

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 UNDER BANKRUPTCY CODE SECTION 1121(d) FOR AN ORDER  
EXTENDING THE DEBTOR'S EXCLUSIVE PERIODS TO FILE A PLAN  
AND SOLICIT VOTES IN CONNECTION THEREWITH**

TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor") in the above-captioned case, files this *Motion Under Bankruptcy Code Section 1121(d) For An Order Extending The Debtor's Exclusive Periods To File A Plan and Solicit Votes In Connection Therewith* (the "Motion") seeking a ninety (90) day extension of the Debtor's exclusive time in which to file a Chapter 11 plan and a ninety (90) day extension of time in which to solicit acceptances of the plan. In support of the Motion, the Debtor respectfully states as follows:

**Jurisdiction and Venue**

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 this Chapter 11 case (the "Chapter 11 Case"). The Debtor continues to operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. The statutory basis for the relief requested herein is section 1121(d) of the Bankruptcy Code.

### **Background**

4. As more fully set forth in the Declaration of Mark P. Nondorf In Support Of Chapter 11 Petitions and First Day Motions [Docket No. 4], the Debtor is a specialty finance company that serves the insurance industry. The Debtor was founded around the realization that insurance agents and agencies own predictable renewal commission rights on certain types of insurance policies ("Insurance Commission Receivables" or "ICRs") that generate significant cash flows over extended periods of time. These ICRs have not been recognized by traditional financing sources yet represent significant financial assets. The Debtor leverages its understanding of the insurance market and needs of market participants to provide a range of products and services based on the value of ICR assets. The Debtor's business is organized around three primary segments: Asset Originations, Asset Servicing, and Lending Business.

5. On November 5, 2012, the Debtor filed its *Motion for Approval of Settlement of Claims Pursuant to Rule 9019* [Docket No. 123] (the "Settlement Motion"), seeking approval of settlement (the "Settlement") by and between the Debtor, LION 2004 Receivables Trust ("Lion Trust"), and Imagine International Reinsurance Limited ("Imagine"). The Court entered its order approving the Settlement on November 27, 2012 [Docket No. 159].

6. On November 9, 2012, the Court entered an order approving the sale of substantially all of the Debtor's assets to Carmel Funding, LLC ("Purchaser") [Docket No. 142].

The Debtor and Purchaser have agreed to extend the closing date of the sale to December 31, 2012 (the "Closing") to facilitate performance by the Debtor of obligations related to the close of the Settlement.

**Requested Relief**

7. Pursuant to section 1121(d)(1) of the Bankruptcy Code, the Debtor seeks the entry of an order extending the periods under sections 1121(b) and (c) of the Bankruptcy Code in which the Debtor has the exclusive right to file a Chapter 11 plan for ninety (90) days, up to and including April 12, 2013, and an additional ninety (90) days to solicit acceptances of such plan, up to and including June 11, 2013, respectively, without prejudice to the Debtor's right to seek additional and further extensions of these periods as may be appropriate under the circumstances.

8. No other extensions of the exclusive periods have been requested by the Debtor.

**Basis for Relief**

9. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a Chapter 11 case during which a debtor has the exclusive right to file a Chapter 11 plan. Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor proposes a plan within the statutory exclusive filing period, it has a period of 180 days after the commencement of the Chapter 11 case to solicit votes and gain acceptance of such plan.

10. Absent the extensions requested herein, the Debtor's initial exclusive filing period and exclusive solicitation period will expire on January 12, 2013 and March 13, 2013, respectively (the "Debtor's Exclusive Periods"). Pursuant to section 1121(d)(1) of the

Bankruptcy Code, the Court may, upon a demonstration of cause, extend the Debtor's Exclusive Periods. Cause exists for extending the Debtor's Exclusive Periods in the Chapter 11 Case.

11. The paramount objectives of a Chapter 11 case are the orderly restructuring of a debtor's business and the negotiation, development, proposal, confirmation and consummation of a Chapter 11 plan. Chapter 11 is also a permissible method for the effectuation of the orderly liquidation of a debtor for whom reorganization is not a viable alternative. The periods for exclusively filing a plan of reorganization or liquidation and exclusively soliciting votes in connection with such plan under section 1121 of the Bankruptcy Code were intended to afford a debtor a full and fair opportunity to achieve these objectives in an orderly and efficient manner without the disruption that might be caused by the filing of competing plans.

12. Section 1121(d)(1) of the Bankruptcy Code provides in pertinent part:

(d)(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

13. Congress intended that the period during which only the debtor may file a Chapter 11 plan should be of adequate length for the debtor to formulate, negotiate and draft a plan and solicit acceptances thereof. As reflected in the legislative history of section 1121 of the Bankruptcy Code, section 1121(d) "allows the flexibility in individual cases" to extend the periods in which the debtor has the exclusive right to file a plan "to allow the debtor to reach an agreement." H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977); *see In re Pub Serv. Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (explaining that "the legislative intent . . . [is] to promote maximum flexibility to suit various types of reorganization proceedings").

14. In circumstances in which the initial period to exclusively file a plan proves inadequate for the debtor to negotiate and file a plan, the Court has the discretion to extend the periods under section 1121 of the Bankruptcy Code for periods of time the Court deems reasonable under the circumstances of the case, within the limits of the Bankruptcy Code. *In re Borders Grp., Inc.*, 2011 WL 2174408, \*2 (Bankr. S.D.N.Y. June 2, 2011); *In re SW Boston Hotel Venture, LLC*, 2011 WL 1675085, \*2 (Bankr. D. Mass. May 4, 2011). In determining whether cause exists to extend the exclusivity period, courts generally consider the following factors:

- (a) the size and complexity of the case;
- (b) the necessity of sufficient time to negotiate and prepare adequate information;
- (c) the existence of good faith progress;
- (d) whether the debtor is paying its debts as they become due;
- (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan of reorganization;
- (f) whether the debtor has made progress in negotiating with creditors;
- (g) the length of time a case has been pending;
- (h) whether the debtor is seeking an extension to pressure creditors; and
- (i) whether or not unresolved contingencies exist.

*In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 484 (Bankr. D. Conn. 2007); *In re Adelpia Commc'ns. Corp.*, 352 B.R. 578, 587-90 (Bankr. S.D.N.Y. 2006); *In re Apex Pharm., Inc.*, 203 B.R. 432, 441 (Bankr. N.D. Ind. 1996); *In re Express One Intern, Intl, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

15. A pivotal factor in the court's determination is whether extending the debtor's exclusivity period will "facilitate movement towards a fair and equitable resolution of the case." *In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (9th Cir. 2002); *In re Dow Corning Corp.*, 208 B.R. 661, 670 (E.D. Mich. 1997).

16. The facts and circumstances of the Chapter 11 Case and the express terms of section 1121(d) of the Bankruptcy Code support the extension of the Debtor's Exclusive Periods as requested herein.

17. Since the Petition Date, the Debtor has continued to pay its debts as they become due and has made substantial progress in moving toward an equitable resolution of the Chapter 11 Case. As discussed above, the Court has approved the sale of substantially all of the Debtor's assets. Further, the Debtor has reached a Settlement with Lion Trust and Imagine, thereby eliminating (i) the Downline Claims<sup>1</sup>, which aggregate approximately \$1,198,000, (ii) rejection damage claims arising from the Debtor's rejection of the LION Trust Agreements, (iii) post-petition claims of the Downlines and/or Lion Trust or Imagine as subrogee of the Downlines pending rejection of the LION Trust Agreements, and (iv) resolution of the Disputed Senior Payment. The Downlines comprise the Debtor's largest creditor constituency. Accordingly, the Settlement has resulted in a resolution of the claims of a majority of the Debtor's scheduled unsecured creditors.

18. The Debtor is working diligently to close the sale and anticipates that it will file a Chapter 11 plan of liquidation subsequent to the Closing. The Debtor currently is operating with few employees, and the Debtor's principals have thus been required to devote their attention primarily to (i) the Debtor's daily operations, (ii) the Debtor's obligations related to the Closing, and (iii) the performance of obligations related to the close of the Settlement. To facilitate the Debtor's obligations related to the foregoing, the Debtor and Purchaser agreed to extend the outside date of the Closing to December 31, 2012. After the Closing, the Debtor's

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Settlement Motion.

principals will then be in a position to formulate a Chapter 11 plan that will result in the most favorable result for its estate and creditors.

19. The Debtor believes that cause exists for extending the Debtor's Exclusive Periods and that such extension will facilitate an equitable resolution of the Chapter 11 Case. Accordingly, the Debtor requests an extension of the Debtor's Exclusive Periods to allow the Debtor requisite time to close the sale and to formulate a Chapter 11 plan.

WHEREFORE, the Debtor requests that the Court enter an order extending the Debtor's exclusive right to file a Chapter 11 plan for ninety (90) days, up to and including April 12, 2013, and an additional ninety (90) days to solicit acceptances of such plan, up to and including June 11, 2013, and that the Court grant the Debtor all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kayla D. Britton

*Counsel for the Debtor and Debtor-in-Possession*

Jay Jaffe (#5037-98)  
Wendy W. Ponader (#14633-49)  
600 E. 96th Street, Suite 600  
Indianapolis, IN 46240  
Telephone: (317) 569-9600  
Facsimile: (317) 569-4800  
jay.jaffe@FaegreBD.com  
wendy.ponader@FaegreBD.com

Kayla D. Britton (#29177-06)  
300 N. Meridian Street, Suite 2700  
Indianapolis, IN 46204  
Telephone: (317) 237-0300  
Facsimile: (317) 237-1000  
kayla.britton@FaegreBD.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 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.

Kay Dee Baird on behalf of Creditor LA/Shadeland Station, Inc.  
[kbaird@kdlegal.com](mailto:kbaird@kdlegal.com), [pdidandeh@kdlegal.com](mailto:pdidandeh@kdlegal.com)

Kayla D. Britton on behalf of Debtor TWG Capital, Inc.  
[kayla.britton@faegrebd.com](mailto:kayla.britton@faegrebd.com), [becky.turner@faegrebd.com](mailto:becky.turner@faegrebd.com); [sarah.herendeen@faegrebd.com](mailto:sarah.herendeen@faegrebd.com)

Jason J. DeJonker on behalf of Creditor Continental Casualty Company  
[jdejonker@seyfarth.com](mailto:jdejonker@seyfarth.com)

Robert S. Gebhard on behalf of Creditor Imagine International Reinsurance Limited  
[Robert.Gebhard@Sedgwicklaw.com](mailto:Robert.Gebhard@Sedgwicklaw.com), [quintella.griffin@sedgwicklaw.com](mailto:quintella.griffin@sedgwicklaw.com)

Christine K. Jacobson on behalf of Creditor International Real Estate Holding Company, LLC  
[cjacobson@katzkorin.com](mailto:cjacobson@katzkorin.com), [dyoung@katzkorin.com](mailto:dyoung@katzkorin.com); [sdowden@katzkorin.com](mailto:sdowden@katzkorin.com)

Jay Jaffe on behalf of Debtor TWG Capital, Inc.  
[jay.jaffe@faegrebd.com](mailto:jay.jaffe@faegrebd.com), [sarah.herendeen@faegrebd.com](mailto:sarah.herendeen@faegrebd.com)

James A. Knauer on behalf of Creditor The Huntington National Bank  
[jak@kgrlaw.com](mailto:jak@kgrlaw.com), [tjf@kgrlaw.com](mailto:tjf@kgrlaw.com)

Beth Kramer on behalf of U.S. Trustee U.S. Trustee  
[beth.kramer@usdoj.gov](mailto:beth.kramer@usdoj.gov)

Michael K. McCrory on behalf of Creditor Fifth Third Bank, N.A.  
[mmccrory@btlaw.com](mailto:mmccrory@btlaw.com), [bankruptcyindy@btlaw.com](mailto:bankruptcyindy@btlaw.com)

Henry Mestetsky on behalf of Creditor International Real Estate Holding Company, LLC  
[hmestetsky@katzkorin.com](mailto:hmestetsky@katzkorin.com), [dyoung@katzkorin.com](mailto:dyoung@katzkorin.com); [sdowden@katzkorin.com](mailto:sdowden@katzkorin.com)

C Daniel Motsinger on behalf of Creditor LA/Shadeland Station, Inc.  
[cmotsinger@kdlegal.com](mailto:cmotsinger@kdlegal.com),  
[cmotsinger@kdlegal.com](mailto:cmotsinger@kdlegal.com); [crbpgpleadings@kdlegal.com](mailto:crbpgpleadings@kdlegal.com); [rhobdy@kdlegal.com](mailto:rhobdy@kdlegal.com)

Peter S. Partee on behalf of Creditor Carmel Funding, LLC  
[ppartee@hunton.com](mailto:ppartee@hunton.com)

Wendy W Ponader on behalf of Debtor TWG Capital, Inc.  
[wendy.ponader@faegrebd.com](mailto:wendy.ponader@faegrebd.com), [sarah.herendeen@faegrebd.com](mailto:sarah.herendeen@faegrebd.com)



Carey D. Schreiber on behalf of Creditor LTC Global, Inc.  
[cschreiber@winston.com](mailto:cschreiber@winston.com), [chardman@winston.com](mailto:chardman@winston.com)

Jonathan David Sundheimer on behalf of Creditor Fifth Third Bank, N.A.  
[jsundheimer@btlaw.com](mailto:jsundheimer@btlaw.com), [mstrange@btlaw.com](mailto:mstrange@btlaw.com)

U.S. Trustee  
[ustpreion10.in.ecf@usdoj.gov](mailto:ustpreion10.in.ecf@usdoj.gov)

I further certify that on December 11, 2012, a copy of the foregoing pleading will be mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

Stuart M. Rozen  
Craig E. Reimer  
Joshua M. Grenard  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606

American Legion - Texas  
Attn: Michael Palmquist  
PO Box 140527  
Austin, TX 78714

Capitol Agency  
PO Box 678  
Attn: Lee Hays  
Shawnee Mission, KS 66201

Doug Bradle  
25 Oak Ridge Drive  
Pelham, AL 35124

James W. Wallace  
717 Tamenend Trace  
Fishers, IN 46037

San Diego County Credit Union  
Attn: Insurance Department  
6545 Sequence Dr  
San Diego, CA 92121-4363

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

Anheuser-Busch Employees CU  
1001 Lynch St  
St. Louis, MO 63118

CBCA Administrators  
PO Box 153061  
Irving, TX 75015-3061

David A. Ciancuillo  
Mayer Brown LLP  
71 S. Wacker Drive  
Chicago, IL 60606

Mary Pillow Kirk  
2028 Earlington Drive  
Nashville, TN 37215

Seabury and Smith  
Attn: Accounting Department  
1777 West Lakes Parkway  
West Des Moines, IA 50398

AGIA  
Attn: Premium Accounting  
1155 Eugenia Place  
Carpinteria, CA 93013

Bud Marcus & Associates, Inc  
105 Beech Bark Ln  
Towson, MD 21286-1616

CBRE Heritage Park II  
Heritage Park II, Bldg ID EGP001  
PO Box 6112  
Hicksville, NY 11802-6112

Frank McKenzie  
30201 Anna Lake Lane  
Underwood, MN 56586

National Registered Agents, Inc.  
PO Box 927  
Princeton Junction, NJ 08550-0927

Steve Elliott  
Stephen Elliott, Pres  
10764 Spur Point Court  
San Diego, CA 92130

U Of Washington Alumni Assoc  
4333 Brooklyn Avenue NE  
Seattle, WA 98185-9508

US Small Business Administration  
409 3<sup>rd</sup> Street SW  
Washington, DC 20416

Wachovia Insurance Agency  
600 Highway 169 South #1200  
Attn: Accounting  
St Louis Park, MN 55426

Wolf & Associates  
1119 E Winchester Ave  
Spokane, WA 99218

Thomas A. Smith  
Senak Keegan Gleason Smith &  
Michaud, Ltd.  
621 South Plymouth Court, Ste 100  
Chicago, IL 60605

/s/ Kayla D. Britton