

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

RECEIVED
OCT 30 2019

Tower Street Management, Inc.,)
)
 Plaintiff,)
 v.)
)
 KnightBrook Insurance Company,)
)
 Defendants.)

C/A: 3:17-1781-JFA

S.C. SUPREME COURT

ORDER

This matter is now pending before the Supreme Court of South Carolina upon certification of a question of law from this court. The parties have returned to this court asking this court to supplement the record before the South Carolina Supreme Court. Each party has suggested a large number of documents that they suggest are necessary in deciding the certified question.

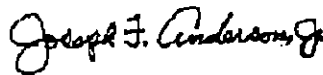
Upon review of the documents proposed to the court, and after reflecting upon the issues presented in this case and the court's certification order, this court is of the opinion that most, if not all, of the documents sought to be added to the record are not necessary for the Supreme Court's determination.

This court does determine that the Finder's Fee Agreement (ECF No. 1-1, p. 8-11) and the Letter of Intent (ECF No. 48-9) may be helpful and therefore should be added to the record. The court will, contemporaneously with the entering of this order, forward those two

documents to the South Carolina Supreme Court. To the extent both parties request additional documents be added to the record, the motion is respectfully denied.

IT IS SO ORDERED.

October 30, 2019
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge

Tower Street Capital Management, Inc. v. KnightBrook Insurance Company

EXHIBIT A
Finder's Fee Agreement

TOWER STREET CAPITAL MANAGEMENT

1205 West Colonial Life Boulevard, Columbia, SC 29210 (803) 397-4814

December 14, 2011

Mr. Eric D. Jarvis
4751 Wilshire Blvd.
Los Angeles, CA 90010

REF: FINDER'S FEE AGREEMENT

Dear Mr. Jarvis:

This Fee Agreement is entered into as of December 14, 2011 (this "Agreement") by and between KnightBrook Insurance Company and affiliate companies ("KnightBrook"), having its principal place of business at 4751 Wilshire Boulevard, Los Angeles, CA 90010 AND Tower Street Capital Management, Inc. ("Finder"), having its principal place of business at 1205 W. Colonial Life Blvd, Columbia, SC 29210.

WHEREAS, the FINDER lead KNIGHTBROOK to DGU Insurance Associates ("program administrator") who is seeking a carrier to take risk on two insurance programs (Equity Protection Program & Second Mortgage Protection Program)

WHEREAS, FINDER's introduction leads KNIGHTBROOK to program administrator to serve as the new program administrator's insurance carrier; and

WHEREAS, KNIGHTBROOK agrees to compensate FINDER for the introduction services provided.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the parties agree as follows:

1. In exchange for identifying and introducing KNIGHTBROOK to the program administrator, where KNIGHTBROOK will act as the at-risk carrier for the new program administrator, defined as the transaction ("Transaction"), KNIGHTBROOK shall pay FINDER a fee per the following schedule until the time that Knightbrook Agency (as provisionally identified as "Newco" in the Letter of Intent dated 9/1/11 and agreed to by Cone & Boylston and Knightbrook) is established. At such time Cone & Boylston will continue to be compensated for the Transaction, but subject to the Newco operating agreement. Until that time, KNIGHTBROOK agrees to pay:

- 2% of the Gross Written Premium on both programs

TOWER STREET CAPITAL MANAGEMENT, INC.

2. KNIGHTBROOK acknowledges the following:

- a. FINDER has not conducted any due diligence with respect to the program administrator or the owners thereof;
 - b. All information provided to KNIGHTBROOK which pertains to the program administrator has been prepared by the program administrator without any independent verification by FINDER; and
 - c. FINDER makes no representation or warranty as to the accuracy of any information prepared by the program administrator or as to whether KNIGHTBROOK will be suitable to act as a purchase for any potential program administrator.
3. This Agreement represents the entire agreement of the parties and supersedes any and all prior or contemporaneous written or oral agreements between KNIGHTBROOK and FINDER. This agreement may not be amended except in writing and signed by both parties.
4. This Agreement shall be binding on the heirs, assigns, and successors of both KNIGHTBROOK and FINDER, respectively.
5. KNIGHTBROOK and FINDER understand and agree that neither party shall be considered to be the agent of the other for any purpose whatsoever and that neither has the authority to enter into any contract, assume any obligation or to make any warranties or representations on behalf of the other.
6. KNIGHTBROOK agrees to indemnify and save FINDER, its affiliates and all respective directors, officers, employees, and agents (collectively, the "Indemnified Parties" and individually, an "Indemnified Party") harmless from and against any and all losses, claims, actions, suits, proceedings, damages, judgments, assessments, demands, costs, expenses, and other liabilities of whatsoever nature or kind, and KNIGHTBROOK will reimburse each such Indemnified Party for all reasonable fees and expenses (including, without limitation, reasonable attorney's fees and expenses, and court costs) as they are incurred in investigating, preparing, pursuing, or defending any claim, action, suit, proceeding or investigation, whether or not an Indemnified Party is a party, relating to or arising out of or in connection with (i) the introduction services rendered by an Indemnified Party pursuant to this Agreement, any Transaction introduction services; (ii) actions taken by or omitted to be taken by KNIGHTBROOK or any affiliates, employees, directors, officers, partners, representatives, or agents of KNIGHTBROOK in connection with any Transaction contemplated by this Agreement, and (iii) any untrue statement or alleged untrue statement of a material fact contained in any document furnished by KNIGHTBROOK to the program administrator, and any omission therein, in light of the circumstances under which they are made, not misleading.

7. The term of this Agreement shall commence at the date first written above between KNIGHTBROOK and FINDER. Notwithstanding the foregoing, either party may terminate this Agreement upon ten (10) days prior notice to the other party. However, KNIGHTBROOK's obligations pursuant to paragraphs 1, 2, 6, and 7 hereof will survive the completion of our engagement hereunder in accordance with the terms of those respective paragraphs, any withdrawal or termination of any Transaction or decision not to proceed with any Transaction or the expiry or other termination or purported termination of this Agreement.
8. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to the application of principles of conflict of laws of that State. The parties hereby agree to the exclusive jurisdiction of any state or federal court located in the State of South Carolina for the resolution of any disputes raising issues regarding the construction, meaning or enforcement of the terms of this agreement and waive any objection that (i) either court is an inappropriate or inconvenient forum to resolve such disputes, or (ii) that either court lacks personal jurisdiction over it. In addition, the parties hereby mutually agree to waive any rights they may otherwise have to trial by jury of any and all such claims.

If you are in agreement with the outline above, please sign below and return to us at your earliest convenience.

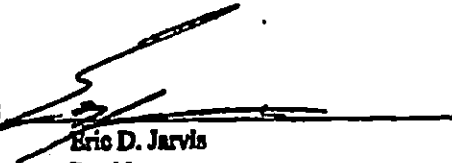
If you have any questions, please let us know.

Sincerely,



Madison Cone
President
Tower Street Capital Management

Agreed: _____



Eric D. Jarvis
President
KnightBrook Insurance Company

Date: _____

1-17-12

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Tower Street Capital Management, Inc.,

Plaintiff,

vs.

KnightBrook Insurance Company,

Defendant.

Civil Action No.: 3:17-cv-1781-JFA

Exhibit 8
Letter of Intent



1751 WILSON BLVD.
SUITE 111
LOS ANGELES, CA 90010
1-866-433-8104
11521.092.4133
KNIGHTBROOK.COM

September 1, 2011

Mr. Madison Cone
Mr. Reginald Boylston
1201 Colonial Life Boulevard West
Columbia, SC 29210

Re: Letter of Intent.

Dear Messrs. Cone & Boylston:

We have collectively discussed the movement of various books of insurance business ("Programs") to KnightBrook Insurance Company ("KnightBrook"). These Programs may be classified as "Fronted", or "At Risk" Programs. The Program opportunities arise from your existing relationships with the producers of the Program business. In addition, we have discussed the development of a managing general agency and third party administrator ("MGA/TPA") to manage the business of one or more Programs, with the most imminent MGA/TPA opportunity relating to a workers' compensation book of business produced by Dallas National Insurance Company. This letter (the "LOI") serves to indicate our mutual desire to enter into a formal arrangement and agreement to accomplish these goals upon mutually agreeable terms. Except as expressly set forth herein, this LOI is not intended as a binding agreement between us, but, if its terms are satisfactory, it shall serve to set forth our mutual understanding that we will work diligently, in good faith, and exclusively with each other, towards the execution of one or more definitive agreements that will contain the terms set forth herein (the "Definitive Agreements").

1. Newco:

A new business entity will be created (provisionally identified as "Newco") which will be owned 50% by KnightBrook or a KnightBrook affiliate, 45% by Madison Burns Cone ("Cone"), 5% by Reginald Wyatt Boylston ("Boylston"). Newco will serve as an MGA/TPA to directly manage the business of one or more Programs, and will also provide oversight of Fronted or At Risk programs on behalf of KnightBrook.

2. Newco Directors and Officers:

KnightBrook shall appoint 50% of the Board, and Cone and Boylston shall collectively appoint 50% of the Board. The officers shall include Cone as President, and Boylston as Executive Vice President.

3. Newco Revenue:

Newco will generate revenue either directly as an MGA/TPA, or as a percentage of profit realized by KnightBrook on Fronted and At Risk programs, as follows:

- 100% of MGA/TPA revenue;
- 25% of the profit realized by KnightBrook on the Fronted Program with Dallas National Insurance Company;
- 20% of the realized profit on all other Fronted Programs;
- 20% of the realized profit on all At Risk Programs.

DEFENDANT'S EXHIBIT

3 10/1/18 pc

Messrs. Cone & Hoyleston
September 1, 2011
Page 2 of 4

4. Payment of Profit Share:

Fronted Programs: Newco will be paid profit share percentages on all Fronted Programs at the end of each month in which premium which is subject to a fronting fee is written.

At-Risk Programs: Newco will be paid profit share percentages on all At-Risk Programs through a sliding scale, dependent upon the loss performance of the subject business. A portion of the profit share will be paid monthly, based upon a loss pick agreed to by the parties. The remaining portion of the profit share will be paid out quarterly over a period of time following the end of the first year of business, which will be based upon the inception-to-date actual loss ratio of the subject Program. Such profit sharing may be conditioned upon the achievement of productivity goals achieved by Newco, and subject to forfeiture upon termination of the relationship between the parties.

Realized Profit of KnightBrook will be the KBIC Gross Profit, as calculated in the examples on the accompanying spreadsheet.

5. Newco Expenses:

MGA/TPA: All expenses of Newco relating to MGA/TPA business will be borne by Newco. KnightBrook will fund Newco with startup expenses until Newco begins generating sufficient revenue to support its expenses. These startup expenses will be credited to KnightBrook before any profit split among Newco's ownership is made. Startup expenses are currently estimated at between \$500,000 and \$2,000,000, which amount may be fixed, modified, or supplemented in a mutually agreed-upon budget and business plan. Such expenses may be conditioned upon the achievement of productivity goals achieved by Newco.

Fronted and At Risk Programs: Costs and expenses of Newco relating to the oversight and management of Fronted and At Risk Programs will be borne by KnightBrook on a cost-reimbursed basis, and subject to agreed-upon budgets. Such expenses will be allocated among the various Programs and shall reduce the profitability of such Programs at the KnightBrook level prior to determining the Newco profit share.

6. Legal Fees:

In the event that Newco shall become subject to a legal action against it arising from the prior employment of any management employees of Newco by Companion Property & Casualty Insurance Company, or its parents or affiliates, Newco shall bear the expenses of defending such legal action. Prior to execution of the definitive agreements, KnightBrook shall be given opportunity to conduct such due diligence and legal analysis to satisfy itself as to the nature and extent of such potential legal liability.

7. Distribution of Newco Profits:

Disbursements of profits to the shareholders of Newco may be made as agreed-upon by the shareholders, no less often than annually, pro-rata with their respective shareholder interests. Newco will be subject to an annual financial audit.

Messrs. Cone & Boylston
September 1, 2011
Page 3 of 4

8. Programs:

Phase 1 Programs: It is anticipated that the initial Programs to be implemented will be the programs identified as:

1. Dallas National Fronting Programs, with MGA & TPA service;
2. All-Star Fronting and At Risk Programs;
3. DGU At Risk Programs;

Each Phase 1 Program will be subject to the approval of KnightBrook, who will diligently review each Program consistently with its established program underwriting protocols. Upon approval of each Program, KnightBrook will increase its capital and surplus in the amounts necessary to support each Program while maintaining KnightBrook's capitalization at levels sufficient to satisfy KnightBrook's regulatory requirements and its A-AM-Best rating. We anticipate that the requisite due diligence on the Dallas National Workers Comp Fronting Program shall begin immediately upon execution of this LOI and shall be completed prior to execution of the Definitive Agreements.

Additional Programs: Additional Programs presented to KnightBrook by Cone and Boylston, or to be presented to KnightBrook in the future by Newco, will also be supported upon the approval of KnightBrook on a Program by Program basis, in a manner consistent with KnightBrook's established program underwriting protocols.

9. Future Insurance and Reinsurance Participation:

In the event that Cone and Boylston shall form an insurance or reinsurance company, KnightBrook agrees that such company may participate in the reinsurance or fronting of the Programs, as may be mutually agreed-upon by the parties.

10. Additional Conditions:

- a. KnightBrook's satisfactory completion of its due diligence of the Phase 1 Programs prior to closing;
- b. KnightBrook's satisfactory completion of its due diligence of Cone and Boylston, to include, without limitation, background investigations, credit investigation, and personal and professional referrals;
- c. The negotiation and execution of the Definitive Agreements acceptable to KnightBrook, Cone, and Boylston, containing terms, conditions, representations and warranties and indemnification customary for transactions of this nature;
- d. Prior to the closing of this transaction, Cone and Boylston will conduct business operations in the ordinary course of business. In the event of a material adverse change in the subject Programs, Cone and Boylston will promptly notify KnightBrook;
- e. This LOI will automatically be withdrawn and cancelled on the earlier of: (1) 60 days following the execution of this LOI by Cone and Boylston, unless the parties mutually agree in writing to an extension of such date; (2) the execution of the Definitive Agreements; or (3) the mutual written agreement of the parties;

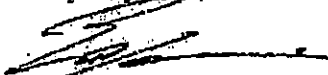
Messrs. Cone & Boylston
September 1, 2011
Page 4 of 4

- f. Neither party shall disclose the existence of this LOI, nor the pendency of our negotiations, to any media or public forum without the prior written consent of the other, except as may be required by applicable law, regulation or self-regulating body. The timing and content of any announcements, press releases or public statements concerning the proposed acquisition or the other transactions contemplated hereby will be by mutual agreement;
- g. Until the expiration of this LOI, Cone and Boylston agree they will not, individually or collectively, take any action to solicit or support any proposal or offer from, furnish any information to, or participate in any negotiations with any entity (other than KnightBrook) regarding movement of the Programs or the subject matter of this LOI, and any such negotiations currently in progress will be terminated or suspended during such period;
- h. The parties will pay their own costs and expenses incurred in connection with the proposed transactions, including all legal, accounting and financial advisory fees and expenses, whether or not the acquisition is consummated;
- i. This Letter is a statement of the intentions of the parties and, except for the provisions of Paragraphs 10.f, 10.g, 10.h, 10.i, and 10.j (which are intended to be binding), is not intended to be a legally binding agreement or to create any rights in favor of any of the parties with respect to the proposed asset purchase or the other transactions contemplated hereby, and no party shall take any action or fail to take action in detrimental reliance until the Agreement is prepared, approved, and signed by all authorized representatives of all parties involved. The obligations of the parties to consummate the transactions hereby shall be subject in all respects to the negotiation, execution and delivery of the agreements referred to above and to the satisfaction of the conditions contained therein, and none of the parties hereto shall have any liability to any of the others if the parties fail for any reason to execute agreements; and
- j. The parties agree that all information exchanged to date and information and knowledge gathered during the due diligence process will be kept confidential.

Upon the signing of this LOI by Cone and Boylston, KnightBrook is prepared to immediately commence due diligence and negotiation of the Definitive Agreements.

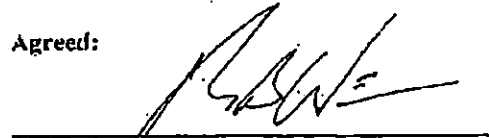
If this LOI is acceptable to you, please sign and return one copy to the undersigned within five (5) business days.

Very truly yours,



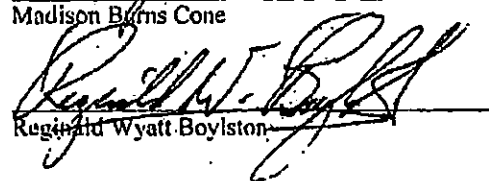
Eric D. Jarvis, President

Agreed:



Madison Burns Cone

9/2/11
Date



Reginald Wyatt Boylston

9/2/11
Date