

SO ORDERED: November 6, 2012.



**Basil H. Lorch III**  
**United States Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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

**ORDER AUTHORIZING RETENTION AND APPOINTMENT  
OF THE BMC GROUP, INC. AS NOTICE AND CLAIMS AGENT  
UNDER 28 U.S.C. §156(c) AND GRANTING RELATED RELIEF**

Upon the application ("Application") of TWG Capital, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned chapter 11 case, for an order authorizing the retention and appointment of The BMC Group, Inc. ("BMC") as Notice and Claims Agent, under 28 U.S.C. §156(c), to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket and otherwise administer the proofs of claims filed in the chapter 11 case of Debtor, and (iii) provide such other administrative services that the Debtor may require, and upon the declaration of Tinamarie Feil submitted in support of the Application; and the Debtor having estimated that there are in excess of 600 creditors in this chapter 11 case, many of which are expected to file proofs of claims, and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome

for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtor's expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that BMC has the capability and experience to provide such services and that BMC does not hold an interest adverse to the Debtor or estate respecting the matters upon which they are to be engaged; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of BMC is in the best interests of the Debtor, estate and creditors; and sufficient cause appearing therefor; it is hereby

**ORDERED**, that the Debtor is authorized to retain BMC effective November 5, 2012 as an administrative expense of the Debtor's estate under section 503(b) of the Bankruptcy Code to perform the noticing and other services set forth in the Application and to receive, maintain, record and otherwise administer the proofs of claim filed in this chapter 11 case; and it is further

**ORDERED**, that BMC is appointed as Claims Agent (as defined in the Application) and, as such, is the custodian of court records and designated as the authorized repository for all proofs of claim filed in this chapter 11 case and is authorized and directed to maintain an official claims register for the Debtor and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk; and it is further

**ORDERED**, that BMC is authorized and directed, if applicable, to perform all related tasks to process the proofs of claim and maintain a claims register including:

- (a) Notify all potential creditors of the filing of the bankruptcy petition and of the setting of the date for the first meeting of creditors, pursuant to § 341(a) of the Bankruptcy Code, under the proper provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure unless

such notice has already been given;

- (b) Maintain an official copy of the Debtor's schedules of assets and liabilities and statement of financial affairs (collectively, "Schedules"), listing the Debtor's known creditors and the amounts owed thereto;
- (c) Notify all potential creditors of the existence and amount of their respective claims as evidenced by the Debtor's books and records and as set forth in the Schedules;
- (d) Furnish a notice of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;
- (e) Maintain a post office box for the purpose of receiving claims;
- (f) File with the Clerk an affidavit or certificate of service which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date mailed, within seven (7) days of service;
- (g) Docket all claims received by the Clerk's office, maintain the official claims register ("Claims Register") for the Debtor on behalf of the Clerk, and, upon the Clerk's request, provide the Clerk with certified duplicate, unofficial Claims Register every thirty (30) days until the claims bar date has passed and then every sixty (60) days after that time only if additional claims have been filed;
- (h) Specify in the Claims Register the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification(s) of the claim (*e.g.*, secured, unsecured,

priority, etc.);

- (i) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (j) Relocate, by overnight delivery with prepaid Federal Express envelopes to be provided by BMC, all of the court-filed proofs of claim to the offices of BMC, not less than weekly;
- (k) Upon completion of the docketing process for all claims received to date for the case, turn over to the Clerk a copy of the Claims Register for the Clerk's review (upon the Clerk's request);
- (l) Make changes in the Claims Register pursuant to Court Order;
- (m) Maintain the official mailing list for the Debtor of all entities that have filed a proof of claim, which list shall be available upon request by a party-in-interest or the Clerk;
- (n) Assist with, among other things, solicitation and calculation of votes and distribution as required in furtherance of confirmation of a plan(s) of reorganization;
- (o) Thirty (30) days prior to the close of this case, arrange to have submitted to the Court a proposed Order dismissing the claims and noticing agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of this case; BMC will be notified of the anticipated closing of this case no later than ninety (90) days prior to the filing of a motion to close the case;
- (p) File with the Court the final version of the Claims Register immediately before the close of the chapter 11 case; and

(q) At the close of the case, box and transport all original documents, in proper format, as provided by the Clerk's Office, to the Federal Archives Record Administration, located at Great Lakes Region, 7358 South Pulaski Road, Chicago, IL 60629-5898.

**ORDERED**, that BMC shall follow the procedures as set forth herein and in the Application and as supplemented by the Claims and Noticing Protocol attached hereto as Exhibit A, which has been reviewed and approved by the Clerk of Court for the United States Bankruptcy Court for the Southern District of Indiana; and it is further

**ORDERED**, that the Debtor is authorized and directed to obtain a post office box for the receipt of proofs of claim; and it is further

**ORDERED**, that BMC is authorized to take such other action to comply with all duties set forth in the application; and it is further

**ORDERED**, that the Debtor is authorized to compensate BMC on a monthly basis upon the receipt of reasonably detailed invoices setting forth the services provided by BMC in the prior month and the rates charged for each, and to reimburse BMC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation; and it is further

**ORDERED**, that BMC's fees and expenses shall be an administrative expense of the Estate pursuant to 11 U.S.C. §503(b)(1)(A); and it is further

**ORDERED**, that in the event BMC is unable to provide the services set out in this order; BMC will immediately notify the Clerk and the Debtor's attorney and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtor's attorney.

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**Exhibit A**

**TWG Capital, Inc.**  
**Chapter 11 Case No. 12-11019-BHL-11**

**UNITED STATES BANKRUPTCY COURT**  
**Southern District of Indiana (Indianapolis)**  
**Claims and Noticing Protocol**

**[PROPOSED]**

**BMC Group Contacts:**

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**To: Clerk of the Bankruptcy Court**  
**Southern District of Indiana (Indianapolis)**

**cc: Faegre Baker Daniels LLP (as Counsel to the Debtors)**

- BMC Group, Inc. (“**BMC**”) is authorized by a Court Order entered November [●], 2012 (Dkt. [●]) to act as Claims and Noticing Agent for the Debtors (the “**BMC Order**”). The following sets out certain proposed arrangements and understandings between the Clerk of the Court (“Clerk”) and BMC for performance under the BMC Order.

**I. Notices and Declarations of Service**

When requested, BMC will work with Debtors’ counsel and the Clerk to effect notice of those matters required by the Federal Rules of Bankruptcy Procedure, including, but not limited to FRBP 2002 (“Notice Procedures”). Within 3 business days after the service of a particular notice, BMC will prepare and file electronically with the Clerk’s Office a Certificate of Service that includes (i) a copy of the notice, if required (ii) an alphabetical list of persons on whom the notice was served, along with their addresses and (iii) the date and manner of service.

**II. Proof of Claim Form and Notice of Bar Date**

The general deadline for filing proofs of claim has not yet been set. Once such deadline is set, BMC at the request of counsel will serve a notice of bar date and blank proof of claim form. The notice will direct that all claims be filed as follows:

**By regular US mail:**

BMC Group, Inc.  
Attn: TWG Capital Claims Processing  
PO Box 3020  
Chanhassen, MN 55317-3020

**By Messenger or overnight courier:**

BMC Group, Inc.  
Attn: TWG Capital Claims Processing  
18675 Lake Drive East  
Chanhassen, MN 55317

**III. Claims Handling**

A. Receipt of Paper Claims

1. Received by Clerk of Court, USBC

Proofs of Claim filed in hard copy format with the Clerk's Office shall be date-stamped by Court personnel then forwarded to BMC at BMC Group, Inc., Re: TWG Capital Processing, 18675 Lake Drive East, Chanhassen, MN 55317 using pre-addressed and pre-paid Express Mail shipping forms provided by BMC. A "filed" stamped copy of the claim will be mailed to the claimant within three (3) business days of docketing if the claimant provides a stamped, self-addressed envelope and a copy of the proof of claim.

2. Received by Counsel, Debtors or BMC

If creditors send their Proof of Claim to Counsel or Debtors such claims will be date stamped as of the date received by either Counsel or Debtors and forwarded to BMC. These claims, along with any Claims received directly by BMC, will be processed by BMC and marked as filed on the first date received by either Counsel, Debtors or BMC.

B. Processing and Docketing of Proofs of Claim

1. For all Proofs of Claim received by our offices and those retrieved from ECF/PACER, BMC will date stamp the front of the proof of claim (for ECF/PACER Proof of Claims, BMC will date stamp with the date as filed with the Court) and will affix a bar code label which assigns a unique claim number to each filed claim. If requested, a "filed" stamped copy of the claim will be mailed to the claimant within three (3) business days of docketing if the claimant provides a stamped, self-addressed envelope and a copy of the Proof of Claim.

2. BMC will maintain all images of each entire Proof of Claim in pdf format and docket the following data fields, unless otherwise requested by the Clerk of Court: Claimant's Full Name and Mailing Address, Case Name and Number, Date Filed, Claim Number and Total Amount of Claim. In addition, for Debtors' convenience, BMC will docket the claim classification(s) shown on the front of each proof of claim. In instances where the case name indicated is inconsistent with the assigned case number, BMC will docket according to the **case name** indicated on the proof of claim form.

C. Transfers of Claim

Transfers of claims received by the Clerk and docketed on the Court's docket **must be** imaged/posted to ECF/PACER. Clerk's Office agrees that by doing so, BMC can "receive" an "official" copy of the transfer of the claim by downloading the image from the ECF/PACER system, and then use the downloaded image to process the transfer of claim.

BMC will download and process all transfers of claim docketed and imaged by the Court as follows:



1. Initial processing: BMC will process the transfers of claim by reviewing the official claims register to determine if the claim transferred falls under Rule 3001(e)(1), (e)(2), (e)(3) or (e)(4).

**Pursuant to Rule 3001(e)(1)** – transfers of claims for which no proof of claim has been filed will be immediately recorded as transferred claims on the official claims register maintained by BMC. The name of the party holding the claim will be changed to reflect the transferee, and a record of the transferor will be maintained for continuity purposes. The docket number will be recorded in information maintained by BMC with respect to the claim.

**Pursuant to Rule 3001(e)(2)** – transfers of claims for which a proof of claim has been filed will require BMC to provide written notice to the alleged transferor of the evidence of transfer of claim and the 20-day objection period. BMC will send the notice of transfer to the alleged transferor using the address as listed on the request for transfer docketed on the Court’s docket within three (3) business days after the initial processing by BMC, and transmit a declaration of service with respect to the notice required under Rule 3001(e)(2) to the Clerk, in electronic format for docketing and filing on the ECF/PACER system. The ECF/PACER docket number will be recorded in information maintained by BMC with respect to the claim.

**Pursuant to Rule 3001(e)(3)** – In the event of transfers of claims for security *before* a proof of claim has been filed, if either the transferor or transferee files a proof of claim, BMC will immediately notify the other party by mail of its right to join in the filed claim. BMC will send the notice to the other party using the address as listed on the request for transfer docketed on the Court’s docket within three (3) business days after the initial processing of the proof of claim by BMC, and transmit a declaration of service with respect to the notice required under Rule 3001(e)(3) to the Clerk in electronic format for docketing and filing on the ECF/PACER system. The ECF/PACER docket number will be recorded in information maintained by BMC with respect to the claim. If the non-filing transferor or transferee, as the case may be, fails to file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, BMC will continue to list the filing transferor or transferee, as the case may be, as the sole owner of the claim with rights thereto, unless and until BMC receives an order of the Court setting forth a different treatment for the claim.

**Pursuant to Rule 3001(e)(4)** – transfers of claims for security *after* a proof of claim has been filed will require BMC to provide written notice to the alleged transferor of the evidence of transfer of claim and the 20-day objection period. BMC will send the notice to the alleged transferor as listed on the request for transfer docketed on the Court’s docket within three (3) business days after the initial processing by BMC, and transmit a declaration of service with respect to the notice required under Rule 3001(e)(4) to the Clerk in electronic format for docketing and filing on the ECF/PACER system. The ECF/PACER docket number will be recorded in information maintained by BMC with respect to the claim.

2. Secondary processing: BMC will review the Court docket to confirm that no objections have been received and docketed within the twenty (20) day objection period. Within twenty-five (25) days after the Rule 3001(e)(2) or Rule 3001(e)(4) written notice has been transmitted, if no objections have appeared on the Court docket, BMC will record the transferred claim on the official claims register maintained by BMC. The name of the party holding the claim will be changed to reflect the transferee, and a record of the transferor will be maintained for continuity purposes. BMC will mail a transfer acknowledgement to the transferee once the transfer has been effected. If an objection is filed, BMC will process and document the transfer in accordance with an order resolving the transfer dispute.

#### IV. Official Claims Register

##### A. Production and Maintenance of the Claims Register

1. BMC shall maintain the official Claims Register for each of the Debtors in both alpha and numeric order and provide, whenever requested, an electronic copy to the Clerk’s Office.

2. BMC will post the image of each proof of claim, as filed, to the following public website [www.bmcgroup.com/twgcapiital](http://www.bmcgroup.com/twgcapiital) maintained by BMC (the “Case Website”). Pursuant to Bankruptcy Code §107(c)(1), BMC may redact any information provided by the Claimant that is determined to be confidential from public viewing on the Case Website.

3. BMC will also post the Claims Register to the Case Website. The posted Claims Register will list claims in alphabetical order, according to name of claimant, and will include the case name and number against which the claim is filed, the claimant’s full name and mailing address, the unique claim number assigned, the date received as “filed” stamped, dollar amount claimed, and classification of claim.

**B. Update of Claims Register based on Court Orders**

BMC will update the Claims Register based upon Court Orders where the pleading title indicates an affect on claim(s). Otherwise, Debtors’ counsel shall be responsible for providing BMC with copies of Court orders affecting claims and BMC shall update the Claims Register based upon such Court orders.

**V. Balloting**

BMC will assist the Debtors and/or Debtors’ counsel with balloting by printing, mailing, receiving, recording and tabulating ballots consistent with any Local Rules and procedures established by the Court’s orders. Although BMC will not certify the interpretation of tabulation results, it will prepare declaration(s) evidencing the result of receipt, recordation and tabulation to be filed with the Clerk of the Court without the necessity of filing the original ballots. Original ballots will be maintained at BMC’s offices pending further instruction on disposition from the Court or Clerk of Court.

**VI. Case Closure**

Upon the entry of an Order closing these Chapter 11 cases, BMC will file the final version of the Claims Registers (in alpha and numeric order) and forward copies of the claims and the final Claims Registers to the Clerk’s Office on CD-ROMS. BMC will contact the Clerk of the Court to determine whether archiving of any claims or ballots received in hard copy is required or whether they should be destroyed.

**VII. Court Information**

United States Bankruptcy Court  
46 E. Ohio St.  
Indianapolis, In. 46204  
Attn: Kevin Dempsey, Clerk of the Court  
Tel: (317) 229-3805  
Email: [●]

**VIII. Debtors’ Counsel**

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