

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

ORIGINAL

In re:

TAYLOR-WHARTON
INTERNATIONAL LLC¹, *et al.*,

Debtors.

Chapter 11

Case No. 09-14089 (BLS)
(Joint Administration Pending)

Re: Docket No. 13

**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**

Upon the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 503(b), and 507(a) for an Order Authorizing Debtors to Pay Certain Pre-petition Claims of Suppliers and Vendors of Goods Entitled to Administrative Priority (the "Motion")²; the Court finds that: (i) it 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)(2); (iii) venue of these Cases and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) notice of the Motion and the hearing was sufficient under the circumstances; and (v) upon consideration of the Declaration of Leonard York in Support of Debtors' Chapter 11 Petitions and First Day Motions and the record herein, and after due deliberation, the Court hereby finds that good and sufficient cause exists for the relief requested and that the requirements of Bankruptcy Rule 6003 have been satisfied because

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 Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

the relief requested in the Motion is necessary to avoid immediate and irreparable harm. Accordingly, it is hereby,

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay in the ordinary course the 503(b)(9) Vendor Claims in an amount not to exceed \$7.4 million.
3. The 503(b)(9) Vendors shall have administrative expense claims with priority under Sections 503(b) and 507(a)(2) of the Bankruptcy Code for those undisputed obligations arising from shipments of Supplies delivered, received and accepted by the Debtors in the ordinary course of business within the 20 days before the Petition Date.
4. The Debtors are authorized, but not directed, to pay, in the ordinary course, their undisputed obligations to 503(b)(9) Vendors who have an administrative expense claim with priority under Sections 503(b) and 507(a)(2) of the Bankruptcy Code for those undisputed obligations arising from shipments of Supplies sold and delivered to and received and accepted by the Debtors in the ordinary course of the Debtors' businesses within the 20 days before the Petition Date in an amount not to exceed \$7.4 million.
5. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause 503(b)(9) Vendors to enter into agreements with the Debtors (the "Trade Agreement") as a condition of payment of each such 503(b)(9) Vendor's 503(b)(9) Vendor Claims, including, but not limited to, the following terms:
 - (a) The amount of such 503(b)(9) Vendor's estimated pre-petition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the 503(b)(9) Vendor and the Debtors (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to

object to such claim in whole or in part, or to assert defenses thereto, shall be fully preserved until further order of the Court);

- (b) The 503(b)(9) Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such 503(b)(9) Vendor and the Debtors on a historical basis at any time during the period within one hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such 503(b)(9) Vendor;
- (c) The 503(b)(9) Vendor's agreement to provide goods and services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the 503(b)(9) Vendor in accordance with such terms;
- (d) The 503(b)(9) Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining pre-petition amounts allegedly owed to the 503(b)(9) Vendor by the Debtors arising from goods or services provided to the Debtors prior to the Petition Date, and that, to the extent that the 503(b)(9) Vendor has previously obtained such a Lien, the 503(b)(9) Vendor shall immediately take all necessary actions to release such Lien;
- (e) The 503(b)(9) Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (f) The 503(b)(9) Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) The 503(b)(9) Vendor's agreement that to the extent that it has received payment of a pre-petition claim but subsequently refuses to supply goods to the Debtors on Customary Trade Terms, any payments received by the 503(b)(9) Vendor on account of its 503(b)(9) Vendor Claim will be deemed to have been in payment of then outstanding undisputed post-petition obligations owed to such 503(b)(9) Vendor, and that such 503(b)(9) Vendor shall immediately repay to the Debtors any payments received on account of its 503(b)(9) Vendor Claim to the extent that the

aggregate amount of such payments exceed the undisputed post-petition obligations then outstanding, without the right of setoff or reclamation.

6. The Debtors are authorized, in their discretion, to make payments on account of a 503(b)(9) Vendor Claim, subject to the other limits set forth herein, even in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that failure to pay such 503(b)(9) Vendor Claim is likely to result in irreparable harm to the Debtors' business operations.

7. If a 503(b)(9) Vendor refuses to supply Supplies to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its 503(b)(9) Vendor Claim (regardless of whether such 503(b)(9) Vendor has entered into a Trade Agreement), or fails to comply with any Trade Agreement entered into between such 503(b)(9) Vendor and the Debtors, then the Debtors may, in their discretion and without further order of the Court, (a) declare that any Trade Agreement between the Debtors and such 503(b)(9) Vendor is terminated, (b) declare that payments made to such 503(b)(9) Vendors on account of its 503(b)(9) Vendor Claims shall be deemed to have been in payment of then-outstanding or subsequently accruing post-petition claims of such 503(b)(9) Vendor without further order of the Court or action by any person or entity, and (c) recover any payment made to such 503(b)(9) Vendor on account of its 503(b)(9) Vendor Claims to the extent that such payments exceeded the undisputed post-petition claims of such 503(b)(9) Vendor, without giving effect to any rights of setoff, claims, provision of payment of reclamation on trust fund claims or other defense. Under any such circumstances, such 503(b)(9) Vendor shall immediately repay to the Debtors any payment made to it on account of its 503(b)(9) Vendor Claims to the extent that such payments exceed the undisputed post-petition claims of such 503(b)(9) Vendor then outstanding, without

giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defenses. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching 503(b)(9) Vendor.

8. Notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if:

- (a) the underlying default under the Trade Agreement is fully cured by the 503(b)(9) Vendor not later than five business days following the Debtors' notification to the 503(b)(9) Vendor of such default had occurred or
- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the 503(b)(9) Vendor.

9. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any 503(b)(9) Vendor Claim.

10. Nothing contained in this order shall be deemed to constitute an assumption or rejection of any executory contract or pre-petition or post-petition agreement between the Debtors and a 503(b)(9) Vendor or to require the Debtors to make any of the payments authorized herein.


11. The Debtors shall maintain a matrix summarizing: (i) the name of each 503(b)(9) Vendor paid on account of any 503(b)(9) Vendor Claim(s); (ii) the amount paid to each 503(b)(9) Vendor on account of any 503(b)(9) Vendor Claim(s); and (iii) the goods or services provided by such 503(b)(9) Vendor (the "503(b)(9) Vendor Payment Matrix"). The 503(b)(9) Vendor Payment Matrix shall be provided bi-weekly to (a) the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) once retained, counsel for the official committee of unsecured creditors (the "Committee"), if any, appointed in these Cases; and (c) counsel to the agent for the Debtors' proposed postpetition financing lenders (the "Agent"); provided, that the

Committee and the Agent shall keep the 503(b)(9) Vendor Payment Matrix strictly confidential. The Committee's constituents shall have no right of access to the 503(b)(9) Vendor Payment Matrix under 11 U.S.C. § 1102(b)(3)(A) and the Committee shall have no duty to provide its constituents with access to the 503(b)(9) Vendor Payment Matrix pursuant to such section of the Bankruptcy Code. The United States Trustee shall not produce the 503(b)(9) Vendor Payment Matrix to third parties except pursuant to valid legal process. The rights of all parties in interest to object to production by the U.S. Trustee are expressly reserved..

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

13. Notwithstanding any applicability of Federal Rule of Bankruptcy Procedure 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: November 20, 2009
Wilmington, Delaware


United States Bankruptcy Judge