

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

**APPLICATION FOR ORDER UNDER 28 U.S.C. § 156(c) AUTHORIZING THE
RETENTION OF THE BMC GROUP, INC. AS
NOTICE AND CLAIMS AGENT FOR THE DEBTOR**

TWG Capital, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), by counsel, hereby files this *Application For Order Under 28 U.S.C. § 156(c) Authorizing The Retention Of The BMC Group, Inc. As Notice And Claims Agent For The Debtor* ("Application").

Summary of Relief Requested

1. By this Application, the Debtor requests that this Court enter an order under 28 U.S.C. § 156(c) and Local Rule B-1007-2 appointing The BMC Group, Inc. ("BMC") as its noticing, balloting and claims agent (collectively, the "Claims Agent") in the Chapter 11 Case pursuant to the *Agreement For Services* attached hereto as Exhibit A (the "Engagement Agreement").

Jurisdiction

2. 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.

3. 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.

4. No trustee, examiner, or committee has been appointed in the Chapter 11 Case.

5. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief sought herein are §§ 105(a) and 521 of the Bankruptcy Code and Local Rule B-1007-2.

Background

7. As more fully set forth in the Declaration of Mark P. Nondorf in Support of Chapter 11 Petition and First Day Applications and Motions (the "Nondorf Declaration"), the Debtor is a specialty finance company that services the insurance industry.

8. 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 and Applicable Authority

9. The Debtor has over 600 creditors. The numerous creditors and other parties in interest involved in the Chapter 11 Case may impose heavy administrative and other burdens on the Court and the Office of the Clerk of the Court ("Clerk's Office"). As required by Local Rule B-1007-2 and the Administrative Procedures for Electronic Filing, the Debtor proposes to engage BMC as the Claims Agent in this Chapter 11 Case.

10. BMC is one of the country's premier Chapter 11 administrators with experience in claims processing and claims reconciliation. BMC has substantial experience in the matters upon which it is to be engaged and has acted as the official notice and claims agent in many large bankruptcy cases filed in this and other districts. See, e.g., In re Eastern Livestock Co., LLC, No. 10-93904 (BHL) (Bankr. S.D. Ind. March 17, 2011); In re ATA Holdings Corp., No. 04-19866 (BHL) (Bankr. S.D. Ind. Oct. 29, 2004); In re Kiel Bros. Oil Co., Inc., No. 04-11121 (BHL) (Bankr. S.D. Ind. June 23, 2004); In re American Commercial Lines LLC, No. 03-90305 (BHL) (Bankr. S.D. Ind. Feb. 26, 2003); In re Conseco, Inc., No. 02-B-49672 (CAD) (Bankr. N.D. Ill. Jan. 14, 2003). In re Jennifer Convertibles, Inc., Case No. 10-13779 (ALG) (Bankr. S.D.N.Y. July 22, 2010); In re Fairpoint Commc'ns Inc., Case No. 09-16335 (BRL) (Bankr. S.D.N.Y. Oct. 27, 2009); In re Metaldyne Corp., Case No. 09-13412 (MG) (Bankr. S.D.N.Y. May 29, 2009); In re Ziff Davis Media Inc., Case No. 08-10768 (BRL) (Bankr. S.D.N.Y. Mar. 10, 2008); see also, e.g., In re NV Broadcasting, LLC, Case No. 09-12473 (KG) (Bankr. D. Del. July 15, 2009).

11. By appointing BMC as the Claims Agent in this Chapter 11 Case, the Debtor's bankruptcy estate and particularly the creditors will benefit from BMC's significant experience in acting as a claims agent in other cases and the efficient and cost-effective methods that BMC has developed.

12. BMC is fully equipped to handle the volume involved in properly processing the claims of creditors and other interested parties in this Chapter 11 Case. BMC will follow the claim procedures that conform to the guidelines promulgated by the Clerk of the Bankruptcy Court and the Judicial Conference and as may be entered by order of this Court.

13. BMC at the request of the Debtor or the Clerk's Office, will provide various services as the Claims Agent, including, without limitation, the following services:
- a. receive and record original proofs of claim filed;
 - b. reconcile and resolve claims, as requested;
 - c. create and maintain official claims registers, including, among other things, the following information for each proof of claim or proof of interest:
 - i. the name and address of the claimant and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - ii. the date received;
 - iii. the claim number assigned; and
 - iv. the asserted amount and classification of the claim;
 - d. implement necessary security measures to ensure the completeness and integrity of the claims registers;
 - e. transmit to the Clerk's Office a copy of the claims registers upon request and at agreed upon intervals;
 - f. maintain an up-to-date mailing list for all entities that have filed a proof of claim or proof of interest, which list shall be available upon request of a party in interest or the Clerk's Office;
 - g. provide access to the public for examination of copies of the proofs of claim or interest without charge during regular business hours;
 - h. record all transfers of claims pursuant to Rule 3001(e) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and provide notice of such transfers as required by Bankruptcy Rule 3001(e);
 - i. distribute notices as directed by the Court and provide proof of service information to the Debtor;
 - j. receive, record and tabulate ballots for purposes of plan voting;
 - k. comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements;

- l. promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- m. perform such other administrative and support services as the Debtor's or the Clerk's Office may request.

Disinterestedness

14. To the best of the Debtor's knowledge, BMC is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and holds no interest adverse to the Debtor and its bankruptcy estate for the matters for which BMC is to be employed.

15. BMC will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or relationships are discovered, BMC will supplement its disclosure to the Court.

16. In connection with its appointment as the Claims Agent, BMC represents, among other things, that:

- a. BMC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims Agent agent in this Chapter 11 Case;
- b. by accepting employment in this Chapter 11 Case, BMC waives any rights to receive compensation from the United States government;
- c. in its capacity as the Claims Agent in this Chapter 11 Case, BMC will not be an agent of the United States and will not act on behalf of the United States; and
- d. BMC will not employ any past or present employees of the Debtor in connection with its work as the Claims Agent in this Chapter 11 Case.

Compensation

17. The Debtor proposes to engage BMC at the rates set forth in the Engagement Agreement. The cost of BMC's services will be paid from the Debtor's estate as provided by 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code. The Debtor

believes that the proposed rates to be charged by BMC are reasonable and appropriate for services of this nature. The Debtor reviewed the rates of other firms prior to selecting BMC and believes BMC's rates are reasonable given the quality of their services.

18. The Debtor requests that the fees and expenses of BMC incurred in the performance of the above services be treated as an administrative expense of the Debtor's chapter 11 estate and be paid by the Debtor in the ordinary course of business without further application to the Court.

19. BMC shall perform the duties within the scope of its appointment under 28 U.S.C. § 156(c) regardless of whether BMC has received payment in accordance with the Engagement Agreement. To the extent BMC requires redress for non-payment of its fees and expenses, it will seek relief from the Court.

20. BMC will comply with all requests of the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

WHEREFORE, the Debtor respectfully requests that the Court enter an Order granting the relief requested herein and such other relief as is just.

Respectfully submitted,

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