

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

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

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

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

Jurisdiction and Venue

1. 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.

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

Procedural Background

3. 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. The Debtor 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 the Chapter 11 Case.

4. On the Petition Date, the Debtor filed a motion [Doc. No. 13] (the "DIP Financing Motion") seeking authorization to obtain post-petition financing from Carmel Funding, LLC ("Carmel Funding"). The Court entered its interim order approving the DIP Financing Motion on September 20, 2012 [Doc. No. 36] and its final order on October 4, 2012 [Doc. No. 79] (collectively, the "DIP Financing Orders").

5. On the Petition Date, the Debtor also 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 (the "Sale") to Carmel Funding or to the bidder submitting the highest or otherwise best bid. On November 9, 2012, the Court entered its order granting the Sale Motion and authorizing the Sale to Carmel Funding [Doc. No. 142]. The Sale to Carmel Funding closed on December 31, 2012.

The IR7 Facility

6. As more fully set forth in the Declaration of Mark P. 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.

7. Assets acquired from the Debtor's purchase of insurance commissions from agents are held in special purpose vehicles ("SPV"). The majority of the existing ICR asset purchases reside in the Company's wholly owned SPV, Insurance Receivables 7, LLC ("IR7").

8. The funding source for the ICR asset purchases housed in IR7 was a \$90 million (later increased to \$103.5 million) syndicated debt facility ("IR7 Facility"). The \$90 million was comprised of \$75 million of senior debt and \$15 million of subordinated debt. Fifth Third Bank ("Fifth Third") and PNC Bank, National Association ("PNC" and together with Fifth Third, "Senior Lenders") are the senior lenders under the IR7 Facility. Fifth Third is also the lender agent under the IR7 Facility ("Lender Agent").

9. IR7, the Debtor, Senior Lenders, Lender Agent, Cardinal TWG Partners, LLC, as subordinate lender, and U.S. Bank National Association, as collateral agent, are parties to that certain Insurance Commission Receivables Facility Agreement dated as of July 12, 2007 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "ICRF Agreement").

10. The ICR assets housed in IR7 involved significant future servicing obligations, which were initially provided by the Debtor as servicer. As part of the IR7 Facility, the Debtor entered into an origination and servicing contract with IR7 (the "IR7 Servicing Agreement"), whereby the Debtor would receive an origination fee for purchases placed in the IR7 Facility and a servicing fee for monitoring and processing commission payments that were received under the purchases.

11. The Debtor and Lender Agent also entered into a Back-Up Servicing Agreement dated as of May 13, 2008 (the "Back-Up Servicing Agreement"). In May 2010, Inservico, Inc. ("Inservico") was appointed as the successor back-up servicer under the Back-Up Servicing Agreement.

12. On August 13, 2010, the Debtor was terminated as the servicer under the ICRF Agreement. Pursuant to the Back-Up Servicing Agreement, Senior Lenders purportedly appointed Inservico as successor to the Debtor as the servicer with respect to the IR7 Servicing Agreement. The Debtor continued to service IR7 under an informal subservicing agreement. By letter dated on or about August 15, 2012, Inservico provided notice that it would resign as servicer effective as of February 12, 2013.

13. On September 13, 2012, Inservico and the Debtor formalized the servicing relationship with IR7 by executing and delivering a Subservicing Agreement (the "Subservicing Agreement"), by which Inservico subcontracted the servicing of IR7 to the Debtor. The Subservicing Agreement terminates no later than February 12, 2013. The Subservicing Agreement was assigned to Carmel Funding as part of the Sale.

14. The ICRF Agreement was amended pursuant to a Standstill Agreement and Amendment dated June 10, 2009, which required the Debtor and/or IR7 to deliver to Senior Lenders a letter of credit in favor of Senior Lenders under the ICRF Agreement for the benefit of IR7 (the "Letter of Credit"). Cardinal Growth, LP agreed to provide the Letter of Credit, provided that the Debtor and IR7 executed a Credit Enhancement and Security Agreement (the "Enhancement Agreement").

15. The U.S. Small Business Administration, as Receiver for Cardinal Growth, L.P. ("Receiver") has asserted a first, valid and perfected security interest in all of the

assets of the Debtor (the "Receiver's Lien") to secure a purported obligation of approximately \$52, 475.84 under the Enhancement Agreement. The Receiver has filed a secured claim in the Chapter 11 Case in the amount of \$52, 475.84 as Proof of Claim No. 5 (the "Receiver's Claim"). The Debtor disputes the amount of the Receiver's Claim and the validity of the Receiver's Lien.

16. Pursuant to the DIP Financing Motion and the DIP Financing Orders, the Debtor provided adequate protection of the Receiver's interests in the Debtor's cash and cash equivalents (the "Cash Collateral") by (a) granting a replacement lien in and to the Debtor's Cash Collateral with the same validity and priority as the Receiver's Lien and (b) segregating and holding in escrow the proceeds from the Sale in the amount of the Receiver's Claim (the "Escrowed Proceeds"), pending a determination as to the validity and priority of the Receiver's Lien and the allowed amount of the Receiver's Claim.

17. Under the Enhancement Agreement, any claim that the Receiver asserts is, if valid, a joint obligation of the Debtor and IR7.

18. The Debtor believes and understands that Milliman, Inc. has asserted or may assert claims against the Debtor's estate or IR7 in the amount of \$9,115.00 related to services provided to or for the benefit of IR7 (the "Milliman Claim").

The Settlement

19. Pursuant to Bankruptcy Rule 9019, the Debtor requests that the Court enter an order substantially in the form of Exhibit A hereto (the "Approval Order") (i) approving a compromise and settlement by and between the Debtor, Inservico, Carmel Funding, Senior Lenders, Lender Agent, and 221 Partners, LLC comprised of and subject to the following terms and conditions (the "Settlement") and (ii) authorizing the Debtor to satisfy the Receiver's Claim

and discharge the Receiver's Lien using a portion of the Escrowed Proceeds, freeing the balance of the Escrowed Proceeds for distribution to creditors of the Debtor's estate.

- a. The Settlement resolves and satisfies disputed claims related to the ICRF Agreement and various servicing agreements.
- b. The Settlement resolves issues related to the transfer of servicing functions of the IR7 assets from Inservico and Carmel Funding, as assignee of the Subservicing Agreement, to Oak Street Servicing, LLC.
- c. The Settlement must be executed on or before February 12, 2013, which is the date the servicing obligations of Inservico and Carmel Funding will terminate. Accordingly, the Debtor has requested that the Court set this Motion for expedited hearing on shortened notice in order to ensure the timely transition of the servicing obligations.
- d. The Debtor, on the one hand, and Senior Lenders and Lender Agent, on the other hand, will enter into a mutual release of all claims, including avoidance action claims under Chapter 5 of the Bankruptcy Code, related to IR7, the ICRF Agreement, and any and all agreements executed in connection therewith.
- e. The Milliman Claim and fifty percent (50%) of the Receiver's Claim will be paid out of IR7 assets (the "IR7 Payment"). The Debtor requests authority to release fifty percent (50%) of the Escrowed Proceeds for payment to the Receiver, along with the IR7 Payment, in full satisfaction of the Receiver's Claim and discharge of the Receiver's Lien. The balance of the Escrowed Proceeds will then be general assets available for distribution to creditors. Upon such payment, the Debtor will be relieved of all liability relating to the Milliman Claim and the Receiver's Claim.

Basis for Relief

20. 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).

21. The Debtor believes that the Settlement is in the best interests of its bankruptcy estate and constitutes the good faith exercise of the Debtor's sound business judgment. The Settlement is in the best interests of the Debtor's estate and creditors because it will result in the (a) resolution of the Receiver's Claim on favorable terms (the Debtor funding out of estate assets only fifty percent (50%) of the amount asserted by the Receiver), (b) release of any liability by the Debtor to Milliman, Inc., (c) release of fifty percent (50%) of the Escrowed Proceeds (\$26,237.92) for distribution to creditors of the Debtor's estate, and (d) elimination of any claims that have been asserted or may be asserted by Senior Lenders or Lender Agent against the Debtor's estate.

22. 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, the Debtor respectfully requests that the Court (a) enter an Approval Order authorizing the Debtor to (i) enter into the Settlement, and (ii) satisfy the Receiver's Claim and discharge the Receiver's Lien using a portion of the Escrowed Proceeds, freeing the balance of the Escrowed Proceeds for distribution to creditors of the Debtor's estate; and (b) grant the Debtor all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kayla D. Britton

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 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 February 5, 2013, 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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