

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)
(Joint Administration Pending)

Re: Docket No. 12

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AUTHORIZING
THE PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon the Motion² of the above-captioned debtors and debtors-in-possession for entry of an order authorizing the Debtors, in their discretion, to pay the prepetition claims of certain critical vendors and service providers; and upon consideration of the Motion and all pleadings related thereto, including the York Declaration; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), (c) notice of the Motion was due and proper under the circumstances, and (d) the requirements of Bankruptcy Rule 6003 have been satisfied; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and after due deliberation and good and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth herein.

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 used but otherwise not defined herein shall have the meaning ascribed to such terms in the Motion.

2. The Debtors are authorized, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition claims of certain Critical Vendors (the “Critical Vendor Claims”) subject to the conditions set forth in this Order.

3. The Debtors’ payment of the Critical Vendor Claims shall not exceed \$7.6 million (the “Critical Vendor Cap”) in the aggregate unless otherwise ordered by the Court.

4. In their discretion the Debtors undertake all appropriate efforts to cause each Critical Vendor to enter into an agreement with the Debtors (the “Trade Agreement”), including, but not limited to, the following terms:

- (A) The amount of such Critical Vendor’s estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical 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 shall be fully preserved until further order of the Court);
- (B) The Critical Vendor’s agreement to be bound by the Customary Trade Terms (including, but not limited to, relevant trade terms), which were the most favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for 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 Critical Vendor;
- (C) The Critical Vendor’s agreement to provide goods to the Debtors based upon Customary Trade Terms, and the Debtors’ agreement to pay the Critical Vendor in accordance with such terms;
- (D) The Critical 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 prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (E) The Critical Vendor’s acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (F) The Critical Vendor’s agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

- (G) The Critical Vendor's agreement that it has received payment of a prepetition claim but subsequently refuses to supply goods to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of setoff or reclamation.

5. In the event that the Debtors are unable to enter into a Trade Agreement with any Critical Vendor, the Debtors are authorized to pay such vendor's Critical Vendor Claim if the Debtors determine, in their sole discretion, that such payment is necessary to prevent irreparable harm to the Debtors' business operations.

6. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has not complied with the terms and provisions of the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors.

7. If a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods to the Debtors on Customary Trade Terms during the pendency of these Cases, the Debtors may, in their discretion, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding post-petition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the post-petition amounts then owing to such Critical Vendor, without the right of setoff or reclamation, it being the express intention of this Court to return the parties to the status quo in effect as of the

date of entry of this Order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The Debtors may, in their sole discretion, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not less than five (5) business days following the Debtors' notification to the Critical Vendor of such default had occurred; or the Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

9. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions that may be held by the Debtors.

10. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed: (a) as an admission as to the validity or priority of any claim against the Debtors or their estates or any objection thereto; or (b) as a waiver of the Debtors' rights to dispute any claim; or (c) as approval or assumption of any agreement, contract or lease.


11. The Debtors shall maintain a matrix summarizing: (i) the name of each Critical Vendor paid on account of any Critical Vendor Claim(s); (ii) the amount paid to each Critical Vendor on account of any Critical Vendor Claim(s); and (iii) the goods or services provided by such Critical Vendor (the "Critical Vendor Payment Matrix"). The Critical 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 Critical Vendor Payment Matrix strictly confidential. The Committee's

constituents shall have no right of access to the Critical 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 Critical Vendor Payment Matrix pursuant to such section of the Bankruptcy Code. The United States Trustee shall not produce the Critical 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 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.

Date: November 20, 2009
Wilmington, Delaware


United States Bankruptcy Judge