

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 AN ORDER APPROVING CERTAIN
AGREEMENT FOR ALLOCATION OF COSTS AND REIMBURSEMENT OF
EXPENSES AND INTERIM SERVICES OF MARK P. NONDORF AS PRESIDENT**

TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor") in the above-captioned case, files this *Motion For An Order Approving Certain Agreement For Allocation Of Costs and Reimbursement Of Expenses And Interim Services Of Mark P. Nondorf As President* (the "Motion") and requests that the Court enter an order approving *nunc pro tunc* to January 1, 2013, that certain Agreement For Allocation Of Costs and Reimbursement Of Expenses between the Debtor and Carmel Funding, LLC and the interim services of Mark P. Nondorf as President. In support of this Motion, the Debtor states as follows:

Background and Jurisdiction

1. On September 14, 2012, 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 bases for the relief requested herein are sections 105, 363, 1108 and 1108 of the Bankruptcy Code.

Facts and Circumstances

4. As more fully set forth in the Declaration of Mark P. Nondorf ("Nondorf") In Support Of Chapter 11 Petitions and First Day Motions [Doc. 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 ("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 the Petition Date, the Debtor filed a motion [Doc. No. 14] (the "Sale Motion") seeking entry of an order authorizing the sale of substantially all of the assets of the Debtor's estate to Carmel Funding, LLC ("CF") pursuant to the terms of the Asset Purchase Agreement dated as of September 14, 2012 (as amended, restated, or amended and restated, the "Purchase Agreement") or to the bidder submitting the highest or otherwise best bid. On November 9, 2012, the Court entered its order granting the Sale Motion, approving the Purchase

Agreement, and authorizing the sale to CF [Doc. No. 142] (the "Carmel Funding Sale"). The Carmel Funding Sale closed December 31, 2012.

6. Nondorf and Melanie S. Otto ("Otto") respectively executed an Employment Agreement dated as of December 31, 2012 by and between each of the them and CF (collectively, the "Carmel Funding Employment Agreements"). The terms of the Carmel Funding Employment Agreements commenced on December 31, 2012 (the "Effective Date"). In addition, on understanding and belief, as of December 31, 2012, CF has hired all or the majority of other employees of the Debtor terminated as of December 31, 2012 on account of and in connection with the closing of the Carmel Funding Sale. (the "2013 CF Employees").

7. On November 5, 2012, the Debtor filed a motion [Doc. No. 123] (the "Settlement Motion") seeking entry of an order authorizing the settlement of claims against the estate (the "LION Settlement"))as scheduled, asserted or potentially to be asserted by Imagine International Reinsurance Limited, an Irish registered company ("Imagine"), and the LION 2004 Receivables Trust, a Delaware statutory trust (the "LION Trust") On November 27, 2012, the Court approved the Settlement Motion.

8. In accordance with the terms of the LION Settlement, among other things, the Debtor is to perform certain services on behalf or for the benefit of Imagine and/or the LION Trust up to and through approximately February 2013. The terms of the LION Settlement also contemplated certain agreements of CF related to assurances of the Debtor's ability to fulfill its obligations under the LION Settlement, notwithstanding the closing of the Carmel Funding Sale.

9. In order for the Debtor to perform its on-going and remaining obligations pending the conclusion of the Chapter 11 Case, including, without limitation, the fulfillment of the Debtor's obligations under the LION Settlement, Debtor and CF have entered into that certain

Agreement For Allocation Of Costs and Reimbursement Of Expenses (the "Cost Sharing Agreement"), subject to the approval of the Court. A copy of the Cost Sharing Agreement is attached and made part hereof as Exhibit A. In addition, to assure the most cost effective and knowledgeable executive services in the performance of the Debtor, subject to the approval of the Court, by that certain Officer Services Appointment and Acceptance Acknowledgement (the "Acknowledgement") the Debtor has appointed Nondorf to serve as President pending the conclusion of the Chapter 11 Case, and Nondorf has accepted such appointments. A copy of the Acknowledgement is attached and made part hereof as Exhibit B. In connection with the approval requested hereunder, the Debtor advises the court that it understand that the Nondorf and Otto Carmel Funding Employment Agreements expressly contemplate and permit the type of arrangements reflected in the Cost Sharing Agreement and the Acknowledgement.

Requested Relief

9. Pursuant to sections 105, 1108 and 1108 the Bankruptcy Code, the Debtor seeks approval nunc pro tunc to January 1, 2013, of the Cost Sharing Agreement and the Acknowledgement.

Basis for Relief

10. Section 1107 of the Bankruptcy Code provides that the debtor in possession entity shall have the same rights and powers of a chapter 11 trustee as a general matter, "the debtor in possession is the same entity that existed before the filing of a chapter 11 petition but is empowered to deal with its contracts and property as provided by the Bankruptcy Code." National Labor Relations Board v. Bildisco & Bildisco, 465 U.S. 513; 104 S. Ct. 1188 (1984).

11. Section 1108 provides that the debtor in possession entity shall be permitted to continue to operate. Thus, in a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation. [*House Report No. 95-595, 95th Cong., 1st Sess. 404 (1077); Senate Report 95-989, 95th Cong., 2^d Sess. 116 (1978)*]. Post petition operations outside the "ordinary course" generally are expected to require court approval.

12. The facts and circumstances of the Chapter 11 Case support approval of the Cost Sharing Agreement and Acknowledgment, both of which the Debtor recognizes as requiring the approval of the Bankruptcy Court. The majority of the Debtor's assets has been transferred and sold, however the Debtor has not altogether stopped operating and retains explicit obligations as approved by the Court. Yet, the Debtor retains no employees and its former employees, including Nondorf and Otto, are now CF employees. CF recognizes that while it now owns and operates what was the majority of the Debtor's assets, CF cannot conduct its business without access to and use of certain of the assets retained by the Debtor. The Cost Sharing Agreement allows the Debtor and CF to perform their respective obligations and businesses in an economical and efficient manner, including the sharing of (i) employees whose skills and knowledge will assist both organizations and (ii) office space, internet access, equipment and related technology. As set forth in greater detail in the Cost Sharing Agreement, essentially, the Debtor is leasing the services of the CF Employees, including Nondorf, in furtherance of the Debtor's interests and operation, and will compensate CF for the percentage of the CF employees' time, including Nondorf's, allocated to work for the Debtor. Likewise, essentially CF is leasing access to and use of the Debtor's assets, and will compensate the Debtor for the percentage of the time such assets are devoted to the ongoing business of CF.

13. The Debtor requires the services of Nondorf in the position of President to continue and wind-down its operations. Compensation on account of Nondorf's service as President will be paid by the Debtor to CF under the Cost Sharing Agreement. Nondorf is willing to serve as President as specified in the Acknowledgement.

WHEREFORE, the Debtor requests that the Motion be granted, that the Court approve the Cost Sharing Agreement and the Acknowledgement, and that the Court grant the Debtor all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Wendy W. Ponader

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 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.

Kay Dee Baird on behalf of Creditor LA/Shadeland Station, Inc.
kbaird@kdlegal.com, pdidandeh@kdlegal.com

Kayla D. Britton on behalf of Debtor TWG Capital, Inc.
kayla.britton@faegrebd.com, sharon.korn@faegrebd.com; sarah.herendeen@faegrebd.com

Jason J. DeJonker on behalf of Creditor Continental Casualty Company
jdejonker@seyfarth.com

Robert S. Gebhard on behalf of Creditor Imagine International Reinsurance Limited
Robert.Gebhard@Sedgwicklaw.com, quintella.griffin@sedgwicklaw.com

Christine K. Jacobson on behalf of Creditor International Real Estate Holding Company, LLC
cjacobson@katzkorin.com, dyoung@katzkorin.com; sdowden@katzkorin.com

Jay Jaffe on behalf of Debtor TWG Capital, Inc.
jay.jaffe@faegrebd.com, sarah.herendeen@faegrebd.com

James A. Knauer on behalf of Creditor The Huntington National Bank
jak@kgrlaw.com, tjf@kgrlaw.com

Beth Kramer on behalf of U.S. Trustee U.S. Trustee
beth.kramer@usdoj.gov

Michael K. McCrory on behalf of Creditor Fifth Third Bank, N.A.
mmccrory@btlaw.com, bankruptcyindy@btlaw.com

Henry Mestetsky on behalf of Creditor International Real Estate Holding Company, LLC
hmetetsky@katzkorin.com, dyoung@katzkorin.com; sdowden@katzkorin.com

C Daniel Motsinger on behalf of Creditor LA/Shadeland Station, Inc.
cmotsinger@kdlegal.com,
cmotsinger@kdlegal.com; crbpgpleadings@kdlegal.com; rhobdy@kdlegal.com

Peter S. Partee on behalf of Creditor Carmel Funding, LLC
ppartee@hunton.com

Wendy W Ponader on behalf of Debtor TWG Capital, Inc.
wendy.ponader@faegrebd.com, sarah.herendeen@faegrebd.com

Carey D. Schreiber on behalf of Creditor LTC Global, Inc.
cschreiber@winston.com, chardman@winston.com

Jonathan David Sundheimer on behalf of Creditor Fifth Third Bank, N.A.
jsundheimer@btlaw.com, mstrange@btlaw.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

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:

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 3rd 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

Melanie Otto
1523 Thames Drive
Greenwood, IN 46143-7868

Mark Nondorf
6346 Calais Drive
Indianapolis, IN 46220-5088

/s/ Wendy W. Ponader