

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

In re:

TAYLOR-WHARTON
INTERNATIONAL LLC¹, et al.,

Debtors.

Chapter 11

Case No. 09-14089 (BLS)
Jointly Administered

Hearing Date: May 25, 2010 at 11:30 a.m. (ET)

Objection Deadline: May 19, 2010 at 4:00 p.m. (ET)

Reply Deadline: May 21, 2010 at 4:00 p.m. (ET)

Re: Docket Nos. 303 & 346

**REPLY OF THE DEBTORS AND DEBTORS IN POSSESSION IN
FURTHER SUPPORT OF THEIR MOTION FOR AN ORDER UNDER
11 U.S.C. §1113(c) AUTHORIZING REJECTION OF CERTAIN
COLLECTIVE BARGAINING AGREEMENTS**

Taylor-Wharton International LLC (“TWI”), together with its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, offers this reply to the objection (the “Objection”) filed by the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “USW”) to the *Motion for Order Under 11 U.S.C. §1113(c) Authorizing Rejection of Collective Bargaining Agreements* filed on May 7, 2010 at Doc. No. 303 (the “Motion”).² In further support of the Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. As a result of negotiations during the last two weeks, the issues before this Court have narrowed considerably. The Debtors reached agreement with the USW to modify the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are: Taylor-Wharton International LLC (1577); TWI-Holding LLC (8154); Taylor-Wharton Intermediate Holdings LLC (6890); Alpha One Inc. (1392); Beta Two Inc. (1408); Gamma Three Inc. (1367); Delta Four Inc. (1320); Epsilon Five Inc. (1344); TW Cryogenics LLC (1713); TW Cylinders LLC (1665); Sherwood Valve LLC (1781); American Welding & Tank LLC (1945); and TW Express LLC (6414).

² All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the Motion.

terms of the AWT Agreement, and these modifications were ratified by a vote of the USW membership at the Fremont Facility. The Debtors and USW also agreed to the terms of a closing agreement with respect to the Harrisburg Facility. By virtue of these actions, the Debtors no longer request a termination of the AWT Agreement and the Harrisburg Agreement as part of this Motion.³

2. While most of the creditor constituencies recognize the gravity of the Debtors' financial predicament, one group – the hourly employees at the Debtors' Washington Facility – refuse to accept badly needed modifications to their labor agreement. Their repeated rejection of the Debtors' proposals is without good cause because the Debtors cannot effectively reorganize without eliminating the substantial operating losses at the Washington Facility.

3. The USW denies the necessity of the Debtors' requested modifications, but these words are belied by the USW's own actions. On April 9, 2010, the USW agreed to treat the Company's April 8, 2010 proposal as a tentative agreement, thereby validating the necessity of the Debtors' proposal. Thereafter, the USW entered into a closing agreement regarding the shutdown of the Harrisburg Facility, and the hourly employees of the Debtors' Fremont Facility voted to ratify a subsequent proposal for concessions.

4. While it is true that the Debtors can achieve a similar reduction in labor costs by transferring work from the Washington Facility, this option does not support the reorganization of the Debtors' business, especially when an alternative solution exists at this location. The fundamental purpose of chapter 11 is to reorganize the Debtors' business affairs to prevent the loss of jobs and the adverse economic effects associated with a liquidation of assets.

³ The Debtors intend to file a motion under Section 363 to approve the closing agreement for the Harrisburg Facility. The Debtors also plan to file a motion under Section 365 of the Bankruptcy Code to assume the AWT Agreement as modified by the parties.

Because more than 175 jobs will be lost if the Washington Facility is closed, and such jobs would be preserved if the Tentative Agreement is accepted, a shutdown does not advance Debtors' reorganizational efforts.⁴ For this reason, the Debtors have made extraordinary efforts to negotiate a consensual modification of the Sherwood Agreement with the USW. The refusal of the Washington Employees (as defined herein) to accept the Tentative Agreement, despite the ratification of similar proposals by other USW members, demonstrates that the refusal is without good cause. The Debtors therefore request that the Court grant their motion and authorize rejection of the Sherwood Agreement.

SUPPLEMENTAL BACKGROUND

5. Subsequent to filing the Motion, the Debtors continued to negotiate with the USW regarding modifications to all three Labor Agreements. On May 13 and 14, 2010, the Debtors sent revised proposals to the USW (the "May 13 Proposal"), and the USW agreed to take these proposals to the rank and file for ratification.

6. On May 16, 2010, hourly employees at the Washington Facility (collectively, the "Washington Employees") voted once again to reject the May 13 Proposal. *See Declaration of Leonard York in Support of the Debtors' Motion for an Order Under 11 U.S.C. § 1113(C) Authorizing Rejection of Collective Bargaining Agreements* ("York Declaration"); *Declaration of Toby Kreidler* ("Kreidler Declaration") [Doc. No. 346, Exhibits 2 and 3] at ¶ 15.

7. The hourly employees at the Fremont Facility (collectively, the "Fremont Employees") gathered the next day, May 17, 2010. The Fremont Employees voted to accept and

⁴ Obviously, if the modifications are not accepted and the Motion is not approved, the Debtors may have no choice but to transfer work from the Washington Facility to reduce its losses.

ratify the May 13 Proposal modifying the Freemont Agreement (the “Modified AWT Agreement”). See York Declaration; Kreidler Declaration at ¶ 15.

8. The USW also agreed to the terms of a closing agreement for the Harrisburg Facility (the “Closing Agreement”). Because the USW represents that ratification of the Closing Agreement is not required under the rules, no further employee action is necessary for the parties to enter into the Closing Agreement. See York Declaration; Kreidler Declaration at ¶ 13.

9. The Debtors accepted the Closing Agreement and Modified AWT Agreement and hereby withdraw that portion of the Motion that seeks to reject the AWT Agreement and Harrisburg Agreement. See York Declaration.

10. On May 19, 2010, the Debtors withdrew the May 13 Proposal as it pertains to the Sherwood Agreement and the Washington Employees. See York Declaration; Kreidler Declaration at ¶ 16.

11. Because the Washington Employees failed to accept the May 13 proposal, the Debtors are prosecuting this Motion on the basis of the Tentative Agreement.

ARGUMENT

I. THE WASHINGTON EMPLOYEES REJECTED THE DEBTORS’ PROPOSALS WITHOUT GOOD CAUSE.

12. Consistent with its obligations under Section 1113(b)(2), the Debtors did not stop negotiations once the Motion was filed. Realizing that their interests are best served by negotiating voluntary concessions with the union workforce, the Debtors modified their proposal and endeavored to reach a consensual modification of the Labor Agreements. These efforts were fruitful as the Debtors agreed to the terms of the Closing Agreement and Modified AWT Agreement with the USW.

13. Unfortunately, a similar result was not obtained at the Washington Facility. Despite the backing of the USW Bargaining Committee and the acceptance of a similar proposal by their counterparts in Fremont, the Washington Employees rejected the Tentative Agreement and the Debtors' May 13 Proposal. Considering the necessity of the proposal and the sacrifices made by other employees, the USW's rejection of the Tentative Agreement was without good cause.

II. THE COST REDUCTIONS SOUGHT BY THE DEBTORS ARE NECESSARY FOR AN EFFECTIVE REORGANIZATION.

14. There can be no dispute that the wage and benefit concessions contained within the Tentative Agreement are necessary for a successful reorganization of the Debtors. Through numerous proposals, information exchanges, and negotiation sessions, the Debtors consistently reported substantial operating losses at the Washington Facility dating back to 2007. The Debtors' financial projections showed that without the Tentative Agreement, the Washington Facility could not continue to operate.⁵ The USW never challenged these findings, nor did it produce conflicting evidence. Because operating losses cannot be tolerated over the long-term (especially a period of more three years), the Debtors had no choice but to reduce costs at the Washington Facility.

15. The USW cannot deny the necessity of the requested modifications after acknowledging that mid-term changes to the Labor Agreements were essential on repeated

⁵ Aside from a passing reference to the Debtors' financial projections, the USW has produced no evidence suggesting that the Washington Facility can become profitable without the requested concessions. Moreover, the Debtors' projections do not support the USW's claims. *See* Objection at ¶ 6; Kriedler Decl. ¶ 10. Although the USW cites to one document projecting a positive EBITDA for the Washington Facility in 2010 without employee concessions, this does not portray the profitability of the site. The EBITDA calculation does not include the cost of insurance for the Washington Facility, which is a significant expense considering the enormous product liability risks associated with the Debtors' products. After accounting for these expenses, as well as needed capital improvements for the site and a reasonable return on capital, the Washington Facility shows a negative net income.

occasions. By agreeing to treat the April 8, 2010 proposal as the Tentative Agreement, the USW Bargaining Committee concluded that the modifications were acceptable, pending a ratification vote by the rank and file members. If the modifications were unnecessary, as the USW now suggests, the Fremont Employees would never have ratified the Debtors' proposal. It is unfathomable to suggest that the Fremont Employees would voluntarily provide concessions if such modifications were not critical to the survival of the Fremont Facility. The ratification vote at Fremont underscores both the gravity of the Debtors' financial condition and the necessity of the labor agreement modifications.

16. The USW suggests that the Sherwood Agreement cannot be rejected when an alternative – closing the Washington Facility – can similarly reduce the Debtors' labor costs. This alternative, however, would necessitate a liquidation of the site rather than foster a reorganization of Washington Facility. It is widely recognized that “the fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.” N.L.R.B. v. Bildisco and Bildisco, 465 U.S. 513, 528 (1984). Accordingly, bankruptcy courts have emphasized the need to preserve jobs and avoid the adverse economic consequences that ensue whenever a facility is closed. See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820326, *14 (Bankr. D. Del. 2001) (noting a substantial public interest in preserving jobs, economic benefits to the surrounding area, and going concern value); In re Rusty Jones, 110 B.R. 362, 375 (Bankr. N.D. Ill. 1998). (“The fundamental purpose of Chapter 11 is to enable a distressed business operation to reorganize its affairs in order to prevent the loss of jobs and the adverse economic effects associated with disposing of their assets at their liquidation.”); In re Envirodyne Industries, Inc., 1993 WL 566565, *37 (Bankr. N.D. Ill. 1993) (“The principal purpose of Chapter 11 reorganizations is to

prevent loss of jobs and other adverse economic effects associated with cessation of the operations of a business.”); In re Bjolmes Realty Trust, 134 B.R. 1000, 1011 (Bankr. D. Mass. 1991) (“chapter 11 reorganization requires a balancing of the economic and social interests of those affected. There are three constituent groups in a reorganization - creditors, owners and those dependent upon the debtor such as employees, suppliers and customers. Although creditors have a compelling interest as the prime beneficiaries of the bankruptcy estate, all these interests must be considered.”).

17. In keeping with these principles, the Debtors seek to reorganize their businesses while preserving as many jobs as possible. Nevertheless, the realities of the Debtors’ financial condition mandate that the Debtors significantly reduce their labor costs to remain competitive and enhance the likelihood of a successful reorganization. To achieve these savings at the Washington Facility, the Debtors had only two credible options. They could either negotiate a modification of the Sherwood Agreement, or transfer work from Washington to a production facility with lower costs.

18. Although it makes no difference to the majority of the Debtors’ creditors which alternative is pursued, the Debtors took into consideration the interests of its employees. Because a plant closing would cause the loss of at least 120 hourly and 55 salaried jobs, thereby inflicting a greater harm than simply modifying the existing labor agreement, the Debtors further the reorganizational purpose of the case by negotiating for wage concessions that will preserve existing jobs.

19. The entry of an order rejecting the Sherwood Agreement should not end the negotiations between the parties. Rejection does not alter the USW’s status as bargaining representative for the Washington Employees. One consequence of a rejection is that the

Debtors can offer employment to the Washington Employees on the terms of the Tentative Agreement. Additionally, the Debtors and the USW can continue to negotiate for a consensual modification of the Sherwood Agreement. By the USW's own admission, either one of these options is preferable to a loss of jobs caused by a transfer of work. See Objection at ¶ 15.

20. The Debtors would prefer not to reject the Sherwood Agreement. The negotiation history shows that the Debtors were determined to reach a modified contract with the USW. After extending at least seven different proposals, the Debtors spent countless hours in negotiations. Although the Debtors' final proposals were accepted by both the USW Bargaining Committee and the Fremont Employees, the rank and file members in Washington rejected all of the Debtors' reasonable proposals. Because the Washington Employees rejected the modified agreement without explanation or any other response, the Court can only conclude that such rejection was without good cause, and it should authorize the Debtors to reject the Sherwood Agreement.

III. THE COURT HAS DISCRETION TO GRANT THE DEBTORS AUTHORITY TO REJECT THE SHERWOOD AGREEMENT.

21. Without citing any case law to support its position, the USW incorrectly maintains that a debtor cannot be given prospective authority to reject a collective bargaining agreement.⁶ Section 1113 does not impose any requirement for the immediate rejection of a collective bargaining agreement. Upon entry of an order under Section 1113, a debtor can be afforded a reasonable opportunity to implement the rejection so as to comport with the debtor's overall reorganization efforts.

⁶ Although the USW cites to a court transcript on this subject in the United Airlines bankruptcy case, the discussion never resulted in a written decision and the parties did not previously brief the matter. In re UAL Corp., No. 02-48191 (Bankr.N.D.Ill. May 20, 2005). As a result, this reference provides no value in this proceeding. The Debtors also have not found any case that supports USW's reading of 11 U.S.C. § 1113.

22. The Court may enter an Order authorizing the Debtors to reject the Sherwood Agreement upon 10-days' notice to the USW. Nothing in Section 1113 requires the immediate rejection of a collective bargaining agreement, nor does it prohibit the Court from giving the Debtors prospective authority upon delayed notice.

23. Courts have noted, at least in dicta, that Section 1113 allows the court to “authorize” rejection. United Food & Commercial Workers Union, Local 770 v. Official Unsecured Creditors Committee (In re Hoffman Bros. Packing Co.), 173 B.R. 177, 183 (B.A.P. 9th Cir. 1994) (“It is apparent that § 1113 authorizes a bankruptcy court to authorize rejection of a CBA provided that a good faith bargaining effort takes place.”) (emphasis added); In re Energy Insulation, Inc., 143 B.R. 490, 495 (N.D.Ill. 1992) (“Section 1113 sets forth the procedure whereby a debtor can obtain authorization to reject or modify the terms of a collective bargaining agreement.”) (emphasis added).

24. A court should look no further than Section 1113(d) to find instances where a debtor is given authority to reject a collective bargaining agreement in its discretion. Specifically, the Bankruptcy Code provides that if a ruling on a Section 1113 motion is not made within 30 days of the hearing date (or within such additional time as the parties may agree), then the debtor “may terminate or alter any provision of the collective bargaining agreement” pending the ruling. 11 U.S.C. § 1113(d)(2). Certainly if Section 1113(d) authorizes an “elective” termination of a collective bargaining agreement, there is no reason to deprive the debtor of similar discretion after a court has carefully reviewed the evidence and determined that such relief is in the best interests of the bankruptcy estate.

25. It is quite common for bankruptcy courts to give debtors authority to take an action, including the assumption or rejection of executory contracts, without requiring that the

debtor actually do so. See, e.g. In re Zenith Industrial Corp., 319 B.R. 810 (Bankr.Del. 2005) (addressing essential vendor motion which authorized, but did not require debtors to make payments to critical suppliers). In fact, this Court has previously given the Debtors authority to take certain actions without compelling them to actually do so. See Order Pursuant to 11 U.S.C. §§ 105(a) and 363 Authorizing the Payment of Certain Prepetition Claims of Critical Vendors (Doc. No. 38); Order Pursuant to 11 U.S.C. §§ 105(a), 503(b), and 507(a) Authorizing Debtors to Pay Certain Pre-Petition Claims of Suppliers and Vendors of Goods Entitled to Administrative Priority (Doc. No. 37); Order Pursuant to 11 U.S.C. §§ 105(a), 363, and 507(a) Authorizing the Debtors, in their Discretion, to (I) Pay Certain Pre-Petition Employee Wages, Compensation and Employee Benefits and Continue Payment of Wages, Compensation and Employee Benefits in the Ordinary Course of Business; and (II) Authorizing the Debtors' Banks and Other Financial Institutions to Process, Honor and Pay Certain Checks Presented for Payment and to Honor Certain Fund Transfer Requests (Doc. No. 39); Order Pursuant to Sections 105(a), 363(b), 541, and 507(a)(8) of the Bankruptcy Code Authorizing (A) Payment of Certain Prepetition Taxes and (B) Financial Institutions to Process and Cash Checks and Transfers Related Thereto (Doc. No. 41). There is no reason – and certainly no case law – usurping discretion in Section 1113 proceedings. Furthermore, there is nothing in Section 1113 or elsewhere which commands a debtor to reject a collective bargaining agreement immediately upon receipt of a court order. Because the Court has authority to issue orders that are necessary or appropriate to carry out the provisions of the Bankruptcy Code, and in the absence of any language restricting the relief it can provide, the Court should grant this Motion and authorize the Debtors to reject the Sherwood Agreement upon notice to the USW. To the extent the Court has any doubt about its authority to grant the Debtors' proposed order for authority to reject the

Sherwood Agreement, however, then the Debtors respectfully request that the Court reject the labor agreement effective as of the date such order becomes final and nonappealable.

IV. THE TENTATIVE AGREEMENT IS FAIR AND EQUITABLE.

26. The Tentative Agreement is fair and equitable because all constituencies are sharing in the burden of the reorganization. The USW argues that because its membership will suffer more than others, the Court cannot find the proposal to be fair and equitable.⁷ The “fair and equitable” requirement does not demand identical treatment. Instead, courts examine whether the debtor’s proposal will spread the burden of saving the company “among all affected parties” so that the burden will not be disproportionately placed on any one group. Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of America, 791 F.2d 1074, 1091 (3d Cir. 1986); In re Century Brass Prods. Inc., 795 F.2d 265 (2d Cir. 1986) (the debtor should spread the burden “to every constituency while ensuring that all sacrifice to a similar degree”).

27. As shown in the Motion, every constituency is bearing part of the Debtors’ reorganizational burden. The Debtors’ plan of reorganization calls for the infusion of \$12,000,000 of new capital into the reorganized company, and it will cancel approximately \$120,000,000 in debt. Similarly, all of the Debtors’ employees are affected by the reorganization. Many of the Debtors’ salaried personnel have been laid off and those that remain have had their salaries frozen and now pay increased amounts for their benefits. The Debtors’ other hourly employees have also borne the burden of the reorganization. The employees at the Harrisburg Facility lost their jobs when the facility was closed, and the Fremont Employees voluntarily agreed to wage and benefit concession to preserve their jobs.

⁷ The Debtors do not concede that the Washington Employees would assume greater wage and benefit concessions than the Debtors’ other employees, and they reserve all rights to present evidence refuting this contention at the hearing on the Motion.

28. An unfair and inequitable result occurs only if the Court refuses to reject the Sherwood Agreement. The hourly employees at the Fremont Facility voluntarily accepted wage and benefit concessions for the overall benefit of the Debtors' businesses. Absent relief from this Court, hourly employees at the Washington Facility will not share in the sacrifice. To the contrary, their wage and benefit rates will be unaffected. In short, they will effectively be the only employees whose interests are not impaired. Because the record contains undisputed evidence showing the sacrifices made by every other creditor constituency, the Washington Employees cannot, with good cause, reject the Tentative Agreement to avoid the burdens of the Debtors' reorganization.

V. THE DEBTORS PROVIDED ACCURATE INFORMATION NECESSARY TO EVALUATE THE PROPOSALS.

29. The USW suggests that the Debtors failed to provide adequate information because they occasionally revised their cost projections with supplemental data. Through this argument, it appears that the USW would prefer to rely upon stale and outdated information in lieu of receiving periodic updates. In the interests of engaging in good faith negotiations, the Debtors ensured that the USW received the most accurate financial information available.

30. The debtor is not charged with guarantying the accuracy of its information at all times. To the contrary, the Bankruptcy Code acknowledges that financial projections often change over time. See 7 Collier, Bankruptcy at ¶ 1113.06[1][b] (16th rev. ed. 2010) (“Congress must have intended that the court make its finding based on the best, albeit fragmentary information available at the time of the hearing on rejection”). Accordingly, Section 1113 requires only that a debtor's proposal should contain the most complete and reliable information “available at the time of such proposal.” 11 U.S.C. § 1113(b)(1)(A). If circumstances change or certain assumptions do not materialize, then it is expected that a debtor's financial analysis may

require modification. Courts have similarly construed the information sharing obligations under Section 1113 quite narrowly. See, e.g. In re Amherst Sparkle Mkt., Inc., 75 B.R. 847, 850, 852 (Bankr.N.D.Ohio 1987) (information sufficient even though its original provision consisted solely of unaudited financial data which contained errors); In re Royal Composing Room, Inc., 62 B.R. 403, 412-13 (Bankr. S.D.N.Y. 1986), *aff'd* 78 B.R. 671 (2d Cir. 1988).

31. More importantly, the USW does not deny that the Debtors responded to each and every information request it made during the negotiations. The Debtors provided numerous documents, financial projections and other information responsive to the USW's inquiries. There is nothing in the record suggesting that the USW lacked the information necessary to evaluate the Debtors' proposals. Moreover, there is nothing to suggest the information supplied by the Debtors was not accurate at the time it was provided. Because the Debtors satisfied their obligations under Section 1113(b)(2)(B), the USW's complaints are without merit and should be overruled.

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Dated: May 21, 2010
Wilmington, Delaware

Respectfully submitted,

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Debtors and Debtors-in-Possession

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

In re:

TAYLOR-WHARTON
INTERNATIONAL LLC, *et al.*, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-114089 (BLS)
(Joint Administration Pending)

**DECLARATION OF LEONARD YORK IN SUPPORT OF
THE DEBTORS' MOTION FOR AN ORDER UNDER 11 U.S.C. § 1113(C)
AUTHORIZING REJECTION OF COLLECTIVE BARGAINING AGREEMENTS**

I, LEONARD YORK, do hereby declare, under penalty of perjury, that:

1. I am the Chief Financial Officer ("CFO") of the debtor-in-possession, Taylor-Wharton International LLC ("TWI") and its debtor-affiliates (together with TWI, the "Debtors"), and have held that position since October 30, 2009. Prior to assuming my position as CFO, I served as a consultant to the Debtors for the past several months.

2. As the CFO, I am one of the officers of the Debtors responsible for devising and implementing the Debtors' business plans and strategies and overseeing the Debtors' financial, operational, and other business affairs. In addition, I am responsible for supervising the maintenance of the Debtors' books and records. I am also responsible for the Debtors' finances and restructuring efforts.

3. I submit this declaration (the "Declaration") in support of the *Motion for Order Under 11 U.S.C. § 1113(c) Authorizing Rejection of Collective Bargaining Agreements*

¹ The Debtors in these cases, along with the last four digits of each Debtors' federal tax identification number are: Taylor-Wharton International LLC (1577); TWI-Holding LLC (8154); Taylor-Wharton Intermediate Holdings LLC (6890); Alpha One Inc. (1392); Beta Two Inc. (1408); Gamma Three Inc. (1367); Delta Four Inc. (1320); Epsilon Five Inc. (1344); TW Cryogenics LLC (1713); TW Cylinders LLC (1665); Sherwood Valve LLC (1781); American Welding & Tank LLC (1945); and TW Express LLC (6414). Each of the Debtors has a principal place of business at 4817 Old Gettysburg Road, Mechanicsburg, Pennsylvania 17055.

(the “Motion”). Any capitalized terms not expressly defined herein are intended to have the meanings ascribed to them in the Motion. Except as otherwise indicated, all matters set forth in this Declaration are based upon: (a) my personal knowledge; (b) my review of the Debtors’ business records and other relevant documents; (c) my experience and knowledge of the Debtors’ business and financial condition; (d) my opinion, and/or (e) information supplied to me by other members of the Debtors’ management and the Debtors’ professional advisors. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

4. On November 18, 2009 (the “Petition Date”), the Debtors each filed voluntary petitions (the “Petitions”) for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in an effort to preserve and maximize the value of their Chapter 11 estates.

**Overview of the Debtors’ Businesses Operations,
History and Capitalization**

5. The Debtors, through their operating companies, are a leading global manufacturer and provider of propane and cryogenic tanks, high and low pressure cylinders, valves and pressure gauges for gas applications.

A. Corporate Structure and the Harsco Acquisition

6. TWI is a Delaware limited liability holding company that wholly owns, through separate Delaware corporations, five distinct subsidiary limited liability companies, each of which is engaged in specific manufacturing operations generally engaged in the field of gas technology (the “Operating Companies”).

7. TWI acquired its various businesses from Harsco Corporation (“Harsco”) pursuant to an Asset and Stock Purchase Agreement dated as of November 27, 2007 (the “Asset Purchase Agreement”), pursuant to which TWI paid Harsco \$300 million in cash and agreed to

pay up to an additional \$40 million on a contingent “earnout” basis, subject to various adjustments, including a traditional post-closing working capital adjustment.

8. Thereafter TWI, through the Operating Companies, commenced operations within its current corporate structure. Certain managerial and related financial functions are centralized at the TWI level, although each Operating Company has a distinct operation. More specifically, the former Harsco businesses are now organized among the TWI Operating Companies as follows:

TW Cryogenics LLC (“Cryogenics”). Cryogenics has operations in Theodore, Alabama and Jesup, Georgia, and its wholly-owned subsidiaries have operations in China, Malaysia, Slovakia, Germany and Australia. Cryogenics is engaged principally in the manufacturing of cryogenic portable and bulk storage tanks. The products are used for storing cryogenic liquids, providing economical solutions for transporting, storing and dispensing liquefied gasses, medical applications, beverage carbonation applications and other related storage and delivery solutions. Customers for these products include liquid gas distribution and production companies, cryoscience equipment distributors, carbonation system retailers and distributors, and others engaged in the cryogenics business.

Sherwood Valve LLC (“Sherwood”). Sherwood has manufacturing facilities in Washington, Pennsylvania, Niagara Falls, New York and Cleveland, Ohio and is the leading valve producer for the industrial gas industry. Sherwood supplies valves to other TWI Operating Companies, with significant inter-affiliate sales. Among its products are industrial gas valves, propane tank valves and regulators, air conditioning and refrigeration products and SCBA, life support, SCUBA and oxygen valves. Customers include multiple tank and cylinder manufacturers (including the affiliated Operating Companies), gas packages, refrigeration rack manufacturers, air conditioning manufacturers, SCBA, SCUBA and medical industry manufacturers.

American Welding & Tank LLC (“AWT”). AWT has manufacturing facilities in Jesup, Georgia, Fremont, Ohio, Bloomfield, Iowa, Crossville, Tennessee and West Jordan, Utah and is a world leader in the design, manufacturing, repair, refurbishment and conversion of propane tanks for residential commercial, industrial and agricultural applications. AWT’s products include bulk steel above-ground and underground propane storage tanks as well as tanks designed for anhydrous ammonia. Customers for manufactured and refurbished products include nationwide and regional propane distributors.

TW Express LLC (“TW Express”). TW Express is a distribution company which primarily serves AWT and holds the transportation assets and leases of TWI.

9. TWI also has a fifth operating business, TWI Cylinders LLC (“Cylinders”), which is engaged in the manufacturing of high and low pressure cylinders. Cylinders previously conducted operations in Harrisburg, Pennsylvania and Huntsville, Alabama, but the Harrisburg facility was closed in February 2010. The Debtors planned to sell the Cylinders business by the end of 2009 and use the proceeds to reduce its debt. Because the sale did not occur, the Debtors are now in the process of conducting an orderly liquidation of the Harrisburg facility and a sale of the Huntsville, Alabama business.

B. Pre-petition Capitalization

10. As of the Petition Date, two levels of secured debt encumbered the Debtors’ assets. The Debtors’ have \$73.9 million currently outstanding under a senior secured debt facility, in addition to \$7.1 million of undrawn letters of credit (the “Senior Debt”) pursuant to a Credit Agreement, dated as of December 7, 2007. The Debtors also have \$73.3 million outstanding on senior subordinated secured notes plus accrued interest (the “Mezzanine Debt”) issued pursuant to the Note Purchase Agreement, dated as of December 7, 2007.

11. The Senior Debt required the Company to maintain interest rate protection for at least three years with a notional amount of at least \$64 million. On December 24, 2007, the Company entered into an interest rate swap agreement with a notional amount of \$75 million and a term of three years. On January 17, 2008, the Company entered into an interest rate cap and collar agreement with a notional amount of \$25 million and a term of three years. The unrealized loss related to these instruments as of the Petition Date is \$3.9 million.

12. In the event of default, the agent for the Senior Debt (the “Agent”) may terminate all loan facilities under the Credit Agreement and may accelerate all unpaid principal

and all accrued and unpaid interest thereon. All of the Debtors' obligations to the Agent and the holders of the Senior Debt under the Credit Agreement are secured by liens on and security interests in substantially all of the now existing and hereafter acquired real and personal property of the Debtors.

13. The relationship between the holders of the Senior Debt and the Mezzanine Debt is governed by a Subordination and Intercreditor Agreement, dated as of December 7, 2007 (the "Intercreditor Agreement"). The Intercreditor Agreement provides, among other things, that the Senior Debt must be paid in full before the payment of any and all of the Mezzanine Debt can be repaid.

14. As of the Petition Date, the Debtors had incurred an estimated \$13.5 million in unpaid trade debt to their suppliers and other vendors. The Debtors also have \$55 million of outstanding obligations pursuant to unsecured PIK Notes (the "Unsecured Notes") which are contractually subordinated in right of payment to the Senior Debt and the Mezzanine Debt and structurally subordinated to most of the Debtors' other creditors.

C. Events Leading to the Debtors' Bankruptcy Filing.

15. A number of macroeconomic factors related to the global economic downturn are the primary cause of a steep decline in the Debtors' operating revenues and their attendant need to restructure. The Debtors' revenues have declined from approximately \$404 million in 2008 to approximately \$237 million in 2009. The Debtors collectively lost \$42.1 million in 2008 and \$17.6 million 2009, and have continued to lose money in the first quarter of 2010.

16. As of April 1, 2009, the Debtors were in covenant default with respect to the Senior Debt and also were in payment default with respect to the Mezzanine Debt for having

missed an interest payment. On April 24, 2009, the holder of the Senior Debt advised TWI that it had exercised its right to sweep excess cash and block the transfer of additional funds from the Debtors' accounts. Thereafter, TWI repaid approximately \$21 million in cash which had been drawn under the revolving credit facility portion of the Senior Debt and the Senior Lender released the blockage of TWI's accounts to the extent necessary to allow TWI to operate under a budget agreed upon by the Senior Lender. The Debtors and Senior Lender entered into a Forbearance Agreement and, during the months that followed, the Debtors and the holders of the Senior Debt and the Mezzanine Debt negotiated the terms of the financial restructuring which is described below.

D. Terms of the Debtors' Financial Restructuring

17. The Debtors diligently evaluated a number of options to address their financial issues. Those efforts included sharing information with and engaging in discussions with a variety of the Debtors' stakeholders with the goal of restructuring the Debtors' balance sheet to bring it into line with the Debtors' current debt servicing capabilities. These discussions resulted in an agreement on the terms of a financial restructuring between the Debtors and the holders of all of their Senior Debt and Mezzanine Debt and a majority of their equity interests.

18. On December 4, 2009, the Debtors filed their Disclosure Statement in Support of Joint Plan of Reorganization of Taylor-Wharton International LLC and its Affiliated Debtors Under Chapter 11 of the United States Bankruptcy Code (the "Disclosure Statement") which contained the Debtors' proposed plan of reorganization (the "Plan").

19. The terms of the Debtors' Plan provide for the investment of \$12 million of new capital and the cancellation of an aggregate of \$120 million in debt as follows: (i) the Senior Debt will be restructured into a \$20 million revolving credit facility, a \$30 million Senior

Term A Facility (collectively, “Term A Debt”), and a \$39 million Term B Facility (“Term B Debt”); (ii) the \$12 million of new capital will be invested as payment-in-kind debt (the “Investor PIK Debt”), which will be subordinate to the Term A Debt and pari passu with the Term B Debt; (iii) all of the Mezzanine Debt and Unsecured Notes will be cancelled; (iv) the holders of the Mezzanine Debt will receive the right to purchase not less than one-half of the principal amount of the Investor PIK Debt; and (v) 7% of the Debtors’ reorganized equity also will be issued pro rata to the holders of the Mezzanine Debt and the balance will be issued pro rata to the purchasers of the Investor PIK Debt, to be allocated as agreed among them.

20. The holders of all of the Senior Debt and Mezzanine Debt voted to accept the terms of the Plan.

21. On May 12, 2010, this Court held a hearing on confirmation of the Plan, and with the USW’s consent, took the matter under advisement pending the hearing on the Debtors’ Motion.

The Debtors’ Financial Projections

22. The parties’ agreement to financial restructuring described in paragraph 19 above was based on certain projections (the “Financial Projections”) that were included as Exhibit 4 to the Disclosure Statement filed in connection with the Plan. Those Financial Projections were based upon the best available information at that time.

Financial Conditions at Harrisburg, Sherwood, and Fremont

23. Approximately 380 of the Debtors 750 employees in the United States are represented by labor unions (“Unionized Employees”). Of that number, 330 are represented by the USW. The terms of employment for the Unionized Employees are governed by 4 separate collective bargaining agreements (the “CBAs”). Three of the CBAs involve members of the

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (the “USW”) and cover the following facilities:

a. Agreement between Sherwood Valve, LLC (“Sherwood”) and USW Local 7139-02 dated August 26, 2008 (the “Sherwood Agreement”), regarding the terms and conditions of employment at Sherwood’s Washington, Pennsylvania facility (the “Washington Facility”).

b. Agreement between American Welding & Tank, LLC (“AWT”) and USW Local 1915 dated May 1, 2009 (the “AWT Agreement”), regarding the terms and conditions of employment at AWT’s Fremont, Ohio facility (the “Fremont Facility”).

c. Agreement between TWI Cylinders LLC (“Cylinders”) and USW Local 1688-31 dated November 20, 2007 (the “Cylinders Agreement” and, collectively with the Sherwood Agreement, and the Fremont Agreement, the “Labor Agreements”), regarding the terms and conditions of employment at Cylinders’ Harrisburg, Pennsylvania facility (the “Harrisburg Facility” and, collectively with the Sherwood Facility, and the Fremont Facility, the “Facilities”).

The fourth CBA is between Taylor-Wharton Cryogenics LLC and Local #441 of the Sheet Metal Workers International Association, dated November 15, 2000, regarding the terms and conditions at the Debtors’ plant in Theodore, Alabama.

24. As discussed below, the Debtors have reached a consensual restructured arrangement with all of the above unions except for the Local 7139-02 at Sherwood’s

Washington Facility which has 55 salaried employees and 121 hourly employees represented by the USW.

25. As noted above, the Debtors lost significant money in 2008 and 2009 and continued to lose money in the first quarter of 2010. Sherwood's Washington Facility, AWT's Fremont Facility and Cylinders' Harrisburg Facility have contributed to the Debtors' losses and each have lost significant sums since the 2007 acquisition from Harsco. To stop the ongoing losses at these Facilities, the Debtors were forced to cease operations at Cylinders' Harrisburg Facility and to reduce costs at Washington and Fremont. The Debtors recently reached an agreement with the USW regarding the effects of the shutdown at Cylinder's Harrisburg Facility, and the rank and file at AWT's Fremont Facility have agreed to a new arrangement with the Debtors that will help return that unit to profitability. Absent a restructuring of the Labor Agreement at the Washington Facility, the Debtors will be forced to take other actions to assure viability of those operations which could include closing some or all of Washington.

26. To address the ongoing losses at the Washington Facility, management of the Debtors immediately reduced overhead at the Washington Facility by, among other things, eliminating salaried personnel and by freezing the pay of and increasing the portion of healthcare premiums paid by the remaining salaried employees.

27. Notwithstanding the above changes, the Washington Facility lost \$8.2 million in 2009 and had an EBITDA loss of \$4.1 million for the year. In the first quarter of 2010, Sherwood's Washington Facility lost \$424,000 from operations and lost \$299,000 in EBITDA without consideration of an extraordinary one-time gain, and lost \$43,000 after consideration of that gain.

28. As part of the cost reduction process at Washington and Fremont, in February 2010, the Debtors commenced negotiations with the USW to restructure the Labor Agreements at the Washington Facility and Fremont Facility.

Good Faith Bargaining and Proposals To USW

29. For its part, at the commencement of bargaining, the USW formed a committee to negotiate with the Debtors. The USW bargaining committee was made up of the union officers and certain hourly employees from each of the Sherwood, Fremont and Harrisburg local unions as well as representatives of the USW's International office. In addition, the bargaining committee included legal and financial personnel from the USW's International headquarters in Pittsburgh, Pennsylvania (collectively, the "USW Bargaining Committee").

30. The Debtors contacted the USW in January 2010 to advise it that they would need certain concessions from the USW with respect to the Washington and Fremont Labor Agreements in order for those plants to remain viable.

31. On January 29, 2010, the USW delivered to Debtors' counsel a written request containing three full pages of document and other information that the USW claimed it needed to help it prepare for discussions with the Debtors. Specifically, the USW sought detailed information concerning the Debtors' historical financial performance and corporate structure, income statements and balance sheets, comparisons of labor costs between the Debtors' union and non-union facilities, and detailed lists of all products made and markets served. The USW also requested detailed human resource information for each of the USW represented units, including unit census lists, health care plan descriptions and cost breakdowns associated therewith, and pension data.

32. The Debtors provided responses to all of the USW's information requests, and the Debtors and their professionals made themselves available to the USW and/or its professionals to explain the responses. The Debtors provided the USW with the business plans, models, and financial and operating data underlying each of the Debtors' proposals. The Debtors will continue to respond to all additional reasonable requests for information by the USW.

33. On February 8, 2010, the Debtors and the USW (through the USW Bargaining Committee) met by conference call (because of the weather) to go over the Debtors' February 8th Proposal. The parties also met to discuss various proposals on March 16 & 17, March 30 & 31, and April 1. Additionally, the parties had numerous conference calls and conducted local plant meetings during this time.

34. During the negotiations, the Debtors made not less than seven proposals (the "Proposals") to the USW under Section 1113. The USW offered various counter-proposals to the Debtors' Proposals. A summary and timeline of the Proposals and counter-proposals exchanged between the parties is set forth below.

<u>Company Proposals to USW</u>	<u>USW Proposals to Company</u>
February 8, 2010	March 16, 2010
March 17, 2010 (first proposal)	March 17, 2010
March 17, 2010 (second proposal)	
March 31, 2010	March 31, 2010
April 1, 2010	April 5, 2010
April 6, 2010	April 8, 2010
April 8, 2010	

35. The Proposals provided by the Debtors were based on the Debtors' most recent financial projections and other information relevant to the proposals.

36. After all of these rounds of bargaining, on April 8, 2010 the Debtors made a fully comprehensive and integrated proposal for dealing with the USW issues at Washington,

Fremont, and Harrisburg. On April 9, 2010, the USW advised the Debtors that it would treat the Debtors' April 8 Proposal as a tentative agreement ("Tentative Agreement"), subject to ratification by the Local Unions.

37. The Tentative Agreement incorporated the following significant terms, among others:

The Tentative Agreement provided for a lock and freeze of the Pension Plans covering the USW represented employees at each of Washington, Fremont and Harrisburg. This proposal was a change by the Debtors from their initial February 8, 2010 proposal which contemplated a termination of those Pension Plans,

The Tentative Agreement provided the USW represented employees with a choice of healthcare plans. This proposal was a change from the Debtors' initial February 8, 2010 proposal which provided for a single healthcare plan similar to the one in effect for all other employees of TWI. And the Tentative Agreement provides for a cap on increases of a USW employee's share of the cost of healthcare, something not available to other employees of the Company.

The Tentative Agreement extended the term of each of the Washington Agreement and the Fremont Agreement and provided for wages increases in April, 2012, and April 2013.

The Tentative Agreement had other provisions benefiting each party such as work scheduling flexibility for the Debtors, the freezing of vision and dental costs for employees at Washington and Fremont and the payment of severance to and the continuation of healthcare for a limited time for laid-off employees at Harrisburg.

38. As of May 7, 2010, the USW Locals at the Fremont Facility and Washington Facility failed to ratify the Tentative Agreement. Consequently, the Motion was filed with this Court seeking to reject the Labor Agreements.

39. Subsequent to filing the Motion, the Debtors continued to negotiate with the USW regarding modifications to all three Labor Agreements. On May 13 and 14, 2010, the Debtors sent revised proposals to the USW (the "May 13 Proposal"), and the USW agreed to take these proposals to the rank and file for ratification.

40. On May 16, 2010, hourly employees at the Washington Facility voted to reject the May 13 Proposal.

41. On May 17, 2010, the hourly employees at the Fremont Facility voted to accept and ratify the May 13 Proposal modifying the Fremont Agreement.

42. The USW also agreed to the terms of a closing agreement for the Harrisburg Facility. I was advised by the USW that ratification of the Closing Agreement is not required.

43. On May 19, 2010, the Debtors withdrew the May 13 Proposal as it pertains to the Sherwood Agreement and the employees at the Washington Facility.

44. As of the date hereof, the USW failed to provide any further proposals to the Debtors regarding the Washington Facility.

45. In light of the Debtors' financial situation, the labor cost savings that would result from the modifications set forth in the Tentative Agreement are important for a successful reorganization at Washington. The Washington Facility can survive only if it becomes cost competitive.

46. The labor cost savings reflected in the Tentative Agreement are necessary even in light of all other cost cutting efforts undertaken by the Debtors at Washington.

47. Salaried and management employees, whose compensation and benefits are at or below competitive levels in many cases, have had their compensation frozen or reduced and have had their co-payments and deductibles on their healthcare increased. In addition, the Debtors' other non-union hourly employees are also sharing the burden of an increased employee-contribution for employer sponsored healthcare benefits.

48. Most importantly, the Debtors' financial stakeholders have taken huge losses on their investments, and are willing to put an additional \$12 million at risk to help insure the Debtors' survival.

49. Despite the fact that the labor cost reductions at Sherwood's Washington Facility are necessary for the Debtors to complete a successful reorganization, and fairness and equity demand that all of the Debtors' represented employees participate in the financial sacrifices necessary for the long-term success of the Debtors, USW Local 7139-02 has refused to accept the Section 1113 proposals without good cause.

50. The USW asserts in its papers that there is no need for relief under the Sherwood Agreement because the Company has stated that it can transfer work from the Facility and thereby receive the necessary cost savings. While this is true, such action will have an adverse effect on the salaried employees and hourly employees who wish to continue to be employed at the Washington Facility.

51. The USW also asserts that the Debtors should be concerned that if there is a rejection of the Sherwood Agreement that the represented employees may strike. I understand that such an action may occur. The Company is prepared, should a strike occur, to deal with the consequences.

52. There are several possible outcomes of a rejection. I understand that if a rejection does occur Sherwood is entitled to offer employment to hourly workers on the basis of the Tentative Agreement. So it is possible that some represented employees will come to work under those conditions. I believe it is also possible, should a rejection occur, since the USW will continue as the bargaining agent for the employees, that the parties can continue to negotiate for a new contract.

53. In my view the worst that can happen as a result of a rejection and a strike is that the Washington Facility will close. If that happens, it is no worse for employees than what is likely to occur absent a rejection if the Company transfers work to other Sherwood plants.

54. The failure of USW Local 7139-02 to ratify the Tentative Agreement was without good cause in light of the demonstrated need for relief as acknowledged by the USW Bargaining Committee when it agreed to such relief in the Tentative Agreement and in light of the Fremont employees' acceptance of restructured terms.

55. Accordingly, in my view, the Court should authorize the rejection of the Sherwood Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 21, 2010

Respectfully submitted,

/s/ Leonard York
Chief Financial Officer
Taylor-Wharton International LLC and
Affiliated Debtors