

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

SECOND 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 *Second 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.

Facts and Circumstances

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 sale to Purchaser closed on December 31, 2012.

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 July 11, 2013, and an additional ninety (90) days to solicit acceptances of such plan, up to and including September 9, 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.

Basis for Relief

8. 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.

9. On December 11, 2012, the Debtor filed its *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 "First Extension Motion") [Docket No. 171]. On January 14, 2013, the Court entered its order [Docket No. 181] granting the relief requested in the First Extension Motion and extending the Debtor's exclusive filing period and exclusive

solicitation period to April 12, 2013 and June 11, 2013, respectively (the "Debtor's Exclusive Periods").

10. 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 Adelphia 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. Since the Petition Date, the Debtor has continued to pay its debts as they come due and has made substantial progress in moving toward an equitable resolution of the Chapter 11 Case.

17. As noted above, the Debtor has closed the sale of substantially all of its assets to Purchaser. Since the closing of the sale, the Debtor has worked diligently to negotiate post-sale transition services agreements providing for the transition of the Debtor's business operations to Purchaser, and for the Purchaser to complete transition service obligations of the Debtor (which relieves the Debtor of potential liabilities).

18. The Debtor has also reached a Settlement with Lion Trust and Imagine, thereby eliminating (i) the Downline Claims¹, 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.

19. Further, the Debtor has negotiated a resolution with Fifth Third Bank regarding the servicing agreements related to Insurance Receivables 7, LLC "IR7"), the Debtor's wholly owned special purpose vehicle, and is in process of transitioning the IR7 servicing obligations to a successor entity.

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

20. As demonstrated by the foregoing, the Debtor has favorably resolved the majority of the critical components of the Chapter 11 Case. However, negotiation and implementation of the foregoing sale, settlements, transitional issues, and the wind-down of the Debtor's business have required the primary attention of the Debtor's principals, and some of these matters have not yet been completed or fully transitioned. The Debtor requests an extension of the Debtor's Exclusive Periods to allow the Debtor time to finalize and implement a viable exit strategy. The Debtor believes it will be in a position to implement an exit strategy on or before July 11, 2013. Consequently, 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.

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 July 11, 2013, and an additional ninety (90) days to solicit acceptances of such plan, up to and including September 9, 2013, and that the Court grant the Debtor all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 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 March 8, 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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