

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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

**FIRST DAY MOTION FOR ORDER AUTHORIZING (A) MAINTENANCE OF EXISTING BANK ACCOUNTS, (B) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (C) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM**

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 (the "Cash Management Motion") for entry of an order authorizing the Debtor to maintain its existing bank accounts, continue to use its existing business forms and continue to use its existing cash management system. The proposed form of the order granting the Cash Management Motion is attached hereto as Exhibit A.

In support of this Cash Management Motion, the Debtor relies on the Declaration Of Mark P. Nondorf In Support Of Chapter 11 Petitions and First Day Applications and Motions [Doc. No. 4] (the "Nondorf Declaration"), and may present additional evidence at the hearing on the Cash Management Motion.

**JURISDICTION**

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 Debtor's 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 or examiner has been appointed in the Chapter 11 Case.

4. This Court has jurisdiction to consider this Cash Management 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.

5. The statutory bases for the relief sought herein are Sections 105(a), 345 and 363 of the Bankruptcy Code.

6. The Cash Management Motion is a "First Day Motion" as defined and allowed under Rule B-9013-3 of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the "Local Bankruptcy Rules").

7. Pursuant to Local Bankruptcy Rule B-9013-3, the Court shall schedule and conduct a hearing on a First Day Motion within two business days (if possible) of the filing of a First Day Motion.

#### **BACKGROUND AND EVENTS LEADING TO FILING**

8. As more fully set forth in the Nondorf Declaration, 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.

9. 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.

10. On or around July 12, 2007, the Debtor entered into an origination and servicing contract with its wholly owned subsidiary, Insurance Receivables 7, LLC ("IR7"), whereby the Debtor would receive (i) an origination fee for purchases placed in IR7's debt facility and (ii) a servicing fee for monitoring and processing commission payments that were received under the purchases (the "IR7 Servicing Agreement"). On or around May 13, 2008, the Debtor, Inservico, Inc. ("Inservico") and other parties, including lenders to IR7 (the "IR7 Lenders") entered into that certain Back-Up Servicing Agreement (the "Back-Up Servicing Agreement"). On August 13, 2010, the Debtor was terminated as the IR7 servicer and pursuant to the Back-Up Servicing Agreement, the IR7 Lenders purportedly appointed Inservico as successor to the Debtor as the servicer with respect to the IR7 Servicing Agreement. Inservico disputes any allegation that it has any obligations under the Back-Up Servicing Agreement or the IR7 Servicing Agreement. With reservation of Inservico's position, by that certain Subservicing Agreement between Inservico and the Debtor dated effective as of September 13, 2012, Inservico has subcontracted the servicing of IR7 to the Debtor. The origination and servicing fees from IR7 are currently the Debtor's primary source of revenue. Inservico is a 62.47% owner of the Debtor.

11. The prolonged impact of the financial crisis that hit in 2008 has impaired the performance of the Debtor's purchased asset portfolio, and the Debtor has sustained significant losses as a result. The financial crisis has also impacted the insurance industry as a whole, which caused the Debtor to experience lower than projected cash flows. The Debtor has also been required to sustain unexpected costs of litigation, including arbitration resulting from the Debtor's discovery of misrepresentations by the seller in the purchase of Medicare Supplemental policies (the "AIMC Arbitration"). During the AIMC Arbitration, the senior lenders on the IR7 debt facility declared an event of default that resulted in the immediate termination of new originations within the IR7 debt facility, thereby further impairing the Debtor's cash flow.

12. The Debtor has taken many measures to prevent the filing of the Chapter 11 Case. The Debtor has worked with investment bankers for over three years to develop and execute recapitalization strategies. However, traditional financing sources have been constrained, and the Debtor has been unable to raise sufficient capital to implement its business plan.

13. A more in depth discussion of the Debtor's business and the circumstances precipitating the filing of the Chapter 11 Case is set forth in the Nondorf Declaration, which is incorporated by reference herein.

**RELIEF REQUESTED**

**A. Summary of Relief**

14. By this Cash Management Motion, the Debtor seeks authority to (a) maintain its existing bank accounts, (b) continue to use its existing business forms, and (c) continue to use its existing cash management system.

**B. Maintenance of Debtor's Existing Bank Accounts and Business Forms is Warranted**

15. Prior to the Petition Date and in the ordinary course of its business, the Debtor maintained several operational bank accounts (collectively, the "Bank Accounts"). The Debtor's cash management system and the Bank Accounts are described in more detail below.

16. The office of the United States Trustee has established certain operating guidelines for debtors in possession. One such provision requires Chapter 11 debtors in possession to open new bank accounts and close all existing accounts. This requirement is designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help to protect against the inadvertent payment of prepetition claims by preventing the debtor in possession's banks from honoring checks drawn prior to the Petition Date.

17. Notwithstanding the foregoing, the Debtor has an immediate need to continue the Bank Accounts without interruption and believes that its transition to Chapter 11 will be much more orderly and efficient, with a minimum amount of disruption and harm to its business operations, if the Bank Accounts are continued postpetition with the same account numbers and without interruption for the reasons described below. Accordingly, the Debtor hereby requests authority to (i) maintain the Bank Accounts in the ordinary course of business and (ii) to pay any ordinary course postpetition bank fees that may be incurred in connection with the Bank Accounts. Although the Debtor has requested authority to keep the Bank

Accounts open, there may be circumstances where the Debtor finds it appropriate to close certain of the Bank Accounts in order to avoid paying prepetition indebtedness not authorized under first day orders entered in the Chapter 11 Case by the Court. The Debtor reserves the right to reopen any accounts and, to the extent that any accounts are reopened, such accounts shall not be designated as "Debtor in Possession" accounts for the reasons stated above.

18. By preserving business continuity and avoiding disruption and delay to payroll and daily business operations that would necessarily result from the closing of the Bank Accounts and the opening of new bank accounts, all parties in interest, including the Debtor's creditors, employees, vendors, and customers, will be best served by continuing to maintain the Bank Accounts.

19. The Debtor has concurrently filed a First Day Motion of Debtor For Entry of An Order (A) Authorizing, But Not Requiring, Payment of Certain Pre-Petition (i) Wages, Salaries, and Other Compensation, (ii) Employee Medical and Similar Benefits, (iii) Reimbursable Employee Expenses, and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions To Receive, Process, Honor and Pay All Checks Presented For Payment And to Honor All Electronic Payment Requests Made By the Debtor Relating to the Foregoing (the "Employee Wage Motion"). To minimize the personal hardship employees will suffer if the pre-petition employee related obligations described in the Employee Wage Motion are not paid when due, and to maintain employee morale at this critical juncture of the Chapter 11 Case, the Debtor has asked for entry of an order approving the Employee Wage Motion as a "First Day Motion".

20. The Debtor also has concurrently filed a First Day Motion For Interim Order (i) Authorizing Debtor To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 364(c)

and 364(d); (ii) Granting Liens and Superpriority Claims; (iii) Authorizing the Use of Cash Collateral; and (iv) Scheduling A Final Hearing (the "DIP Motion"). Among other things, the DIP Motion seeks immediate entry of an order without notice approving the financing sought by the DIP Motion, which financing, in part, will be used immediately to free funds necessary to fund payroll and operating expenses so that the Debtor's' business operations will not be disrupted.

21. It is imperative that the Bank Accounts and the Debtor's cash management system remain in place without interruption to support the payments that will be made if the Employee Wage Motion and the DIP Motion are granted.

22. In addition, to minimize expenses to the Debtor's estate, the Debtor requests authorization to continue to use the current correspondence and business forms, including, but not limited to, invoices, checks, vendor communications and documents, letterhead, envelopes, and other business forms (collectively, "Business Forms"), substantially in the form existing immediately before the Petition Date, without reference to the Debtor's status as a debtor in possession.

23. If the Debtor is not permitted to maintain and utilize the current Bank Accounts and existing Business Forms, it will be adversely impacted by (i) the resulting disruption to its ordinary financial affairs and business operations, (ii) the delay of the administration of its estate, and (iii) the incurrence of unnecessary costs to the estate.

**C. Description of Debtor's Cash Management System**

24. The Debtor's cash management system is managed primarily by the Debtor's executive and accounting personnel at the corporate headquarters in Indianapolis, Indiana. Through utilization of the centralized cash management system, the Debtor is able to

facilitate cash forecasting and reporting, monitor collection and disbursement of funds, and maintain control over the administration of the various bank accounts required to effect the collection, disbursement, and movement of cash.

25. The Debtor maintains two bank accounts at Key Bank.

(a) **Key Bank Operating Account.** The Debtor maintains a general operating account at Key Bank (the "Operating Account"). The Debtor uses the Operating Account to collect revenues, process payroll, remit operating expenses and process certain payments to insurance agents in connection with the Debtor's servicing contracts.

(b) **Key Bank LTPC Account.** The Debtor maintains an account (the "LTPC Account") with Key Bank which is used to process the payment of commissions due to agents in connection with the servicing contract with LION Trust. A more in depth discussion of this servicing relationship is discussed in the Nondorf Declaration.

**D. Continuation of the Cash Management System is in the Best Interests of the Debtor's Estate and Creditors**

26. As described above, the Debtor's cash management procedures constitute ordinary course, essential business practices. The cash management system provides significant benefits to the Debtor including, among other things, the ability to (i) control company funds, (ii) ensure the maximum availability of funds whenever necessary, and (iii) reduce administrative costs by facilitating the movement of funds and development of more timely and accurate account balance information.

27. This Court and others have granted Chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). See also In re Service Merchandise Co., Inc., 240 B.R. 894, 896-97 (Bankr. M.D. Tenn. 1999) (large, sophisticated Debtor in "mega-case" not required to modify their complex cash management system); In re Columbia Gas Sys., Inc., 997 F.2d 1039, 1061 (3d Cir. 1993)

(recognizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient"), cert. denied sub nom Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp., 114 S. Ct. 1050 (1994).

28. In other Chapter 11 cases, this Court has recognized that strict enforcement of the requirement that debtors in possession close their bank accounts does not serve the rehabilitative process of Chapter 11, consistent with orders entered by other courts in Chapter 11 cases. See, e.g., In re Platinum Properties, LLC, et. al., No. 11-05140 (BHL) (Bankr. S.D. Ind. May 5, 2011); In re Willemsen Dairy LLC, Case No. 10-13036 (JKC) (Bankr. S.D. Ind. Sept. 2, 2010); In re Union Go-Dairy, LLC, 10-01175 (JKC) (Bankr. S.D. Ind. Feb. 10, 2010); In re Sharper Image Corp., No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); In re Linens Holding Co., No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re Hancock Fabrics, Inc., No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007); In re Pecus ARG Holding, Inc., No. 09-10170 (KJC) (Bankr. D. Del. Jan. 16, 2009). The Debtor respectfully requests that this Court waive the requirements of the United States Trustee that the Debtor close its Bank Accounts.

29. For all the reasons set forth above, it is critical both to the continued operation of the Debtor's business operations and to the preservation thereof that the Debtor continues to utilize the existing cash management system without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code to approve the Debtor's centralized, integrated cash management system in its current form (except to the extent it needs to be modified in accordance with the debtor in possession financing arrangements).

**E. The Court Should Authorize the Debtor to Use Existing Checks and Business Forms Because Parties In Interest Will Receive Adequate Notice of the Chapter 11 Case**

30. To minimize expenses to the estate and distraction to the employees, the Debtor further seeks authority to continue to use all correspondence and business forms (including, but not limited to, checks, letterhead, purchase orders, and invoices) as such forms were in existence immediately before the Petition Date. Because of the nature of the Debtor's business operations, use of new business forms would greatly increase the Debtor's costs and add significantly to the administrative burdens of transitioning to operations under Chapter 11.

31. Requiring debtors in possession to obtain new forms that reflect their status as debtors in possession is designed to provide notice of Chapter 11 cases to parties with whom the debtors transact. However, parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as a debtor in possession. Indeed, the Debtor will be sending notice to all known creditors of the commencement of this case. In light of the formal and informal notice that creditors have and will receive regarding the Debtor's Chapter 11 filing, the Debtor submits that changing business forms is unnecessary and would be unduly burdensome.

32. Moreover, courts have granted similar relief to debtors in Chapter 11 cases. See, e.g., In re Platinum Properties, LLC, et. al., No. 11-05140 (BHL) (Bankr. S.D. Ind. May 5, 2011); In re Levitt & Sons, LLC, No. 07-19845 (Bankr. S.D. Fla. Nov. 14, 2007); In re Affiliated Media Inc., No. 10-10202 (KG) (Bankr. D. Del. Jan. 26, 2010); In re Circuit City Stores, Inc., No. 08-35653 (KRH) (Bankr. E.D. Va. Nov. 10, 2008); In re Calpine Corp., No. 05-60200 (Bankr. S.D.N.Y. Jan. 25, 2006); In re McLeodUSA Inc., No. 05-63230 (JHS) (Bankr. N.D. Ill Oct. 31, 2005); In re Nat'l Steel Corp., No. 02-08699 (JHS) (Bankr. N.D. Ill. Mar. 6, 2002); In re Kmart Corp., No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 25, 2002); In re Comdisco

Inc., No. 01-24795 (RB) (Bankr. N.D. Ill. July 17, 2001); In re Outboard Marine Corp., No. 00-37405 (JHS) (Bankr. N.D. Ill. Jan. 4, 2001).

NOTICE

33. The Debtor has provided or will provide notice of the Cash Management Motion and the hearing thereon, by telephone, telecopy, electronic mail, overnight delivery service, or hand delivery, to (i) the office of the United States Trustee for the Southern District of Indiana; (ii) the Internal Revenue Service; (iii) the Debtor's twenty (20) largest general unsecured creditors; (iv) all secured creditors; and (v) any party who has filed an appearance and served same on the Debtor prior to service.

NO PRIOR REQUEST

34. No previous request for the relief requested herein has been made to the Court in the Chapter 11 Case.

WHEREFORE, the Debtor respectfully requests that the Court enter the order attached as Exhibit A hereto authorizing the Debtor to (a) maintain its Bank Accounts, (b) continue to use its existing Business Forms, and (c) continue to use its existing cash management system.

Respectfully submitted,

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