certain Assignment and Assumption Agreement dated as of December 30, 2004 (the "Assignment and Assumption Agreement"), between the Debtor and Long Term Preferred Care, Inc. ("LTPC"); (ii) that certain Distribution Agreement dated as of December 30, 2004 (the "Distribution Agreement"), between the Debtor and Imagine International Reinsurance Limited, an Irish registered company ("Imagine"); and (iii) that certain Monitoring Agreement dated as of December 30, 2004 (the "Monitoring Agreement," sometimes collectively hereafter with the Assignment and Assumption Agreement and Distribution Agreement, the "LION Trust Agreements"), between the Debtor, Imagine and the LION 2004 Receivables Trust, a Delaware statutory trust (the "LION Trust"). The Rejection Motion also presently is set for hearing on November 8, 2012 (the "Rejection Hearing"), however consistent with the terms of the Settlement (as defined below), on or before Monday, November 5, 2012, TWG expects to file a motion to continue the Rejection Hearing to accommodate the requirements of the Settlement, and to prosecute the Rejection Motion after approval of the Settlement. Further, concurrently with this 9019 Motion, TWG is filing a Notice of Submission of a revised Exhibit A to the Sale Motion which shall be that certain First

Amendment to Amended and Restated Asset Purchase Agreement (the "Amended APA"). The Amended APA likewise reflects certain requirements per the terms of the Settlement, most significantly in redefining "Excluded Assets" to include the Materials (as defined herein). The relief requested in this 9019 Motion is not expected to delay the Auction, the Sale Hearing or the Closing on the sale of the Assets, all as defined and contemplated by the Sale Motion.

5. This 9019 Motion involves resolution of the claims against the estate arising under or on account of the LION Trust Agreements and TWG's anticipated rejection of those agreements per the Rejection Motion.

Background

6. Collectively, the LION Trust Agreements reflect a December 2004, four party transaction by and among the Debtor, LTPC, the LION Trust, and Imagine. The transaction was constructed as follows: (i) under that certain Commission Purchase Agreement dated as of December 30, 2004, between LTPC and LION Trust, LION Trust purchased the rights to the commissions from LTPC, (ii) per the Assignment and Assumption Agreement, among other things, the Debtor assumed the obligation of LTPC to pay certain insurance agents who sold policies on behalf of LTPC (the "Downlines") arising under LTPC's agreements with the Downlines; (iii) per the Distribution Agreement, among other things, the Debtor was to receive monthly a "Senior Payment" (as defined in the Distribution Agreement) from the LION Trust monthly waterfall to pay the commissions due to the Downlines as contemplated under the Assignment and Assumption Agreement; and (iv) per the Monitoring Agreement, among other things, the Debtor was to perform servicing on behalf of the LION Trust and Imagine and receive a monthly servicing fee.

7. Effective with the October 2011 month of agreement, the Debtor ceased paying the Downlines their full commissions as required under the Assignment and Assumption Agreement; instead the Debtor began a process to remit to Downlines only the amounts that were received from the Senior Payment from the Lion Trust.

8. On July 2, 2012, Imagine delivered to the Debtor a Notice of Termination of the Monitoring Agreement, citing certain breaches under the Monitoring Agreement that constitute "Early Termination Events," including the Debtor's failure to pay the Downlines their full commissions as obligated under the Assignment and Assumption Agreement (the "Termination Notice"). The Termination Notice purports to establish July 2, 2012 as the "Early Termination Date."

9. Notwithstanding the Termination Notice, the parties entered into a letter agreement pursuant to which the Debtor agreed to provide "Transitional Services" for an agreed upon fee to enable the LION Trust to pay commissions directly to the Downlines, with the LION Trust's full reservation of rights against the Debtor. The Debtor has continued to provide the Transitional Services pursuant to the letter agreement for the agreed upon fee after the Petition Date.

10. As noted in the Rejection Motion, though no party to the Distribution Agreement and the Assignment and Assumption Agreement has acted formally to terminate either agreement, the Debtor's position is that for most intents and purposes, compliance with respective obligations under these agreements effectively ceased concurrent with the Early Termination Date of the Monitoring Agreement. The last Senior Payment received by the Debtor was in June 2012, for the payment of commissions to the Downlines earned in May 2012. According to the Debtor, the LION Trust's cessation of the remission of the Senior Payment

under the Distribution Agreement necessarily rendered TWG unable in all events to perform its obligations under the Assignment and Assumption Agreement. TWG's schedules reflect an accounts receivable owed by the LION Trust which the LION Trust and Imagine disputes (the "Disputed Senior Payment").

11. The LION Trust and Imagine contend that notwithstanding the Early Termination Event, the Debtor remained obligated to perform certain duties under the LION Trust Agreements, including a duty to cooperate in transitioning the servicing of the Downlines' commissions to a new servicer or "Successor Monitor," which duty also would survive the Debtor's rejection of the LION Trust Agreements. The LION Trust and Imagine further contend that notwithstanding the Debtor's Rejection Motion, the LION Trust and/or Imagine have vested interests in and unqualified rights of access to all data, information and related business records (a) pertaining to the LTPC insurance commissions purchased by the LION Trust or (b) necessary for the continued servicing of the Downlines' commissions. TWG disputes some or all of these contentions as asserted by the LION Trust and Imagine.

12. In connection with TWG's inability to perform its obligations under the Assignment and Assumption Agreement, among the creditors scheduled by TWG in its Schedules filed October 12, 2012 [Docket No. 101], are approximately 445 insurance agents or brokers, known as the "Downlines," which are scheduled by TWG as holders of commission payment claims (the majority reflected as "disputed" claims) aggregating the sum of approximately \$1,198,000 (collectively, the "Downline Claims"). According to TWG, the Downline Claims all arise on account of TWG's alleged or purported pre-petition defaults to remit to the Downlines the entirety of commissions that were ultimately to be paid to them by TWG under the LION Trust Agreements. On information or belief, by virtue of rights of

subrogation or comparable rights, LION Trust and/or Imagine may be the actual holder of the Downline Claims.

13. Per this 9019 Motion, among other things, TWG, LION Trust and Imagine resolve, compromise and settle via mutual releases any (i) claims arising under the LION Trust Agreements, including the Disputed Senior Payment; (ii) all rejection damages claim arising under the LION Trust Agreements that LION Trust and/or Imagine may assert on their behalf or on account of any rights of subrogation related to any claims of the Downlines against TWG arising under the LION Trust Agreements, and (iii) the interests and rights of the LION Trust and/or Imagine to the data, information and records arising under or relating to the LION Trust Agreements and the servicing of the Downlines' commissions.

Relief Requested

14. Pursuant to Bankruptcy Rule 9019, TWG requests that the Court enter an order (the "Approval Order") approving (i) the settlement (the "Settlement ") of the Claim (as defined below) as to TWG under the terms and conditions of the parties and as evidenced by the Term Sheet (the "Term Sheet") attached hereto as Exhibit A with attachments and to be incorporated into a settlement agreement to be filed with the Court prior to a hearing on this Motion; (ii) the transfer and conveyance by TWG to LION Trust of the Materials as defined in the Term Sheet and as evidenced under the terms and conditions of the parties and as evidenced by the Term Sheet; and (iii) the performance by TWG of all of its other obligations under the Term Sheet.

The Settlement

15. All as set forth more fully in the Term Sheet, the key provisions of the Settlement reached between TWG, LION Trust and Imagine provide:

- (i) TWG agrees to convey, transfer, assign and deliver the Materials (identified as "Excluded Assets" per the Amended APA) to LION Trust, which shall be the exclusive property of the LION Trust, for an aggregate payment to TWG in the sum of \$60,000¹;
- (ii) TWG agrees to provide access to LION Trust to the Materials for the interim period between filing this 9019 Motion up to and through the entry of a final and non-appealable order approving the Settlement;
- (iii) TWG and Carmel Funding, the stalking buyer under the Amended APA (and any successful overbidder for the Assets) agree to continue to perform those certain Transitional Services on terms previously committed to by TWG for the period set forth in the Term Sheet;
- (iv) LION Trust agrees to warrant to TWG as of the closing of the Settlement that LION Trust shall have paid in full the commissions to the Downlines covered by the LION Trust Agreements in such sums as previously specified by TWG to LION Trust during the course of TWG's performance of the Assignment and Assumption Agreement and the Transitional Services (as defined in the Term Sheet), , which shall consist of shortfalls for the months of agreement from October 2011 through May 2012 and monthly payments for the months of agreement from June 2012 through September 2012²;
- (v) LION Trust shall recite in the final settlement agreement it is entering into the Settlement with the intention and for the purpose of determining and causing to be paid commissions to the Downlines incurred on or after the closing date of the Settlement, as and when due, subject to all rights, defenses and claims of LION Trust or Imagine; and
- (vi) TWG, Carmel Funding, the stalking buyer under the Amended APA (and any successful overbidder for the Assets), LION Trust, Imagine and other related parties execute a mutual general release of all claims arising under the Materials or the LION Trust Agreements, exclusive solely of certain specified claims of TWG against LTPC and the claims, rights or defenses that the LION Trust or Imagine may have against third parties.

¹ TWG advises that much of the Materials actually will remain in the possession of TWG or the ultimate successful bidder of the Assets per the Sale Motion, as such Materials will remain as part of that certain PTS database included in the Assets. To assure the LION Trust the full benefits of the Settlement and transaction contemplated hereby, TWG has agreed to enter into a confidentiality agreement covering such Materials and the pending Asset Purchase Agreement has been amended to require Carmel Funding and any successful overbidder for the Assets to likewise enter into such a confidentiality agreement.

² This provision means that the Downline Claims referenced in section __ hereof have in fact been satisfied by LION Trust. Any entitlement by LION Trust to "step into the shoes" of the Downlines with respect to these Downline Claims as the Downlines' subrogee, will be waived and released per the Settlement.

16. TWG advises the Court that in connection with the Sale Motion, the requirements or agreements required of Carmel Funding, the stalking buyer under the Amended APA, and any successful overbidder for the Assets, identified in sections 12(iii) and (vi) of this 9019 Motion and more completely in the Term Sheet, have been made per the Amended APA filed on November 2, 2012. In addition to the parties entitled to notice of the submission of the Amended APA per Bankruptcy Rule 2002, on November 2, 2012, TWG also provided a copy of the Amended APA to LTC Global, Inc., the one party of which TWG is aware that may be an overbidder for the Assets.

17. If approved, the Debtor submits that the Settlement will result in the (i) elimination of certain claims against the Debtor's estate (the majority scheduled as "disputed") in the approximate sum of \$1,198,000, (ii) elimination of the rejection damage claim under 11 U.S.C. §365(g) which LTFC, LION Trust and/or Imagine would be entitled to assert upon entry of an order approving the Rejection Motion, (iii) elimination of any post-petition claims of the Downlines and/or LION Trust or Imagine as subrogee of the Downlines pending rejection of the LION Trust Agreements which according to the Debtor, are in the aggregate approximate sum of \$170,000 (collectively (i), (ii) and (iii) are hereafter referred to as the "Claim"), (iv) resolution of the Disputed Senior Payment and the elimination of related attorneys fees and costs incurred in litigating TWG's interests in the receivable, (v) receipt of a payment to the TWG estate in the sum of \$60,000, and (vi) elimination of attorneys fees and costs incurred in litigating opposition to the Sale Motion and Rejection Motion by the LION Trust and Imagine and any subsequent litigation necessary to adjudicate their asserted rights and interests in the data, information and records arising under or related to the LION Trust Agreements and the servicing of the Downlines' commissions.

Basis for Relief

18. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit Court of Appeals has offered the following guidance to courts in making such determinations:

The linchpin of the "best interests of the estate" test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, "including the possibility that disapproving the settlement will cause wasting of assets."

Doctors Hosp. of Hyde Park, 474 F.3d at 426 (citations omitted).

19. TWG believes that the Settlement is in the best interests of its bankruptcy estate and constitutes the good faith exercise of TWG's sound business judgment, and that subject to court approval, the Debtor has the authority (a) to convey and deliver the Materials to the LION Trust as the sole and exclusive property of the LION Trust, to the extent that the Materials constitute property of the Debtor's bankruptcy estate and (b) to execute the mutual general release on behalf of itself and the bankruptcy estate.³

20. Per the Settlement, the settlement of the Claim is in the best interests of TWG's estate and creditors because it releases TWG from in excess of approximately \$1,368,000 in liability. Further, Settlement resolves all disputes related to the Disputed Senior Payment and yields \$60,000 in proceeds to the TWG's estate available for distribution to holders of allowed claims.

³ Subject to same clarification as set forth in footnote 1 hereof.

21. Notice of this Motion will be provided to all creditors, the United States Trustee, the debtor in the above-captioned case, all counsel of record, and any other entity that the Court may direct, as provided in Bankruptcy Rules 2002 and 9019.

WHEREFORE, TWG respectfully requests that the Court (a) enter an Approval Order authorizing (i) the settlement of the Claim under the terms and conditions of and as evidenced by the Term Sheet, (ii) the transfer and conveyance by TWG of the Materials to LION Trust; and (iii) the performance by TWG of all of its other obligations under the Term Sheet; and (b) grant TWG all other just and proper relief.

Respectfully submitted,

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By: /s/ Jay Jaffe

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on November 5, 2012, a copy of the foregoing pleading was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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