

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

In re:

THQ, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 12-13398 (MFW)

(Jointly Administered)

Hearing Date: January 4, 2013 at 10:30 a.m. ET

Objection Deadline: January 4, 2013 at 10:30 a.m. ET

Ref. No. 13

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO
DEBTORS' MOTION FOR FINAL ORDER
AUTHORIZING THE DEBTORS TO OBTAIN POST
PETITION FINANCING AND USE OF CASH COLLATERAL**

The Official Committee of Unsecured Creditors, which was appointed on January 3, 2013, (the "Committee")² of THQ Inc. and its affiliated debtors (collectively, the "Debtors"), for its Objection (this "Objection") to Debtors' Motion for Final Order Authorizing the Debtors to Obtain Postpetition Financing and Use of Cash Collateral [Docket No. 13] ("the "DIP Motion"), respectfully represents:

INTRODUCTION

1. As described at length in the Official Committee's objection [Docket No. 99] (the "Bidding Procedures Objection")³ to the Debtors' motion seeking approval of bidding

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: (i) THQ, Inc. (1686); (ii) THQ Digital Studios Phoenix, Inc. (1056); (iii) THQ Wireless, Inc. (7991); (iv) Volition, Inc. (4944) and (v) Vigil Games, Inc. (8651). The Debtors' principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² The Committee is comprised of the following entities: Wilmington Trust, N.A.; World Wrestling Entertainment, Inc.; Mattel, Inc.; Viacom International Inc.; and Silverback Asset Management, LLC.

³ The Bidding Procedures Objection contains a lengthy factual and procedural "Background" section which contains an overview of the Debtors' business, a description of the Debtors' and their advisors' pre-petition actions and other events that preceded the Debtors' bankruptcy filing, and a description of various pleadings the Debtors have filed in these cases. Such "Background" section is incorporated into this Objection in its entirety. Capitalized terms used



procedures with respect to the proposed sale of the Debtors' business "as a whole" to Clearlake Capital Group, L.P. ("Clearlake"), the Debtors and their advisors are attempting to ensure that the sale to Clearlake is consummated - - regardless of whether such sale will maximize the value of the Debtors' estates and the recoveries of unsecured creditors.

2. The DIP Motion is not clear in many respects, including (a) whether the DIP loan and the pre-petition loan are cross-collateralized, (b) collateral by which the DIP loan would be secured (*i.e.*, what percentage of stock of THQ's foreign subsidiaries and estate causes of action are pledged) and (c) whether the Debtors intend to, and could be authorized by this Court to, use cash collateral should there be a "default" under the DIP loan. As of the Petition Date, approximately \$20 million was owed under the Debtors' pre-petition secured facility with Wells Fargo. The Committee understands that, as of December 29, 2012, the Wells Fargo facility was "paid down" by approximately \$17 million to a balance of \$3 million. The Clearlake "second-out" DIP loan was, as of that date, \$7 million. As of January 4, 2013, the outstanding balance under the Wells Fargo facility will be approximately \$8 million and Clearlake will be owed \$7 million.

3. The terms of the proposed DIP financing, including, among other things, the onerous deadlines and milestones proposed therein, appear to have been "manufactured" by the Debtors' management and their advisors to make it appear necessary for the Clearlake sale to be consummated by January 15, 2013, given that the DIP loan appears to mature on January 15, 2013 and a "default" would exist if not then repaid. The DIP financing terms serve to benefit Clearlake unjustifiably at the expense of the Debtors' unsecured creditors, as they are designed to force a "fast-track" sale rather than allowing for a fair and robust 363 sale process, including a

and not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Objection.

bona fide process to sell the various pieces or titles among the Debtors' businesses. For these reasons, and for those set forth in the Bidding Procedures Objection, the DIP Motion should not be approved and the terms of the DIP financing should be clarified.

OBJECTION

4. Debtor-in-possession financing should not be approved unless the terms are "fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender." *In re Aqua Associates*, 123 B.R. 192, 195-97 (Bankr. E.D. Pa. 1991) (citing *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987)). Postpetition financing should also not be approved where "it is apparent that the purpose of the financing is to benefit a creditor rather than the estate." *In re Ames Dep't. Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990).

5. Here, the terms of the proposed DIP financing (in particular, the proposed deadlines and milestones therein. Additionally, the \$500,000 "carve-out" for all professionals of the estates is inadequate. At the "first-day" hearings in these cases, this Court approved DIP financing on an interim basis, in part, on the "short-form" DIP budget for the four week period from December 17, 2012 through January 7, 2013 that the Debtors attached to their First Day Declaration. This original DIP budget reflected a significant reduction in cash flow receipts, and increase in cash disbursements, compared to budgets prepared by the Debtors immediately prior to the Petition Date. Under the original DIP Budget, the Debtors forecasted that they would run out of money promptly on or about January 15, 2013 (the same date that the forbearance period expires under the Debtors' pre-petition secured facility and the deadline for closing of the Clearlake sale).

6. The Debtors' present cash flow forecasts (created less than two weeks following the filing of the original DIP Budget) now show, however, that the amount of cash the Debtors

originally claimed they needed was significantly exaggerated. Under the Debtors' current forecasts, the Debtors now contend that they have sufficient cash to finance their operations for at least several weeks beyond January 15, 2013. The timing of this revision, among other things, suggests that the Debtors' original DIP budget was part of a process to "manufacture" the January 15, 2013 "cliff" that is purportedly driving the need for the expedited sale to Clearlake.

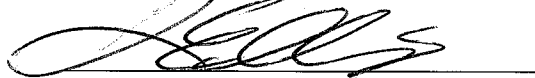
7. The goal in these cases seems to be focused on doing whatever is necessary to consummate a sale of the Debtors' business "as a whole" to Clearlake. The deadlines and milestones set forth in the DIP Motion and the DIP credit facility should not be approved. In addition, the terms of the DIP financing should be clarified, among other things, to explain (a) whether the DIP loan and the pre-petition loan are cross-collateralized, (b) what the amount of the "carve-out" for professionals is under the DIP financing, (c) which collateral the DIP loan would be secured by (in particular, whether and to what extent of stock of THQ's foreign subsidiaries and estate causes of action are pledged) and (d) whether the Debtors intend to, and could be authorized by this Court to, use cash collateral should there be a "default" under the DIP loan.

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WHEREFORE, the Committee respectfully requests that the Court (i) deny the Debtors' request for a Final Order approving the DIP Motion (as set forth herein), (ii) clarify the terms of the DIP financing and (iii) grant such other and further relief as may be just and proper.

Dated: January 3, 2013

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