

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 APPROVAL OF COMPROMISE
WITH IMAGINE INTERNATIONAL REINSURANCE LIMITED AND
THE LION 2004 RECEIVABLES TRUST 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 Motion for Approval of Compromise With Imagine International Reinsurance Limited and The Lion 2004 Receivables Trust 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").

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. The Debtor, Imagine International Reinsurance Limited (“Imagine”), and The Lion 2004 Receivables Trust (“Lion Trust”) are parties to a Settlement Agreement dated November 20, 2102 (the “Settlement Agreement”), whereby the parties agreed, in relevant part, that the Debtor would convey, transfer, assign and deliver the Materials (as defined in paragraph 2 of the Settlement Agreement), including the Policytracker database, to Lion Trust for the sum of \$60,000 (the “Settlement Payment”).

5. The Settlement Payment was payable in two installments: 50% was payable upon this Court’s entry of an order approving the Settlement Agreement, and 50% was payable after Lion Trust “has received delivery of all the Materials in a form satisfactory to Lion [Trust] with reasonable opportunity for Lion [Trust] to confirm that the Materials are complete and in satisfactory form.” *Settlement Agreement*, ¶ 8. The Court entered its order approving the Settlement Agreement and the terms and conditions of the settlement contained therein on November 27, 2012 [Docket No. 159].

6. As of the date of this Motion, the second installment (\$30,000) of the Settlement Payment remains due to the Debtor (the “Remaining Payment”). Lion Trust and Imagine have refused to pay the Remaining Payment due to a dispute between the parties as to whether the Policytracker database has been delivered in a satisfactory form.

7. On June 12, 2013, the Debtor filed its *Chapter 11 Plan of Liquidation of TWG Capital, Inc.* (the “Plan”) [Docket No. 270]. On July 12, 2013, the Debtor filed its *Disclosure Statement with Respect to the Chapter 11 Plan of Liquidation of TWG Capital, Inc.*

(As *Immaterially Modified*) (the “Disclosure Statement”) [Docket No. 287]. Schedule IV.B of the Disclosure Statement reflects the sources and uses of the Debtor’s remaining funds assuming confirmation of the Plan, which includes the Remaining Payment as a non-cash asset of the Debtor’s estate.

Relief Requested

8. 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, Lion Trust and Imagine (the “Settlement”) pursuant to the terms and conditions of the Amendment to Settlement Agreement, which is attached hereto as Exhibit B (the “Amendment”), (ii) approving the Amendment, and (iii) authorizing the Debtor’s execution of and performance under the Amendment and all other documents required pursuant to the Amendment.

The Settlement

9. Lion Trust and/or Imagine will pay \$25,000 in full and complete settlement of the Remaining Payment, which shall be payable in two installments: (i) \$15,000 will be paid to the Debtor immediately upon execution of the Amendment by all parties thereto (the “Execution Date”), and (ii) \$10,000 (the “Escrow Payment”) will be paid into an escrow account (the “Escrow Account”) on the Execution Date

10. The Escrow Payment will be released from the Escrow Account on or before September 30, 2013, provided that (i) the Court enters the Approval Order, and such Approval Order becomes a final, nonappealable order, and (ii) the “Access Agreement,” substantially in the form of Exhibit A to the Amendment, is executed by the required, non-Debtor parties.

Basis for Relief

11. 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).

12. 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 will result in the resolution of the Remaining Payment without costly or protracted litigation. Absent the Settlement proposed herein, the Debtor will be required to expend additional administrative costs in seeking collection of the Remaining Payment, only to gain an additional \$5,000 for the estate, assuming a full recovery. Further, litigation will unduly delay distributions as provided for in the Plan.

13. 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 the Approval Order authorizing the Debtor to (i) enter into the Settlement, (ii) execute and perform

under the Amendment and all other documents required thereunder; and (b) 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)
Kayla D. Britton (#29177-06)
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.britton@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 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, cindy.wondra@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
hmestetsky@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, Sr. 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

Michael Benton Willey on behalf of Creditor Tennessee Department of Revenue
michael.willey@ag.tn.gov

I further certify that on July 23, 2013, a copy of the foregoing pleading was 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
c/o CBRE
101 W Washington St, Ste 1000E
Indianapolis, IN 46204

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

/s/ Kayla D. Britton