

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
GWG Holdings, Inc., <i>et al.</i> , ¹)	Case No. 22-90032 (MI)
)	
Debtors.)	(Jointly Administered)
)	

EMERGENCY MOTION TO APPROVE LIFE INSURANCE PORTFOLIO SALE

Emergency relief has been requested. Relief is requested no later than 1:30 p.m. Central Time on October 3, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in this paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on October 3, 2023 at 1:30 p.m. in Courtroom 404, 4th Floor, 515 Rusk, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur’s conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur’s home page. The meeting code is “JudgeIsgur”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, were: GWG Holdings, Inc. (2607); GWG Life, LLC (6955); GWG Life USA, LLC (5538); GWG DLP Funding IV, LLC (2589); GWG DLP Funding VI, LLC (none); and GWG DLP Funding Holdings VI, LLC (none). The location of Debtor GWG Holdings, Inc.’s principal place of business and the Debtors’ service address is 325 N. St. Paul Street, Suite 2650 Dallas, TX 75201. Further information regarding the Debtors and these chapter 11 cases is available at the website of the Debtors’ claims and noticing agent: <https://donlinrecano.com/gwg>.

“Electronic Appearance” link on Judge Isgur’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

Elizabeth C. Freeman, as trustee (the “WDT Trustee”) for the GWG Wind Down Trust (the “Wind Down Trust”) (successor to GWG Holdings, Inc. and its debtor affiliates in the above-captioned cases (collectively, the “Debtors”), files this motion (the “Motion”) seeking approval of the sale of the portfolio of near-duration, intermediate-duration, and long duration life insurance policies formerly owned by certain of the Debtors (the “Policy Portfolio”). In support of this Motion, the WDT Trustee respectfully states as follows:

SUMMARY OF THE RELIEF REQUESTED

1. The WDT Trustee seeks approval of the sale of the Policy Portfolio ultimately owned by the Wind Down Trust. The proceeds of the proposed sale will be distributed pursuant to the confirmed Plan and the WDT Agreement. The WDT Trustee seeks approval of the sale on an emergency basis to allow closing to occur on or around October 11, 2023.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Wind Down Trust confirms its consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The basis for the relief requested herein is section 105 of title 11 of the United States Code (the “Bankruptcy Code”), the Confirmation Order, and the WDT Agreement.

BACKGROUND

5. On April 20, 2022 (the “Initial Petition Date”), the Initial Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing the Initial Debtors’ chapter 11 cases (the “Initial Cases”). On October 31, 2022, the DLP Debtors filed their own voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “DLP Cases” and, together with the Initial Cases, the “Chapter 11 Cases”).

6. During the Chapter 11 Cases, the Debtors entered into a series of debtor-in-possession facilities, each providing liens on the Policy Portfolio. The Debtors’ ultimate financing facility (the “Vida DIP Facility”) was provided by affiliates of Vida Capital, Inc. (n/k/a Obra Capital, Inc.) (“Vida”) [ECF No. 1144]. The Vida DIP Facility contained a commitment from Vida to provide long-term financing for the Policy Portfolio in the form of an exit facility at the Debtors’ election.

7. On June 20, 2023, the Court entered the order (the “Confirmation Order”) confirming the plan (the “Plan”)² [ECF No. 1952]. The Plan went effective on August 1, 2023 (the “Plan Effective Date”) [ECF No. 2079].

8. Under the Plan, the Wind Down Trust was created. In addition to the Plan, the Wind Down Trust is governed by the *Wind Down Trust Agreement of GWG Wind Down Trust* [ECF No. 1887] (the “WDT Agreement”).

9. Pursuant to the Plan, on the Plan Effective Date, certain of the Debtors’ assets, including the equity interests in Life Recovery Fund, LLC (“Portfolio Co.”) (which owns the Policy Portfolio) transferred to the Wind Down Trust. Plan Art. IV.A.; Confirmation Order ¶ 8. The WDT Trustee is charged with monetizing Policy Portfolio.

² Capitalized terms used but not defined herein shall have the meanings given to such terms in the Plan.

10. Also on the Effective Date, the Wind Down Trust entered into the exit facility with Vida (the “Exit Facility”).

11. Each of the Vida DIP Financing Facility and the Exit Facility had a “portability” feature. This provides that in the event of a sale of the Policy Portfolio to a third party, under certain conditions, the Exit Facility could be assumed by such third-party purchaser.

Sale Process

12. Following the Plan Effective Date, the WDT Trustee commenced a marketing process for the sale of the Policy Portfolio. The WDT Trustee established a data room, entered into eleven non-disclosure agreements with potentially interested parties, and ultimately received proposals from two bidders. The WDT Trustee evaluated the proposals, taking into account the net cash to the Wind Down Trust, the financial wherewithal of the proposed purchaser, the timing for a proposed closing, the proposed transaction structure, the completion of the portfolio diligence by the bidders, the reduction in operating costs to the Wind Down Trust, and Vida’s willingness to provide the required consents and amendments for an assumption of the Exit Facility.

13. Following a thorough evaluation process, the WDT Trustee elected to sell the Policy Portfolio (through selling the Wind Down Trust’s limited liability interests in Portfolio Co.) to Apex Longevity Fund LLC (including any affiliate thereof, “Apex”) in exchange for \$10 million and Apex’s assumption of the Vida Exit Facility (or in the alternative, a merger of Portfolio Co. into an affiliate of Apex) (the “Portfolio Sale”). Closing is required to occur on or before October 11, 2023. On September 22, 2023, Apex wired the \$10 million to an account to be held in escrow until closing.

14. As of the Plan Effective Date, the Debtors’ approximately 26,000 bondholders, as well as other stakeholders (including general unsecured creditors, preferred equity holders, and common equity holders), hold beneficial interests in the Wind Down Trust (collectively, the “WDT”).

Interests”). Holders of the WDT Interests will receive distributions on account of such interests from the Wind Down Trust in accordance with the Plan and WDT Agreement.

BASIS FOR RELIEF

15. Pursuant to section 105(a) of the Bankruptcy Code, a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In addition, the Confirmation Order provides, “[s]ubject to Article XI of the Plan, pursuant to sections 105(a) and 1142 of the Bankruptcy Code, this Court retains exclusive jurisdiction with respect to all matters arising from or related to these Chapter 11 Cases, the Plan, and the implementation of this Confirmation Order, including, without limitation, those matters set forth in Article XI of the Plan.” Confirmation Order ¶35.

16. The WDT Agreement provides, “the Bankruptcy Court shall have exclusive jurisdiction over the Wind Down Trust and the Wind Down Trustee, including the administration and activities of the Wind Down Trust and the Wind Down Trustee, and, pursuant to the Plan, has retained such jurisdiction.” WDT Agreement §9.2.

17. “All determinations with respect to the monetization of the Wind Down Trust Assets...will be subject to the reasonable business judgment of the Wind Down Trustee...subject to the requirement that the Wind Down Trustee seek and obtain Bankruptcy Court approval of any transaction with an economic value of \$5 million or more, as set forth herein.” Plan Art. V(A)(3).

18. Where the “business judgment” rule applies, the decision-maker is required to articulate a “business justification” for the proposed transaction. *See, e.g., In re Cont'l Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986). Once a valid business justification is articulated, “[t]he business judgment rule ‘is a rebuttable presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action

taken was in the best interests of the company.” *Asarco LLC v. Ams. Mining Corp.*, 396 B.R. 278, 405 (S.D. Tex. 2008) (citations omitted).

19. The Portfolio Sale should be authorized as a sound exercise of the WDT Trustee’s business judgment. The Portfolio Sale is contemplated to close by mid-October 2023 and provides for cash consideration at closing in the amount of \$10 million.

20. The WDT Trustee ran a targeted marketing process for the Policy Portfolio. As the Policy Portfolio was marketed several times during the Chapter 11 Cases, the WDT Trustee and her agents were keenly aware of the identities of active participants in the life insurance settlement industry and who might be interested in the Policy Portfolio.

21. After receiving two viable proposals for the sale of the Policy Portfolio, the WDT Trustee selected the proposal from Apex, after thorough and careful consideration of a number of factors. It is the Trustee’s business judgment that the Portfolio Sale is in the best interests of the Wind Down Trust.

22. The WDT Trustee consulted with the Litigation Trustee, counsel for the former L Bond Committee, and counsel for L Bond Management regarding the proposed sale. Most importantly, the WDT Trustee met with principals at Vida. Vida is willing to consent to the change of control of the entity that owns the Policy Portfolio and agreed to work collaboratively to amend the Exit Facility to facilitate the closing of the Portfolio Sale.

23. The WDT Trustee’s decision to enter into the Portfolio Sale is a sound exercise of her business judgment and should be approved.

EMERGENCY CONSIDERATION

24. Emergency consideration is warranted because the parties require a closing of the sale to occur not later than October 11, 2023.

NOTICE

25. The WDT Trustee will provide notice of this Motion to the Litigation Trustee and all parties entitled to receive notice pursuant to Fed. R. Bankr. P. 2002. The WDT Trustee will also post a notice on the GWG Wind Down Trust case website, <https://cases.stretto.com/GWGTrust>. In light of the nature of the relief requested, no further notice need be provided.

WHEREFORE, the WDT Trustee requests the Court enter an order granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

September 28, 2023

Respectfully Submitted,

/s/ Kristhy M. Peguero

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Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Kristhy M. Peguero

Kristhy M. Peguero

Certificate of Service

I certify that on September 28, 2023, I caused a true and correct copy of the foregoing to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kristhy M. Peguero

Kristhy M. Peguero

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
GWG Holdings, Inc., <i>et al.</i> , ¹)	Case No. 22-90032 (MI)
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Debtors.)	(Jointly Administered)
)	Re: Docket No. ___

ORDER AUTHORIZING PORTFOLIO SALE

Upon the motion (the “Motion”)² of Elizabeth C. Freeman, as trustee (the “WDT Trustee”) for the GWG Wind Down Trust (the “Wind Down Trust”) (successor to GWG Holdings, Inc. and its debtor affiliates in the above-captioned cases (collectively, the “Debtors”), pursuant to section 105 of the Bankruptcy Code authorizing the Portfolio Sale; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the WDT Trustee’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided as set forth herein; and this Court having reviewed the Motion; and this Court having determined that the legal

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the WDT Trustee's interest in the Portfolio vested in the Wind Down Trust pursuant to Article IV.A of the Plan and paragraph 8 of the Confirmation Order; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The WDT Trustee is authorized to effectuate the Portfolio Sale, including enter into all related documentation and take all steps to effectuate such sale, and the Portfolio Sale and related documentation shall be binding on the WDT Trustee and its successors and assigns.

2. The Portfolio Sale is the product of an arms-length, good faith negotiation which resulted in fair consideration that provides reasonably equivalent value under the Bankruptcy Code and any Uniform Fraudulent Transfer Act, fair consideration under any Uniform Fraudulent Conveyance Act, and reasonably equivalent value, fair consideration, fair salable value, and fair value under any such laws as applicable or any other applicable laws of the United States, any state, territory, or possession thereof, or the District of Columbia. Neither the Wind Down Trust nor the Buyer entered into the Portfolio Sale the purpose of hindering, delaying, or defrauding the Trust's present or future creditors.

3. Proceeds from the Portfolio Sale shall be distributed pursuant to the Plan and the WDT Agreement.

4. Notice of the Motion as provided therein is good and sufficient notice of the Motion and the requirements of the Bankruptcy Local Rules are satisfied by such notice.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The WDT Trustee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE