

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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<b>In Re:</b>  <b>TMT PROCUREMENT CORPORATION,</b> <i>et al.</i> <sup>1</sup>  <p style="text-align: right;"><b>Debtors.</b></p>	§ § § § §	<b>Chapter 11</b>  <b>Case No. 13-33763</b>  <b>Jointly Administered</b> <b>Hearing Date: June 12, 2015</b>
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**STIPULATION RELATED TO MOTION TO CONVERT**

[relates to ECF 2415 & 2442]

Upon (i) *Hsin Chi Su's Expedited Motion to Convert All Pending Chapter 11 Cases to Chapter 7* (ECF 2415, the "Motion") and (ii) the *Debtors' Objection to Mr. Su's Motion to Convert All Pending Chapter 11 Cases to Chapter 7* (ECF 2442, the "Objection"), Mr. Su and the Debtors stipulate to the following facts for evidentiary purposes in connection with the hearing on the Motion. This Stipulation is binding only with respect to the Motion and the Objection and shall not be used, relied on or referred to for any other purpose or proceeding in this Court or any other court or proceeding. Additional parties have also objected to the Motion. See ECFs 2433 (Committee), 2444 (MRMBS II LLC), 2445 (DIP Lender), 2446 (Bank Sinopac) & 2447 (Wilmington Trust, National Association) (the "Other Objecting Parties") but are not a party to this Stipulation for the reasons discussed in paragraph 25 below.

1. These Chapter 11 case were filed on June 20, 2013.
2. The Debtors' estate professionals (Bracewell & Giuliani LLP ("B&G"), AlixPartners, LLC ("AP") and Kelley Drye & Warren LLP ("KDW")) are currently incurring five categories of professional fees.
  - a. First, B&G fees and expenses in connection with Mr. Su's Sale Order Appeals (as defined below). These fees and expenses are being paid by the relevant prepetition lenders involved in each appeal and added to the liabilities under their respective loan agreements.
  - b. Second, B&G fees and expenses in connection with the Patent Litigation (as defined below), other than the lawsuit against F Elephant Inc. These fees and

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<sup>1</sup>The Debtors in these chapter 11 cases are: (1) A Whale Corporation; (2) B Whale Corporation; (3) C Whale Corporation; (4) D Whale Corporation; (5) E Whale Corporation; (6) G Whale Corporation; (7) H Whale Corporation; (8) A Duckling Corporation; (9) F Elephant Inc; (10) A Ladybug Corporation; (11) C Ladybug Corporation; (12) D Ladybug Corporation; (13) A Handy Corporation; (14) B Handy Corporation; (15) C Handy Corporation; (16) B Max Corporation; (17) New Flagship Investment Co., Ltd; (18) RoRo Line Corporation; (19) Ugly Duckling Holding Corporation; (20) Great Elephant Corporation; and (21) TMT Procurement Corporation.

expenses are being paid by the relevant prepetition lenders involved in each appeal and added to the liabilities under their respective loan agreements.

- c. Third, B&G fees and expenses in connection with those vessels for which there are excess sale proceeds but the Debtors currently do not have Court authority to pay such fees and expenses out of such excess sale proceeds. Those vessels are the *Fortune Elephant*, the *A Ladybug* and two of the *Handies* (but no fees are currently being incurred with respect to the *Handies*).
  - d. Fourth, B&G's and KDW's fees and expenses in connection with various matters that, with the consent of the Debtors, the Committee and the DIP Lender, are being paid currently via an increase in the "Carve-Out" under the Final DIP Order (ECF 699, as amended and modified from time to time and as adopted by ECF 2323) as permitted by paragraph 9 of the Final DIP Order. Such matters include, without limitation:
    - i. Mr. Su's District Court patent litigation against F Elephant Inc, see docket identified in paragraph 27.p below.
    - ii. The matters described in ECF 2432 as authorized by ECF 2451 (both under seal).
    - iii. The analysis and potential prosecution of avoidance actions, see documents identified in paragraph 26.c below, and other estate causes of action.
    - iv. The Debtors, the Committee and the DIP Lender may, in their sole discretion, hereafter consent to additional increases in the Carve-Out for other matters, subject to paragraph 9 of the Final DIP Order.
  - e. Fifth, Debtors' and Committee's professional fees and expenses not included in the foregoing categories a, b, c and d. Such fees and expenses, other than any portion that has been or may hereafter be paid out of third party funds, are referred to as the "Accruing Fees".
3. A summary of the fees and expenses discussed in paragraph 2 above for the period November 2014 through March 2015 is attached as Exhibit A. The interim fee applications identified in paragraph 27.c below identify all fee payments received by B&G, AP, KDW, S&K through October 2014. No fee payments have been received by any such professional since then, with the exception of (i) lender payments to B&G and AP in an aggregate amount of approximately \$44,000 as identified on Exhibit A, (ii) approximately \$28,000 to B&G as a result of increases in the Carve-Out as described in paragraph 2.d above, and (ii) a \$34,000 payment to B&G pursuant to ECF 2402.
  4. Other than as discussed in paragraph 2 above, from and after September 2014, the Debtors have reported that they are not incurring any other material expenses except for (i) post-closing sale expenses paid out of prepetition lender cash collateral and (ii) quarterly US Trustee fees, see monthly operating reports identified in paragraph 26.a

below. The Debtors currently have no employees and, after the last vessels were sold in August 2014, have had no cash flow from operations.

5. B&G, AP, KDW, Seward & Kissel LLP (“S&K”) and FTI Consulting, Inc. (“FTI”) each filed three interim fee applications as identified in paragraph 27.c below. Mr. Su has reserved the right to object to all current and former estate professionals’ fee and expenses, including the Accruing Fees and amounts previously paid on an interim basis, and has reserved the right to seek disgorgement of amounts previously paid, see, e.g., pleadings identified in 27.d below.
6. All of the Debtors’ vessels have been sold. The sale closings occurred in April 2014, with respect to the *A Duckling*, and between June and August 2014 with respect to the remaining vessels, subject to continuing court proceedings in several instances where the sales occurred in admiralty court. The gross purchase price and excess sale proceeds (if any) for each vessel are set forth in section 4.07(1) of either ECF 2374 or ECF 2375, depending on the vessel. Mr. Su has appealed the sale orders for the *A Whale*, the *B Whale*, the *C Whale*, the *D Whale*, the *G Whale* and the *H Whale* the (“Sale Order Appeals”), see docket identified in paragraph 27.q below.
7. Mr. Su has commenced District Court patent litigation against certain of the Debtors and various lenders (the “Patent Litigation”), see docket identified in paragraph 27.p below.
8. The Debtors, collectively, currently have approximately \$16.5 million in cash, see ECF 2417 (monthly operating report for March 2015), of which approximately \$14 million is not subject to cash collateral liens of prepetition lenders. All of the cash is subject to the lien of the DIP Lender.
9. The Debtors are pledgees certain shares (the “Vantage Shares”) of Vantage Drilling Company (“Vantage”) pledged by F3 Capital for the purposes described in ECFs 323 (order regarding shares) and 545 (addendum order), as adopted by ECF 2323. The original number of shares pledged was 30,007,142, of which 26,007,142 (the “DIP Shares”) were pledged, *inter alia*, to secure the DIP Facility and 4,000,000 (the “Addendum Shares”) were pledged for the purpose set forth in ECF 545.
10. 11,282,771 of the Vantage Shares were sold, at an average price of \$1.6929. Approximately \$17.9 million of the proceeds were applied to principal, interest and fees under the DIP Facility. The remainder of the principal amount of the DIP Facility was paid by agreement out of a portion of the excess sale proceeds from the *A Ladybug* and out of the *B Max* DIP facility. Other amounts were or, in the case of DIP Lender professional fees, continue to be, paid out of cash on hand. The remaining cash from the sale of Vantage Shares, together with 3,771,229 of the Vantage Shares, continue to be held by the Debtors’ broker, Raymond James. The remaining 15,007,142 of the Vantage Shares are being held in the Court register. All of the cash and the remaining DIP Shares are subject to the lien of the DIP Lender. All of the cash, DIP Shares and Addendum Shares are subject to the claims, if any now or hereafter exist, described in ECFs 323 and 699 (as adopted by ECF 2323).

11. The Debtors also hold certain actual or potential causes of action and rights of recovery as described in:
  - a. ECF 2432 (sealed motion).
  - b. ECF 2179 (B Max “Arbitration Claims”).
  - c. Potential avoidance actions and other potential estate causes of action, see documents identified in paragraph 26.c below and ECF 2455.
  - d. Mr. Su’s Sale Order Appeals, see docket identified in paragraph 27.q below and the hearing transcript identified in paragraph 27.m below.
  - e. Mr. Su’s reservation of rights (and the rights of any other party-in-interest) to seek disallowance and disgorgement of fees paid to various estate professionals on an interim basis, see pleadings identified in paragraph 27.d below.
  - f. Potential retention by Debtors of excess proceeds from the sale of the *Fortune Elephant*, see District Court Case Nos. 4:14-cv-3342 identified in paragraph 27.p below.
12. All of the assets, shares, actual or potential causes of action and rights of discovery described in paragraphs 8, 10 and 11 above are collectively referred to as the “Estate Assets”, all of which remain subject to the liens under the Final DIP Order.
13. As of the date of this Stipulation, Mr. Su’s relevant non-Debtor affiliates have not entered into tolling agreements with respect to the potential avoidance actions related to the Debtors’ identification of payments made to insiders within one prior to the petition date as identified in paragraph 26.c below.
14. Mr. Su is currently engaged in a dispute with Vantage (as the same may be prosecuted in court or via arbitration, the “Vantage Litigation”).
15. The date of final resolution of the Vantage Litigation is uncertain, see hearing transcript identified in paragraph 27.o below.
16. Absent consent of the DIP Lender or Court order, and with certain minor exceptions such as increases in the Carve-Out consented to by the Debtors, the Committee and the DIP Lender, the Estate Assets cannot currently be distributed pending final resolution of the Vantage Litigation for the reasons discussed in the hearing transcript identified in paragraph 27.o below. As a result, the Accruing Fees are currently accruing but are unable to be paid at this time.
17. There is no assurance that the Accruing Fees will ultimately be allowed. For the reasons described in the hearing transcript identified in paragraph 27.o below, there is no assurance that the Accruing Fees, even if allowed, will ultimately be paid.

18. A Handy Corporation, B Handy Corporation and C Handy Corporation confirmed a Chapter 11 plan (ECF 1261, the “Handies Plan”, as modified on the record and in the Order confirming the Handies Plan (ECF 1355)).
19. The Handies Plan provided for various distributions on account of the DIP Facility, administrative expenses, secured claims, unaffiliated unsecured claims, and unsecured claims held by Mr. Su or his affiliates (collectively, as set forth in the Handies Plan, the “Handies Plan Distributions”).
20. One or more of the conditions to the occurrence of the Effective Date provided in section 8.02 of the Handies Plan could not be met and were not waived, and the Handies Plan was terminated (ECF 1445). CarVal asserted that the primary reason it terminated the Handies Plan was the Debtors’ inability to obtain Mr. Su’s signatures on either the Shareholders Agreement or the Shareholder Proxy (each as defined in the Handies Plan). Mr. Su asserted that the Shareholders Agreement and the Shareholder Proxy, as drafted, did not accurately reflect the agreement between the parties as to Mr. Su’s voting rights. The issue was not addressed in Court and, therefore, this Stipulation does not take a position as to who was “at fault” for the termination of the Handies Plan.
21. After termination of the Handies Plan, the *A Handy*, *B Handy* and *C Handy* were sold. The \$4,000,000 payment to the DIP Lender included in the Handies Plan Distributions therefore could not be made, requiring a greater payment out of the sale of Vantage Shares as described in paragraph 10 above, and none of the other Handies Plan Distributions have been made to date given the limited proceeds available after repayment of the *A Handy* and *B Handy* mortgage debt and the insufficient proceeds available to repay the *C Handy* mortgage debt in full, see section 4.07(1) of ECF 2374.
22. The Debtors’ exclusivity periods have terminated and, except for the Handies Plan, the Debtors have not confirmed any other Chapter 11 plans.
23. The Debtors (including the Handies Debtors) have filed Chapter 11 plans of liquidation that, with the consent of the Debtors, the Committee, Mr. Su, the prepetition lenders and the DIP Lender, are currently scheduled for a status conference on January 28, 2016.
24. The Debtors are and will remain unable to file Chapter 11 plans of reorganization that provide for the reorganization of the Debtors as going concerns.
25. The Debtors and Mr. Su acknowledge that a number of facts to which they are stipulating are matters known to them but that the Objecting Parties may have insufficient information and belief to agree or disagree with such facts. The Debtors and Mr. Su therefore acknowledge that the failure of an Objecting Party to object to or dispute the facts stipulated to herein shall not be construed as agreement by it as to the accuracy, completeness or relevance of the facts stipulated to herein. They further acknowledge that, just as between them this Stipulation can only be used “for the purposes of the hearing on the Motion only and without admission or prejudice as to any other matters or proceedings in this Court or any other court or proceeding,” so too is this Stipulation not

an admission by, and cannot be used as prejudice against, any of the Objecting Parties or any other party-in-interest.

26. The following documents are admitted for all purposes of the hearing on the Motion only and without admission or prejudice as to any other matters or proceedings in this Court or any other court or proceeding.
- a. ECFs 373, 490, 625, 798, 908, 1018, 1137, 1293, 1448, 1622, 1786, 2056, 2166, 2201, 2228, 2251, 2279, 2303, 2331, 2356, 2417 & 2454 (Debtors' monthly operating reports).
  - b. ECFs 542, 545, 546, 699, 700 & 2323 (vacated orders and order adopting same after remand).
  - c. Attachments 3b and 3c to each Debtor's Statement of Financial Affairs at ECFs 177, 178, 179, 181, 182, 183, 184, 186, 187, 188, 189, 191, 192, 193, 197, 452, 453, 454, 455, 456 & 457 (payments identified by the Debtors as having been made within 90 days prior to the petition date and to insiders within 90 days and one year prior to the petition date, respectively).
  - d. ECFs 864, 865, 895, 896, 897, 1589, 1590, 1591, 1592, 1593, 2267, 2268, 2269, 2270 & 2271 (orders allowing first, second and third interim fee applications of B&G, AP, KDW, S&K and FTI).
  - e. ECFs 1261, 1355 & 1445 (Handies plan, confirmation order and notice of termination).
  - f. ECF 2187 (order authorizing pursuit of B Max "Arbitration Claims").
  - g. ECF 2308 (order re potential share purchases).
  - h. ECF 2359 (order allowing S&K to withdraw).
  - i. ECF 2402 (order on Debtors' motion for a protective order with respect to corporate property).
  - j. ECF 2451 (sealed order concerning retention of UK counsel).
  - k. If the Court enters an order approving ECF 2455 (seeking Committee standing to pursue avoidance actions) prior to the hearing on this Motion, the parties agree that such order will be deemed to be referenced and included in this paragraph 26.k.
27. The following documents are admitted for the purposes of (i) their existence, (ii) the assertion of the allegations, claims and arguments set forth therein (but not the truth of such allegations, claims and arguments), and (iii) in the case of transcripts, for the existence of the testimony adduced and the arguments made (but not the truth of such testimony and arguments) and the Court's comments, findings and conclusions set forth



therein, in each case for the limited purpose of the hearing on the Motion only and without admission or prejudice as to any other matters or proceedings in this Court or any other court or proceeding.

- a. ECF 121-4 (original complaint in Vantage Litigation).
- b. ECF 2179 (motion concerning pursuit of B Max “Arbitration Claims”).
- c. ECFs 743, 744, 758, 759, 769, 1459, 1460, 1461, 1462, 1464, 2243, 2244, 2245, 2246, 2247, 2261, 2262, 2263 & 2265 (first, second and third interim fee applications of B&G, AP, KDW, S&K and FTI).
- d. ECFs 2256, 2257, 2258 & 2259 (Mr. Su’s objections to estate professionals’ third interim fee applications).
- e. ECF 2255 (motion re potential share purchases).
- f. ECFs 2300, 2304, 2317 & 2358 (pleadings related to motion to disqualify S&K).
- g. ECFs 2345, 2346, 2372, 2378, 2384, 2386, 2393, 2411 & 2413 (pleadings with respect to the Debtors’ motion for a protective order with respect to corporate property).
- h. ECFs 2374, 2375, 2376, 2404, 2405, 2407, 2414, 2419, 2423, 2433 & 2435 (Debtors’ two Chapter 11 plans and related pleadings).
- i. ECF 2432 (sealed motion concerning retention of UK counsel).
- j. ECFs 2415, 2442, 2443, 2444, 2445, 2446 & 2447 (Mr. Su’s motion to convert and related pleadings).
- k. ECF 2455 (stipulation and proposed order as to Committee standing to pursue avoidance actions).
- l. Hr’g Tr. December 11, 2013 at 96:6 – 111:10 & 194:3 – 206:13 (Mr. Su’s testimony concerning matters encompassed in ECF 2432).
- m. Hr’g Tr. April 2, 2015 (hearing on Mr. Su’s motion to disqualify S&K).
- n. Hr’g Tr. April 14, 2015 (hearing on Debtors’ motion for a protective order with respect to corporate property).
- o. Hr’g Tr. May 18, 2015 at 9:6-21 (Mr. Su’s counsel’s views on timeframe of Vantage Litigation), 22:18 – 25:2 (colloquy between the Court and Mr. Su’s counsel concerning Vantage Shares) & 30:6 – 35:5 (consensual abatement of Chapter 11 plans to status conference on January 28, 2016).
- p. The District Court dockets for Case Nos. 4:14-cv-2163, 2164, 2165, 2166 & 3342 (Mr. Su’s patent lawsuits).

- q. The District Court dockets for Case Nos. 4:14-cv-1799, 2167, 2172 & 2177 (Mr. Su's sale order appeals).

Dated: this 4th day of June, 2015

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