

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 ENTRY OF AN ORDER ESTABLISHING PROCEDURES FOR
EXPUNGING SATISFIED CLAIMS**

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 (the "Motion") for entry of an order authorizing and approving procedures to expunge satisfied claims pursuant to the Satisfaction Notice Procedures (as defined below). In support of the Motion, the Debtor 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 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. No trustee, examiner, or committee has been appointed in the Chapter 11 Case.
4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

Background

5. 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 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.

6. 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.

7. The Debtor, Long Term Preferred Care, Inc. ("LTPC"), Imagine International Reinsurance Limited ("Imagine"), and the LION 2004 Receivables Trust ("Lion Trust") were involved in a four-party transaction in December 2004. The transaction was constructed as follows:

- a. 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;

- b. Pursuant to the Assignment and Assumption Agreement dated as of December 30, 2004 by and between the Debtor and LTPC (the "Assignment and Assumption Agreement"), among other things, the Debtor assumed the obligations of LTPC to pay certain insurance agents who sold policies on behalf of LTPC (the "Downlines") arising under LTPC's agreements with the Downlines;
- c. Per the Distribution Agreement dated as of December 30, 2004 by and between the Debtor and Imagine (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
- d. Pursuant to the Monitoring Agreement dated as of December 30, 2004 by and between the Debtor, Imagine, and Lion Trust (the "Monitoring Agreement"), among other things, the Debtor was to perform servicing on behalf of Lion Trust and Imagine and receive a monthly servicing fee.

8. The Assignment and Assumption Agreement, the Distribution Agreement, and the Monitoring Agreement may be collectively referred to herein as the "Lion Trust Agreements."¹

9. Beginning in 2008, the amount of Senior Payment received from Lion Trust became insufficient to pay the commissions due to the Downlines. For an extended period of time, TWG funded this shortfall from its own operating cash.

10. 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 100% of the Senior Payment to Downlines via a pro rata portion of the Senior Payment received from Lion Trust.

¹ The Lion Trust Agreements have been rejected by the Debtor pursuant to the Court's *Order Granting Motion to Authorize the Rejection of Certain Agreements* (Doc. 162).

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

12. 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, 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.

13. In connection with TWG's inability to perform its obligations under the Assignment and Assumption Agreement, among the creditors scheduled by the Debtor in its Schedule F – Creditors Holding Unsecured Nonpriority Claims ("Schedule F") filed October 12, 2012 [Docket No. 101], are approximately 445 insurance agents or brokers, known as the "Downlines," which are scheduled by the Debtor 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 the Debtor, 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.

14. Pursuant to the Settlement Agreement dated November 20, 2012 by and between the Debtor, Lion Trust and Imagine (the "Settlement Agreement"), Lion Trust warranted

to the Debtor that Lion Trust has caused to be paid the Downline Claims and that Lion Trust will continue to cause to be paid the Downlines' commission payments, as and when due.²

15. Accordingly, pursuant to the Settlement Agreement, the pre-petition Downline Claims and the claims of the Downlines for post-petition commission payments have been and will be satisfied by Lion Trust, and the obligations of the Debtor to the Downlines have been extinguished.

16. At least one Downline has filed a proof of claim in the Chapter 11 Case purporting to preserve rights to future commission payments. The Debtor intends to object to any claims filed in the Chapter 11 Case that have been or will be satisfied by Lion Trust. The Debtor specifically reserves the right to object to any claims filed in the Chapter 11 Case on any basis and at any time, including without limitation, the Satisfied Claims.

Relief Requested

17. By this Motion, the Debtor requests entry of an order, substantially in the form of Exhibit A attached hereto, approving certain notice procedures, including the form and manner of notice, for providing notice to the Downlines that their scheduled claims will be expunged as satisfied under the Settlement Agreement pursuant to procedures described herein (the "Satisfaction Notice Procedures").

Satisfied Claims

18. The Debtor has identified certain scheduled claims that were satisfied pursuant to the Settlement Agreement (collectively, the "Satisfied Claims").

19. The Debtor hereby seeks approval of the Satisfaction Notice Procedures described below to provide all holders of Satisfied Claims (the "Satisfied Claim Holders") with

² The Court entered its order approving the terms of the Settlement Agreement on November 29, 2012 [Docket No. 162].

the opportunity to object, if necessary, to the Debtor's determination that (i) such Satisfied Claims were in fact satisfied, (ii) such Satisfied Claims should be expunged from the Debtor's schedules, and (iii) the Satisfied Claim Holders should be removed from the Debtor's creditor list.

Proposed Satisfaction Notice Procedures

20. The Debtor proposes the following procedures for serving notice on Satisfied Claim Holders (the "Satisfaction Notice Procedures"):

- a. The Debtor shall serve a notice (the "Satisfaction Notice") substantially in the same form as attached Exhibit B hereto via U.S. Mail, postage prepaid, upon all known Satisfied Claim Holders within three business days after entry of the order approving this Motion. The Satisfaction Notice will be sent to the address listed on the Debtor's Schedule F or any updated address provided to the Debtor for such Satisfied Claim Holder prior to entry of the order approving this Motion.
- b. The Satisfaction Notice shall set forth the names of the Satisfied Claim Holders who will be purged from the Debtor's creditor list and whose claims will be deemed satisfied and expunged.
- c. Any Satisfied Claim Holder who disputes the Debtor's determination that its claim has been satisfied as set forth in the Satisfaction Notice must file a written objection (an "Objection") with the Office of the Clerk of this Court and must serve such Objection upon the counsel for the moving party, so that such Objection is **received** by no later than 21 days after service of the Satisfaction Notice (the "Objection Deadline").
- d. Every Objection to a Satisfaction Notice must contain, at a minimum, the following information:
 - i. The name of the Satisfied Claim Holder and a description of the basis and the amount of the Satisfied Claim;
 - ii. The specific factual basis and any supporting documentation upon which the Satisfied Claim Holder relies in opposing the Satisfaction Notice and the Debtor's determination therein;
 - iii. The name, address, telephone number, and email address of the person(s) (which may be the Satisfied Claim Holder or the Satisfied Claim Holder's legal representative) with whom

counsel for the Debtor should communicate with respect to the Satisfied Claim or the Satisfaction Notice and who possesses authority to reconcile, settle, or otherwise resolve any issues related to the Satisfied Claim on behalf of the Satisfied Claim Holder.

- e. If an Objection is received on or before the Objection Deadline, the Court shall conduct a hearing on such Objection on **March 7, 2013 at 1:30 p.m.**
- f. If a Satisfied Claim Holder fails to file and serve an Objection by the Objection Deadline (i) the Satisfied Claim Holder is deemed to have consented to the Satisfaction Notice and the Debtor's determination with respect to its Satisfied Claim; (ii) the Satisfied Claim Holder (or any subsequent holder of the Satisfied Claim) will be forever barred, estopped, and enjoined from asserting any claim against the Debtor or its estate related to the Satisfied Claim or any claim related to other past or future commissions due to the Satisfied Claim Holder by the Debtor; (iii) the Satisfied Claim will be expunged from the Debtor's Schedule F; (iii) the Satisfied Claim Holder will be removed from the Debtor's creditor list and will not receive any further notices in the Chapter 11 Case; (iv) the Satisfied Claim Holder will not be entitled to any distribution from the Debtor's estate arising from the Satisfied Claim or any other claim related to past or future commissions due to the Satisfied Claim Holder by the Debtor; and (v) the Debtor will be discharged from any and all indebtedness or liability with respect to the Satisfied Claim.
- g. The Debtor reserves the right to file objections to any claims in the Chapter 11 Case on any basis and at any time, including without limitation, the Satisfied Claims.

Basis for the Relief Requested

21. Implementation of the proposed Satisfaction Notice Procedures is appropriate in the Chapter 11 Case and is well within the Court's equitable powers under Section 105(a) of the Bankruptcy Code. The proposed Satisfaction Notice Procedures are necessary to the efficient administration of the Debtor's estate. Specifically, the Satisfaction Notice Procedures will increase efficiency and reduce costs with respect to the ongoing administration of this case.

22. The Debtor submits that Satisfied Claim Holders are not "creditors" within the meaning of 11 U.S.C. § 101(10) because they have neither a "claim against the debtor that arose at the time of or before the order for relief" nor a "claim against the estate." As set forth above, the Downline Claims (constituting the significant majority of the claims scheduled as disputed claims in the Debtor's Schedule F) were fully satisfied by Lion Trust before the Petition Date. Further, all commissions owed to the Downlines after the Petition Date have been or will be paid by Lion Trust pursuant to the Settlement Agreement. All pre-petition and post-petition claims of the Downlines against the Debtor have thus been satisfied. Accordingly, the Debtor asserts that the Downlines are not creditors of the Debtor's estate and are not parties in interest entitled to receive notice or to participate in the Chapter 11 Case.

23. Expunging the Satisfied Claims benefits the Debtor's estate and creditors by (a) reducing costs related to noticing in those instances when service or notice is required on "all creditors" pursuant to the Federal Rules of Bankruptcy Procedure, (b) eliminating non-creditors from considerations relating to the future administration of this case, including the development of a Chapter 11 plan, and (c) ensuring accuracy and integrity of the Debtor's schedules and creditor list during the course of the Chapter 11 Case.

Notice

24. The Satisfaction Notice will be served on (i) the United States Trustee, (ii) all counsel of record, (iii) all Satisfied Claim Holders, (iv) Imagine, Lion Trust and LTPC, (v) all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, and (vi) all parties to whom the Court directs that notice be given.

No Prior Request

25. No previous request for the relief sought herein has been made by the Debtor to this Court or any other court.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kayla D. Britton

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2013, 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 January 15, 2013, a copy of the foregoing pleading will be mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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