

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| |) | |
| In re: |) | Chapter 11 |
| |) | |
| TRIAD GUARANTY INC., ¹ |) | Case No. 13-11452 (MFW) |
| |) | |
| Debtor. |) | Objections Due: July 2, 2013 at 4:00 p.m. (ET) |
| |) | Hearing Date: July 9, 2013 at 9:30 a.m. (ET) |
| |) | |

**DEBTOR’S APPLICATION FOR ENTRY OF AN ORDER
AUTHORIZING EMPLOYMENT AND RETENTION OF MORRISON &
FOERSTER LLP AS SPECIAL COUNSEL TO DEBTOR PURSUANT TO 11
U.S.C. §§ 327(e) AND 329(a)**

Triad Guaranty Inc. (the “Debtor”), as debtor and debtor in possession in the above-captioned chapter 11 case, hereby submits this Application (the “Application”) for entry of an order, substantially in the form attached hereto as Exhibit A, nunc pro tunc to June 3, 2013, authorizing the Debtor’s retention of Morrison & Foerster LLP (“Morrison & Foerster” or the “Firm”) as the Debtor’s special counsel pursuant to sections 327(e) and 329(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). In support of this Application, the Debtor relies upon the declarations of Anthony Princi (the “Princi”

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8519. The location of the Debtor’s headquarters and the Debtor’s service address is 1900 Crestwood Blvd., Birmingham, AL 35210.

Declaration”) and William T. Ratliff, III, copies of which are attached hereto as Exhibits B and C and incorporated by reference herein, and respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 3, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”). The Debtor is continuing to operate its business as debtor and debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or official committee of unsecured creditors has been appointed in the Bankruptcy Case.

3. An in-depth description of the Debtor's business, the reasons for commencing this chapter 11 case, and the relief sought from the Court to allow the Debtor to smoothly transition into chapter 11 is set forth in the First Day Declaration of William Ratliff, III in Support of the Debtor's Chapter 11 Petition and First Day Motions, which is incorporated herein by reference.

RELIEF REQUESTED

4. Pursuant to Bankruptcy Code sections 327(e) and 329(a), Bankruptcy Rule 2014(a), and Local Rule 2014-1, the Debtor hereby seeks the entry of an order authorizing the Debtor to retain and employ Morrison & Foerster as special counsel in this chapter 11 case, nunc pro tunc to the Petition Date.

MORRISON FOERSTER'S QUALIFICATIONS

5. Morrison & Foerster is particularly well qualified to serve as the Debtor's special counsel in this Bankruptcy Case. Morrison & Foerster is one of the largest law firms in the world, with a national and international practice, and has substantial experience in virtually all aspects of the law that are likely to intersect and arise herein. In particular, Morrison & Foerster has extensive bankruptcy, insurance insolvency and regulatory, and tax expertise.

6. Morrison & Foerster also is extremely familiar with the Debtor's business. Since January 2013, Morrison & Foerster's professionals have worked closely with the Debtor's management and other professionals and, as a result, have become well acquainted with the Debtor's history, operations, and related matters. In particular, over recent months, Morrison & Foerster has represented the Debtor as its lead outside counsel in significant tax and insurance insolvency and regulatory matters. Accordingly, Morrison & Foerster has developed substantial knowledge regarding the Debtor that will result in effective and efficient services in this Bankruptcy Case.

SERVICES TO BE PROVIDED

7. Subject to approval by this Court, the services that the Debtor requests that Morrison & Foerster render in this Bankruptcy Case include advising the Debtor with regard to tax matters, insurance insolvency and regulatory matters, and other matters as requested by the Debtor from time to time.

8. The Debtor submits that it would be in the best interest of its estate if Morrison & Foerster were retained as special counsel to advise the Debtor, consult with and assist General Bankruptcy Counsel (defined below), and perform the specific legal services described below. Morrison & Foerster has extensive knowledge of the Debtor and its business, and has been the Debtor's key outside advisor responsible for formulating and advising the Debtor on a plan to maximize value for the Debtor's estate. Continued retention of Morrison & Foerster in this Bankruptcy Case would ensure continuity in the provision of legal services to the Debtor and would avoid the time and expense required for new counsel to gain the level of knowledge and familiarity of the Debtor and its business already possessed by Morrison & Foerster. In addition, because of Morrison & Foerster's extensive experience in the very specialized area of insurance insolvency, the Debtor has been able to charter a strategic course to maximize value for its estate without the need for the retention of a financial advisor.

9. By separate application, the Debtor is seeking to employ Womble Carlyle Sandridge & Rice, LLP as its general bankruptcy counsel ("General Bankruptcy Counsel"). The Debtor intends to use the services of General Bankruptcy

Counsel to represent it generally in this Bankruptcy Case, to assist it in carrying out its duties under chapter 11 of the Bankruptcy Code, and to represent it in conducting the Bankruptcy Case and on legal and administrative bankruptcy matters that may arise herein.

10. To the extent that certain aspects of these matters may involve a mixture of bankruptcy and non-bankruptcy issues, General Bankruptcy Counsel and Morrison & Foerster will coordinate their efforts in accordance with the purposes of their respective retentions so as to prevent or minimize duplication of effort in this case and to provide efficient and cost-effective legal services to the Debtor.

BASIS FOR RELIEF

11. Bankruptcy Code Section 327(e) states:

the trustee with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

12. In this Circuit, for Bankruptcy Code section 327(e) to apply, an attorney must establish that: (1) the attorney has already represented the debtor; (2) the attorney is being retained for a special purpose; (3) the appointment of the attorney is in the best interest of the estate; and (4) the attorney has no conflict of interest concerning the matter for which it is being retained. See In re Woodworkers

Warehouse, Inc., 323 B.R. 403, 406 (D. Del. 2005); Meespierson, Inc. v. Strategic Telecom, Inc., 202 B.R. 845, 847 (D. Del. 1996). “When analyzing the retention of special counsel under this section, the court should consider all relevant facts surrounding the debtor's case, including but not limited to, the nature of the debtor's business, all foreseeable employment of special counsel, the expense of replacement counsel, potential conflicts of interest and the role of general counsel.”

Woodworkers, 323 B.R. at 406.

13. The Debtor believes that the services of Morrison & Foerster in connection with the matters listed above are necessary in order to enable the Debtor to execute faithfully its duties as a debtor-in-possession. The Debtor has selected Morrison & Foerster as special counsel because of the firm's history as counsel to the Debtor, as well as Morrison & Foerster's recognized experience and knowledge in the highly specialized area involving the intersection of tax, insurance insolvency and regulatory, and bankruptcy law. Of particular relevance, Morrison & Foerster has recently represented creditors' committees in several major bankruptcies involving insurance companies operating in the mortgage industry. Each of these bankruptcies was driven by substantial tax, bankruptcy and insurance law issues, providing Morrison & Foerster with extensive knowledge regarding issues likely to arise during the Debtor's chapter 11 cases. Given Morrison & Foerster's unique level of knowledge of, and experience with, the Debtor and its business, the retention of Morrison & Foerster will avoid the time and expense that another law firm would otherwise have to invest in learning about the Debtor's operations in order to provide

the same level of services. The retention of Morrison & Foerster as special counsel will minimize administrative expenses, which will inure to the benefit of the Debtor and its creditors.

COMPENSATION

14. Subject to the Court's approval of this Application, Morrison & Foerster intends to: (a) charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date the services are rendered,² and (b) seek reimbursement of actual and necessary out-of-pocket expenses. The current hourly rates of the Morrison & Foerster lawyers and paraprofessionals are set forth in the Princi Declaration.³

15. Additionally, Morrison & Foerster's engagement agreement with the Debtor, attached as Exhibit 3 to the Princi Declaration (the "Engagement Agreement"), contained a provision entitling Morrison & Foerster to a success fee of 2.5% of the gross proceeds of certain transactions involving the creation and realization of value for some or all of the Debtor's intangible assets. Subject to the Court's approval of this Application, the Debtor proposes to engage Morrison & Foerster in this chapter 11 case on terms similar to those contained in the Engagement Agreement. In particular, similar to the success fee contained in the Engagement

² The hourly rates charged by Morrison & Foerster professionals differ based on, among other things, the professional's level of experience, and the rates normally charged in the location of the office in which the professional is resident.

³ Morrison & Foerster's hourly rates may change from time to time in accordance with Morrison & Foerster's established billing practices and procedures.

Agreement, the Debtor requests approval of a success fee in favor of Morrison & Foerster of 2.5% of the gross proceeds of any one or more transactions involving the creation and realization of value to the estate for the Debtor's intangible assets (the "Success Fee"), payable upon the closing of any such transaction. Also similar to the terms of the Engagement Agreement, the proposed fee arrangement would permit the Debtor to credit any fees paid to Morrison & Foerster in excess of \$150,000 paid on account of postpetition services against any Success Fee (the "Credit Amount").

16. The Debtor believes that this fee arrangement is consistent with Bankruptcy Code section 328(a), which permits the Debtor to engage professionals on any reasonable terms, including "on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis" and appropriate under the circumstances. *First*, the Debtor believes the Success Fee arrangement is appropriate in this case in light of the unique and speculative nature of the Debtor's intangible assets, and Morrison & Foerster's corresponding expertise in developing and implementing value-maximizing transactions involving such speculative assets. *Second*, as a result of Morrison & Foerster's agreement to provide certain services, the Debtor has been spared the costs of retaining a financial advisor in its efforts to generate maximum value for its assets.

17. *Finally*, as described further below, although Morrison & Foerster originally received a \$150,000 retainer, prior to the Petition Date, the Firm agreed to maintain a reduced, \$50,000 retainer, of which only \$47,948 remains. The Debtor understands that this retainer is much lower than what would otherwise be

conventional for the Firm to accept in a case like this, with limited liquid assets. Accepting a reduced retainer exposes Morrison & Foerster to risk of non-payment in the event that the Debtor's estate becomes administratively insolvent. Because Morrison & Foerster has agreed to shoulder increased risk not contemplated when the Firm began its engagement, the Debtor further believes that it is appropriate to reward the Firm with a portion of any incremental value Morrison & Foerster assists the estate in realizing in connection with a transaction involving the Debtor's intangible assets. The Debtor believes that the payment of the Success Fee described above appropriately offsets the increased risk taken on by Morrison & Foerster and compensates the Firm for its particularized expertise in mortgage-related insurance bankruptcy cases, as well as the additional services it has agreed to undertake in this case as opposed to other chapter 11 cases.

18. Morrison & Foerster will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with rendering the legal services described above. Morrison & Foerster intends to apply to the Court for compensation and reimbursement of expenses, including the payment of any Success Fee, in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and pursuant to any additional procedures that have been or may be established by the Court in the Bankruptcy Case. Morrison & Foerster has agreed to accept as compensation such sums as may be allowed by the Court. Morrison & Foerster understands that interim and final fee awards are subject to approval by the Court.

19. Prior to the Petition Date, the Debtor paid Morrison & Foerster \$208,376.96 for services in contemplation of or in connection with the filing of the Bankruptcy Case. Prior to the Petition Date, Morrison & Foerster applied \$158,376.96 against this amount for fees and expenses incurred pre-petition in contemplation of or in connection with the filing of the Bankruptcy Case. The remaining \$50,000 was provided to Morrison & Foerster as a retainer, which, pursuant to the Engagement Agreement was earned upon receipt. Subsequent to the Petition Date, Morrison & Foerster applied \$2,052 of the pre-petition retainer to satisfy fees that were incurred prior to the Petition Date, but that had not been invoiced as of the Petition Date. Morrison & Foerster seeks to hold the balance of \$47,948.00 as a retainer (the “Retainer”) for post-petition work. The Debtor has agreed that the Retainer is to be held by Morrison & Foerster as security during the pendency of this case, and is not intended to be applied until all alternative sources of payment have been applied.

DISCLOSURE CONCERNING CONFLICTS OF INTEREST

20. In reliance on the Princi Declaration, to the best of the Debtor’s knowledge, Morrison & Foerster does not hold or represent any interest adverse to the Debtor’s estate concerning the matters for which the Debtor seeks to retain Morrison & Foerster in this Bankruptcy Case. As set forth in the Princi Declaration, Morrison & Foerster represents or may represent entities and individuals who may be creditors or shareholders of the Debtor or who otherwise have an interest in this Bankruptcy Case, on unrelated matters. In addition, as part of its regular practice, Morrison &

Foerster appears in cases, proceedings, and transactions involving many different attorneys and accountants, some of whom may represent creditors and parties-in-interest in the Bankruptcy Case. Morrison & Foerster does not and will not represent such parties-in-interest in any matters adverse to the Debtor or in connection with this Bankruptcy Case. Furthermore, attorneys and employees of Morrison & Foerster may indirectly or directly hold equity interests in certain of the creditors (or their affiliates) that are public companies or mutual funds or may invest through certain companies that hold claims against the Debtor. To the best of the Debtor's knowledge, no such attorney or employee owns sufficient stock of any creditor to influence their affairs in any way. For these reasons, the Debtor submits that Morrison & Foerster does not hold or represent an interest adverse to the Debtor on the matters for which Morrison & Foerster is to be retained and, thus, retention of Morrison & Foerster pursuant to Bankruptcy Code section 327(e) is appropriate.

NUNC PRO TUNC

21. The Debtor requests that the retention of Morrison & Foerster as set forth herein be effective as of the Petition Date, pursuant to Local Rule 2014-1.

NOTICE

22. Notice of this Application has been provided to: (i) the United States Trustee for Region 3; (ii) creditors holding the 20 largest unsecured claims, as identified in the Debtor's chapter 11 petition; and (iii) counsel to parties that have filed a notice of appearance. The Debtor respectfully submits that no further notice of this Application is required.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting: (i) the relief requested herein and (ii) such further relief as the Court may deem proper under the circumstances.

Dated: June 20, 2013

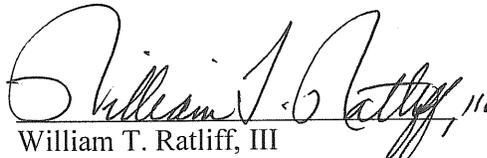

William T. Ratliff, III
Chairman, President, and Chief
Operating Officer

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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|-----------------------------------|---|-------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| TRIAD GUARANTY INC., ¹ |) | Case No. 13-11452 (MFW) |
| |) | |
| Debtor. |) | |
| |) | Re: Docket No. _____ |
| |) | |

**ORDER GRANTING DEBTOR’S APPLICATION FOR ENTRY OF AN
ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF
MORRISON & FOERSTER LLP AS SPECIAL COUNSEL TO DEBTOR
PURSUANT TO 11 U.S.C. §§ 327(e) AND 329(a)**

Upon the application (the “Application”)² of the Debtor, pursuant to sections 327(e) and 329(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014-1, for an order authorizing it to retain and employ Morrison & Foerster LLP (“Morrison & Foerster”) as special counsel nunc pro tunc to the Petition Date, all as more fully set forth in the Application; and the Court having reviewed the Application and the Princi Declaration, and having scheduled a hearing on the Application (the “Hearing”); and the Court having found that: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) notice of this Application and the

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8519. The location of the Debtor’s headquarters and the Debtor’s service address is 1900 Crestwood Blvd., Birmingham, AL 35210.

² Capitalized terms used herein as defined terms and not otherwise defined herein shall have those meanings ascribed to them in the Application.

Hearing was appropriate under the circumstances; and (v) Morrison & Foerster does not hold or represent an interest adverse to the Debtor on the matters for which Morrison & Foerster is to be retained; and the Court having determined that the legal and factual bases set forth in the Application, the Princi Declaration, and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Application is approved.
2. The Debtor is authorized to retain and employ Morrison & Foerster as special counsel in this Bankruptcy Case, pursuant to section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Bankruptcy Rule 2014-1, on the terms and conditions set forth in the Application, nunc pro tunc to the June 3, 2013.
3. Morrison & Foerster shall be compensated for its services and reimbursed for any related expenses in accordance with the terms of the Engagement Agreement, subject to and further in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable orders or procedures of this Court, provided, however, that the Success Fee and Credit Amount referenced in the Engagement Agreement shall be respectively defined as set forth in the Application.
4. Morrison & Foerster is permitted to hold the Retainer through the duration of this Bankruptcy Case.

5. This Court shall retain jurisdiction to implement, interpret and enforce this Order.

Dated: July __, 2013

HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE