

SO ORDERED: October 4, 2012.



Basil H. Lorch III
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
TWG CAPITAL, INC.,) Case No. 12-11019-BHL-11
)
Debtor.)

ORDER GRANTING MOTION FOR ENTRY OF AN ORDER (I) APPROVING CERTAIN BIDDING PROCEDURES WITH RESPECT TO THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTOR'S ESTATE; (II) SCHEDULING AN AUCTION AND SUBSEQUENT HEARING TO CONSIDER THE SALE OF THE DEBTOR'S ASSETS; AND (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

This matter is before the Court on the *Motion For Entry of an Order (I) Approving Certain Bidding Procedures With Respect to the Sale of Substantially All of the Assets of the Debtor's Estate; (II) Scheduling An Auction and Subsequent Hearing to Consider the Sale of the Debtor's Assets; and (III) Approving the Form and Manner of Notice Thereof* (the "Procedures Motion") filed by TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor" or the "Seller") in the above-captioned chapter 11 case (the "Chapter 11 Case"),

seeking entry of an order (i) approving certain bidding procedures for the sale of substantially all of the assets of the Debtor's estate, (ii) scheduling an auction and subsequent hearing to consider the sale of the Debtor's assets; and (iii) approving the form and manner of notice thereof.

Upon consideration of the Procedures Motion, and upon the record of the hearing held on the Procedures Motion and the record in the Chapter 11 Case, and being otherwise duly advised, the Court now finds and concludes that:

A. On September 14, 2012, the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court") its voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the Chapter 11 Case.

B. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee, examiner, or committee has been appointed in the Chapter 11 Case.

C. This Court has jurisdiction over the matters raised in the Procedures Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtor has articulated a sound business justification for the proposed sale and has demonstrated that the proposed bidding procedures attached to the Procedures Motion (the "Bidding Procedures") will maximize the proceeds realized for the benefit of the Debtor's estate and are in the best interests of the Debtor's estate and creditors.

E. The Debtor has entered into the Purchase Agreement with Carmel Funding, LLC, a stalking horse bidder (the "Stalking Horse Bidder").

F. The Bidding Procedures, the Break-up Fee¹ and the Overbid Protection are reasonable and appropriate to maximize the return on the Assets.

G. The Break-up Fee to be paid under the circumstances as set forth in the Purchase Agreement, and the Overbid Protection are (a) actual and necessary costs and expenses of preserving the Debtor's estate, within the meaning of section 503(b) of the Bankruptcy Code, (b) commensurate to the real and substantial benefit conferred upon the Debtor's estate by the Stalking Horse Bidder, (c) reasonable and appropriate, in light of the size and nature of the proposed transaction and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder, and (d) necessary to induce the Stalking Horse Bidder to continue to pursue the transaction and to continue to be bound by the Purchase Agreement.

H. The Debtor's bankruptcy estate's authorization to pay the the Break-up Fee is an essential inducement and condition relating to the Stalking Horse Bidder's entry into, and continuing obligations under, the Purchase Agreement. Unless it is assured that the Break-up Fee will be made in each of the circumstances described in the Purchase Agreement, the Stalking Horse Bidder is unwilling to remain obligated to purchase the Assets or be otherwise bound under the Purchase Agreement (including the obligation to maintain committed to its offer while such offer is subjected to higher or otherwise better offers as contemplated by the Bidding Procedures). The Debtor's promise to pay the Break-up Fee has induced the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid on which the Debtor, its creditors, and other prospective bidders can rely. The Stalking Horse Bidder has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Procedures Motion or the Purchase Agreement.

purchase price for the Assets will be received. Accordingly, the Break-up Fee is reasonable and appropriate and represents the best method for maximizing value for the benefit of the Debtor's estate and creditors.

I. In compliance with Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure, proper and adequate notice of the Procedures Motion and the hearing thereon has been provided and no other or further notice is necessary.

J. There are sufficient business justifications to approve the Bidding Procedures, the Break-up Fee and the Overbid Protection, and the other relief requested in the Procedures Motion. Accordingly, the relief requested in the Procedures Motion is in the best interests of the Debtor, its estate, and its creditors.

K. Good and sufficient cause exists for the granting of the relief requested. Accordingly,

IT IS HEREBY ORDERED that:

1. The Procedures Motion is GRANTED in its entirety.
2. All objections to the Procedures Motion or the relief requested therein that have not been withdrawn, waived, or settled, any all reservations of rights included therein, are hereby overruled on their merits.
3. The Bidding Procedures attached to the Procedures Motion, including without limitation all deadlines set forth therein, the Break-up Fee and the Overbid Protection, are approved in all respects.
4. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures and this Order. Where the terms of this Order vary from the terms of the Purchase Agreement or the terms proposed in the Procedures Motion,

this Order shall control.

5. As scheduled below, the Court will conduct the Sale Hearing to consider approval of the proposed sale to the Stalking Horse Bidder, subject to higher and better bids received by way of an auction (the "Auction") to be held at the offices of **Faegre Baker Daniels LLP at 600 E. 96th Street, Suite 600, Indianapolis, Indiana 46240 on November 7, 2012 at 1:00 p.m. EST.**

6. The Break-up Fee. If the Closing with the Stalking Horse Bidder does not occur as a result of (A) the Seller's breach of the Purchase Agreement or (B) the Seller's receipt of a third party offer at the Approval Hearing (and such third party offer is subsequently approved by the Bankruptcy Court and closes), then the Stalking Horse Bidder will be entitled to receive from the Seller (i) reimbursement of its out of pocket expenses incurred and actually expended in connection with the Sale Process, not to exceed the sum of \$10,000 (the "Expense Reimbursement") and (ii) a flat fee payment (not dependent on amounts actually expended or incurred by the Stalking Horse Bidder) in cash in an amount equal to \$10,000 (together with the Expense Reimbursement, the "Break-up Fee").

a. If the Closing with the Stalking Horse Bidder does not occur as a result of the Seller's breach of the Purchase Agreement and a termination of the Purchase Agreement by the Stalking Horse Bidder, the Seller is authorized and directed, without further order of this Court, to pay the Stalking Horse Bidder the Break-up Fee, which shall be paid out of the Seller's bankruptcy estate, and the claim or claims of the Stalking Horse Bidder to payment of the Break-up Fee shall constitute an allowed superpriority administrative expense claim arising under Bankruptcy Code §§ 364(c), 503(b), 506(c) and 507(a)(1).

b. If the Closing with the Stalking Horse Bidder does not occur as a result of the Seller's receipt of a third party offer at the Approval Hearing (and such third party offer is subsequently approved by the Bankruptcy Court and closes), then (i) the Successful Bidder (as hereinafter defined) and/or the Seller shall be directed to immediately cause the Break-up Fee to be paid to the Stalking Horse Bidder directly from the proceeds associated with the sale to such Successful Bidder; provided, however, that in the event that a third party sale is not consummated within 15 days following the Sale Hearing, the Seller and the Stalking Horse Bidder shall close the transactions contemplated by the Purchase Agreement upon the terms and conditions set forth in the Purchase Agreement as modified by any Overbid by the Stalking Horse Bidder, and (ii) pursuant to §§ 364(c)(1) and 506(c) of the Bankruptcy Code, the Stalking Horse Bidder shall have superpriority administrative expense and surcharge claims payable out of the Seller's cash or Deposit of the Successful Bidder.

7. Participation Requirements. Any person or entity who wishes to participate in the Bidding Process must be deemed "financially qualified" by the Debtor or the Debtor's advisors.

8. Initial Overbid Amount. No prospective purchaser(s) which bid(s) for the Assets at the Auction shall be entitled to purchase the Assets unless such prospective purchaser submits an initial deposit ("Deposit") equal to ten percent (10 %) of its bid and offers to purchase the Assets for consideration (including all cash, non-cash consideration and Assumed Liabilities) which, when coupled with the consideration received by the Seller in conjunction with the Assets that may not be part of such purchaser's offer, is in an amount equal to not less than the sum of (such sum being referred to as the "Initial Overbid Amount"): (A) the Purchase Price (including the Seller's good faith valuation of those portions of the Purchase Price that will not be paid in

cash), plus (B) the Break-up Fee, plus (C) \$5,000.

9. Subsequent Overbid Amount. After the Initial Overbid Amount, all further overbids must be in increments of at least \$2,500 in excess of the Initial Overbid Amount or the then prevailing bid. After the Initial Overbid Amount, the Seller must consider the amount of or entitlement to payment of the Break-up Fee in determining the highest or best offer for the Assets. Should overbidding take place, the Buyer shall have the right, but not the obligation, to participate in the overbidding and to be approved as the over bidder at the Sale Hearing based upon any such overbid and may credit bid the Break-up Fee.

10. Deposits. Unless forfeited as a result of breach by a Successful Bidder and failure to close, the Deposits shall not be property of the Debtor's bankruptcy estate, shall not become the property of the Debtor's bankruptcy estate to the extent necessary to pay the Break-up Fee, and no party shall have a lien on the Deposit of the Successful Bidder. Pursuant to 11 U.S.C. §§ 364(c)(1) and 506(c), the Stalking Horse Bidder shall have a superpriority administrative expense and surcharge claims payable out of the Seller's cash or Deposit of the Successful Bidder.

11. The Stalking Horse Bidder's Right to Credit Bid. The Purchase Price under the Purchase Agreement shall be payable in whole or in part, as determined by the Stalking Horse Bidder it is sole discretion, in the form of a credit bid of the DIP Financing.

12. Bid Deadline. A prospective purchaser who wishes to bid for the Assets must submit its bid on or before **5:00 p.m. EST three business days prior to the Sale Hearing (as defined herein)** (the "Bid Deadline").

13. Highest Bidder. Upon conclusion of the Auction, the Debtor shall review the qualified bid(s) on the basis of among other things, the following: (a) the amount of the bid,

(b) the form of consideration, (c) the form of the proposed transaction, (d) the ability to obtain approval from this Court and other required approvals for the sale and to close in a timely fashion, and (e) the net value provided to the Debtor and such other aspects as determined by the Debtor and shall submit the highest or otherwise best bid (the "Successful Bid") at a hearing (the "Sale Hearing") for approval by this Court pursuant to Section 363 of the Bankruptcy Code. The party making the Successful Bid is referred to herein as the "Successful Bidder." If the Debtor does not receive any qualified bids by the Bid Deadline, other than from the Stalking Horse Bidder, the Debtor shall report the same to this Court and shall proceed to seek approval of the proposed sale of the Assets to the Stalking Horse Bidder pursuant to the Purchase Agreement at the Sale Hearing.

14. Qualified Bids Remain Open. Qualifying bid(s) at the Auction shall remain open and subject to acceptance by the Seller as back up bids to the Successful Bid for a period of twenty-one (21) days following entry of the Sale Order, unless further extended by order of this Court, following which period the Deposits of all bidders who were not the Successful Bidder at the Auction or later accepted, shall be refunded.

15. Sale Hearing. The Court shall conduct the Sale Hearing on **November 8, 2012, at 10:00 a.m. EST** (the "Sale Hearing") in Room 103, Lee H. Hamilton U.S. Federal Building and Courthouse, 121 W. Spring St., New Albany, IN 47150, at which time the Court will consider approval of the proposed sale to the Stalking Horse Bidder or other Successful Bidder.

16. Procedure For Assumption And Assignment Of The Assumed Lease and the Assumed Contracts. Within three (3) days after the entry of this Procedures Order, the Debtor will file with the Court and serve on each non-debtor party to a contract or lease that may

potentially be an Assumed Lease or Assumed Contract a notice (the "Assumption and Cure Notice"), which shall set forth the cure amount that the Debtor believes is necessary to assume such contract or lease pursuant to Section 365 of the Bankruptcy Code (the "Cure Amount") as of the date of the Sale Hearing, and notify each non-debtor party that such party's lease or contract may be designated for assumption and assignment to the Stalking Horse Bidder or the Successful Bidder to be identified at the conclusion of the Auction. Any objection to the assumption or assignment of any Assumed Lease or Assumed Contract or the amount or terms of payment of the Cure Amount thereunder must be filed and served on or before five (5) days before the Sale Hearing (the "Cure Objection Deadline"). Any objection to the amount or terms of payment of the Cure Amount must state with specificity what cure the party to the Assumed Contract or Assumed Lease believes is required with appropriate documentation in support thereof. If no objection is timely received, the Cure Amount set forth in the Assumption and Cure Notice shall be controlling notwithstanding anything to the contrary in any Assumed Lease and Assumed Contract or other document, and the non-debtor party to the Assumed Lease or Assumed Contract shall be forever barred from asserting any other claim arising prior to the Sale Hearing against the Seller or the Stalking Horse Bidder or any other Successful Bidder as to the Assumed Lease or Assumed Contract, and the non-debtor party shall be deemed to have consented to the assumption and assignment of the Assumed Lease or Assumed Contract.

17. Notice of Motion. Within three (3) days of the entry of this Procedures Order, the Debtor shall: (a) provide notice by serving the Procedures Order and the Bidding Procedures upon the following persons in the manner indicated, in accordance with Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure and Rule B-6004-1(b) of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana: (i) the office

of the United States Trustee for the Southern District of Indiana; (ii) any counsel or party that has filed an appearance and served such appearance on the Debtor; (iii) the Internal Revenue Service; (iv) each governmental agency, regulatory body or taxing authority and other party that might claim an interest in the Assets to be sold; (v) the counter-parties to the Assumed Lease and the Assumed Contracts; (vi) all parties to the Purchase Agreement and all related agreements; (vii) all entities known to have expressed an interest in a transaction with respect to the Debtor or the Assets; (viii) all entities known to have asserted any Lien related to the Assets; (ix) the Service List as defined in Rule B-1000-1(b)(4) of the Local Rules of this Court to the extent duplicative of the foregoing; and (x) to any party requesting a copy of the Sale Motion or to whom the Court directs that notice be given; and (b) serve a notice of the Sale Motion and Sale Hearing on all known creditors and interested parties in addition to the parties set forth in part (a) above. To the extent the Debtor complies with the notice provisions herein, such shall be good and sufficient, and no other notice shall be required.

18. Objections. **November 2, 2012, five days prior to the Sale Hearing, at 5:00 p.m. Eastern Standard Time** shall be the last date to file with the Clerk of this Court written objections to the proposed sale, to the proposed assumption and assignment of the Assumed Lease and Assumed Contracts or to the proposed Cure Amounts or adequate assurance of future performance, if any, related to the Assumed Lease and Assumed Contracts. The failure of any objecting person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection, to the Sale Motion, or the consummation and performance of the Debtor under the Purchase Agreement, or an agreement with a Successful Bidder.

19. Retention of Jurisdiction. The Court shall retain jurisdiction over any

matter or dispute arising from or relating to the implementation of this Order.

20. Debtor's Authority. The Debtor is hereby authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements of this Order.

21. Waiver. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Order shall not be stayed for ten (10) days after the entry hereof and shall be effective and enforceable immediately upon its entry.

22. Binding on Successor Trustee. This Order shall be binding in all respects upon, and shall inure to the benefit of the Debtor, its estate, the Purchaser or other Successful Bidder, and the successors and assigns of each of the foregoing, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

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