

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: :
: Case No. 06-61796
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
: :
Debtors. : Chapter 11
: :
: Honorable Russ Kendig
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**MOTION OF DEBTORS AND DEBTORS IN
POSSESSION, PURSUANT TO SECTIONS 105(a) AND 331
OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2014(a), FOR ENTRY OF AN ORDER ESTABLISHING
PROCEDURES FOR MONTHLY COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS AND COMMITTEE MEMBERS**

CEP Holdings, LLC and its affiliated debtors and debtors-in-possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), hereby move (the “**Motion**”), pursuant to sections 105(a) and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Local Bankruptcy Rule 2014(a), for entry of an order establishing procedures for monthly compensation and reimbursement of expenses of professionals and committee members. In support of the Motion, the Debtors refer to and rely upon the Affidavit of Joseph Mallak in Support of Chapter 11 Petitions and First Day Motions, filed contemporaneously herewith (the “**Mallak Affidavit**”), and respectfully represent as follows:

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2014(a).

BACKGROUND

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have requested that the Cases be jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed.

A. Summary of Capital Structure and Current Business Operations

6. Creative Engineered Polymer Products, LLC, (“**CEPP**”) is a limited liability company formed under the laws of the State of Ohio. CEPP is wholly owned by CEP Holdings, LLC (“**Holdings**”), a privately-held limited liability company formed under the laws of the State of Ohio. Holdings is a holding company whose sole asset is its membership interests in CEPP. CEPP has three subsidiaries: (i) Composite Parts Mexico S.A. de C.V. (the “**CEP Mexico**”), a Mexican corporation which is 99.9% owned by CEPP and .01% owned by non-debtor Reserve Capital Group, Ltd; (ii) Thermoplastics Acquisition, LLC (“**Thermoplastics**”), an Ohio limited liability company which is wholly owned by CEPP and is a debtor in these cases; and (iii) CEP Latin America, LLC (“**CEP LA**”), a non-debtor Ohio limited liability company which is wholly

owned by CEPP. CEP LA was never funded and has no operations or debt. The principal place of business of the Debtors is 3560 West Market Street, Suite 340, Akron, Ohio 44333.

7. The Debtors operate 10 manufacturing plants in Ohio, Michigan, Alabama, South Carolina and Mexico, including a plant in Canton, Ohio. CEPP operates six plants in Ohio, Michigan and Alabama. Non-debtor CEP Mexico operates two plants in Mexico. Thermoplastics operates one plant in Ohio and one in South Carolina.

8. CEP and its debtor subsidiaries are custom molders and extruders of rubber and plastic products, primarily for the OEM automotive market. The Debtors have achieved a unique position as preferred suppliers of high quality products to major customers, including General Motors, Delphi Corporation, Visteon, Nissan, Daimler-Chrysler, Honda and GKN Automotive. CEP has maintained this position as a leader in the marketplace through innovative manufacturing techniques and by continuously improving its broad base of material and process technology.

9. Gross sales for the Debtors' businesses are projected to be approximately \$190 million for fiscal 2006. The Debtors' nearly 1,106 employees manufacture the Debtors' products at ten strategically located manufacturing facilities in Ohio, Michigan, South Carolina, Alabama and Mexico.² The Debtors also maintain a Technical Center in Livonia, Michigan which offers design assistance and program management services for the Debtors' businesses.

B. Prepetition Debt Structure

10. The Debtors were formed as part of two separate purchase transactions on August 16, 2005 and December 20, 2005, respectively. As part of the August 16, 2005 transaction, the CEPP and CEP Mexico businesses were purchased from the Carlisle Companies. In conjunction

² CEP Mexico, a non-debtor, produces high quality plastic products at two factories in Mexico.

with the transaction, CEP Acquisition LLC n/k/a CEPP entered into a Loan and Security Agreement, dated as of August 16, 2005 (the “**Prepetition CEPP Credit Agreement**”) with Wachovia Capital Finance Corporation (Central) (“**WCFC**”), as both Agent and Lenders thereunder. The Prepetition CEPP Credit Agreement provided two term loans and a revolving credit facility to CEPP in the maximum amount of \$45 million (collectively, the “**CEPP Prepetition Loan**”). The CEPP Prepetition Loan is secured by substantially all the assets of CEPP, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, real property, accounts receivable, other personal property and proceeds thereof (collectively, the “**Prepetition CEPP Collateral**”). As of the Petition Date, the amount outstanding under the CEPP Prepetition Loan was not less than \$21,693,507.60 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition CEPP Credit Agreement and applicable law).

11. As part of the December 20, 2005 transaction, CEPP purchased the Thermoplastics business from Parker Hannifan Corporation. In conjunction with the transaction, Thermoplastics entered into a Loan and Security Agreement, dated as of December 21, 2005 (the “**Prepetition Thermoplastics Credit Agreement**” and together with the Prepetition CEPP Credit Agreement, the “**Prepetition Credit Agreements**”) with WCFC, as both Agent and Lenders. The Prepetition Thermoplastics Credit Agreement provided a term loan and a revolving credit facility to Thermoplastics in the maximum amount of \$5 million (collectively, the “**Thermoplastics Prepetition Loan**” and together with the CEPP Prepetition Loan, the “**Prepetition Loans**”). The Thermoplastics Prepetition Loan is secured by substantially all the assets of Thermoplastics, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, accounts receivable, other personal property and proceeds thereof

(collectively, the “**Prepetition Thermoplastics Collateral**” and together with the Prepetition CEPP Collateral, the “**Prepetition Collateral**”). As of the Petition Date, the amount outstanding under the Thermoplastics Prepetition Loan was not less than \$4,219,688.58 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition Thermoplastics Credit Agreement and applicable law). The Prepetition Credit Agreements are cross-defaulted and cross-collateralized.

12. Prior to the Petition Date, Visteon Corporation, General Motors Corporation and Delphi Corporation (collectively, the “**Customers**”) and WCFC entered into a Subordinated Participation Agreement dated June 30, 2006 and a First Amendment to Subordination Participation Agreement dated August 18, 2006 pursuant to which the Customers purchased subordinated, last out participation interests (the “**Participation Interests**”) in the Prepetition Loan Facilities. The Customers purchased \$2.9 million of Participation Interests, the proceeds of which were used by the Debtors to fund their operations and the building of the Customers’ parts.

C. Events Leading To The Filing Of These Chapter 11 Cases

13. The Debtors and other automotive suppliers and manufacturers have faced a series of unanticipated operational and market challenges that have adversely affected their operations and cash flows. These challenges have impaired both the Debtors’ suppliers and customers which in turn have severely affected the Debtors’ operations and businesses.

14. With respect to suppliers, the September 2005 hurricanes in the Gulf Coast region have disproportionately damaged manufacturers who rely on plastic resins. Shortly after the hurricanes, the Debtors began experiencing sharp increases in their principal raw materials (plastic resins) which increases were attributable to interrupted refining capacity. With prices already high due to increased global demand, insecurity and supply constraint issues, the

hurricanes magnified the rise in the price of crude oil and natural gas. The Debtors have continued to experience significantly higher costs for raw materials.

15. With respect to the Debtors' customers, the Debtors have been unsuccessful in recovering much of these increases in raw material costs from their customers through price increases. The structure of the American automotive industry is such that it is difficult for manufacturers such as the Debtors to pass rising material costs on to customers. Faced with rising costs, the Debtors have expended substantial effort in attempting to source cheaper alternatives (such as recycled materials and alternative formulations) for substitution of higher cost materials. Despite these efforts, most of the Debtors' customers have delayed approving these material substitutions. Although the Debtors are now starting to experience success in receiving approvals of the material substitutions, the damage to the Debtors' liquidity is irreversible outside the protections of the Bankruptcy Code.

16. In addition to increased material costs, the general instability of the industry has directly harmed the Debtors' liquidity. For example, the Debtors have been impaired by the bankruptcy filing of several large OEM's, including Delphi Corporation, the Debtors' second largest customer. The bankruptcy filing of Delphi in October 2005 alone resulted in a cash loss to the Debtors of nearly \$1.7 million based on the Debtors' unpaid prepetition claim in that case.

17. In addition to bankruptcy filings in the industry, the general credit downgrade has led to delays and increasingly delinquent customer payments for approved tooling programs. These programs are typically managed and paid for by the Debtors for the benefit of a particular customer which subsequently reimburses the Debtors. The increased delays and failure of customers to pay for these programs have decreased the portion of accounts receivable against

which Wachovia will lend under the Prepetition Credit Agreements. This, in turn, has further impaired the Debtors' liquidity.

18. The Debtors have further experienced excess capacity at their plants due to decisions by their customers. For example, GM's transfer from the GMT800 platform to the GMT900 platform has led to substantial idling of capacity. In late 2005, GM started phasing out the GMT800 platform, a manufacturing platform in which the Debtors were heavily involved. The Debtors have been harmed by this action because (i) the Debtors have significant up front costs invested in the GMT800 platform and (ii) GM has not provided the Debtors with replacement work in the new GMT900 platform. Thus, the Debtors have not recovered their costs associated with the GMT800 platform and are operating at significantly lower capacity at several manufacturing plants due to a failure to receive work under the GMT900 platform.

D. Prepetition Activities

19. In an attempt to create maximum value for the Debtors' creditors, the Debtors worked with the Customers and WCFC to allow the Debtors to formulate a restructuring plan which would reorganize the Debtors outside of a chapter 11 proceeding. As part of this plan, in May 2006 the Debtors entered into a series of forbearance, accommodation and access and security agreements with WCFC and the Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. This window expired September 6, 2006.

20. Given the size and complexity of the Debtors' operations and the continuation of the market circumstances described above, the Customers, WCFC and the Debtors ultimately determined that an out-of-court restructuring was not feasible. Thus, after exploring all options and faced with a severe liquidity crisis, the Debtors have no choice but to commence these cases

as the only means of preserving the Debtors as going concerns, and, thus, maximize the value of the Debtors' assets for their creditors.

21. With the aide of this Court and the support of WCFC and the Customers, the Debtors' goal is to stabilize their business operations and financial situation and sell their assets in a manner to maximize value for the Debtors' Creditors. As detailed in the Debtors' DIP Financing Motion,³ filed contemporaneously herewith, WCFC and the Customers have agreed to provide post-petition financing and cash infusions to the Debtors which financing and cash infusions will fund the Debtors' costs of operations, wind down, restructuring and liquidation until such time that the Debtors' assets are sold pursuant to section 363 of the Bankruptcy Code. The Debtors believe that this course of action will maximize the value of their assets for all creditors.

RELIEF REQUESTED

22. The Debtors, as debtors in possession, contemporaneously herewith, are seeking approval of their employment and retention of (a) Baker & Hostetler LLP ("**Baker**") as general bankruptcy counsel, (b) Glass & Associates, Inc. ("**Glass**") as financial advisor and (c) Giuliani Capital Advisors LLC ("**GCA**") as investment bankers (each a "**Professional**" and collectively, the "**Professionals**"). The Debtors anticipate that they may need to retain other professionals in these cases. In addition, a statutory committee of unsecured creditors (the "**Committee**") may be appointed in these Cases, and is likely to retain counsel and possibly other professionals to assist the Committee.

³ The full title of the DIP Financing Motion is CEP Holdings, LLC's Motion for Emergency Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief.

23. To the best of the Debtors' knowledge and based upon the Bankruptcy Rule 2014 affidavits,

- (a) each Professional is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code;
- (b) none of the Professionals holds or represents an interest adverse to the estates that would impair that Professional's ability to objectively perform professional services for the Debtors, in accordance with section 327 of the Bankruptcy Code;
- (c) each Professional's connections with the creditors, any other party in interest, or their respective attorneys are disclosed in the respective Rule 2014 affidavit;
- (d) each Professional's partners and professionals working on this matter are not relatives of the United States Trustee of the Northern District of Ohio or of any known employee in the office thereof, or any United States Bankruptcy Judge for the Northern District of Ohio;
- (e) none of the Professionals has provided or will provide professional services to any of the creditors, other parties-in-interest, or their attorneys with regard to any matter related to the Cases; and
- (f) the disclosures made by each Professional in its respective Rule 2014 affidavit regarding connections with the Debtors, their creditors, any other parties in interest in these cases, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee satisfies the requirements of Bankruptcy Rule 2014.

24. Pursuant to section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement of expenses every one-hundred and twenty (120) days, or more often if the Court permits.

BASIS FOR RELIEF REQUESTED

25. The Debtors request the establishment of procedures for the compensation and reimbursement of court-approved professionals on a monthly basis similar to those established in other large Chapter 11 cases. *See, e.g., In re RMA Mgmt. Assocs., Inc.*, No. 05-43959 (KW)

(Bankr. N.D. Ohio July 8, 2005); *In re Nexpak Corp.*, No. 04-63816 (RK) (Bankr. N.D. Ohio July 19, 2004); *In re Summitville Tiles, Inc.*, No. 03-46341 (WTB) (Bankr. N.D. Ohio Dec. 12, 2003); *In re Republic Engineered Prods. LLC.*, No. 03-55118 (MSS) (Bankr. N.D. Ohio Oct. 8, 2003); *In re LTV Steel Co.*, No. 00-43866 (WTB) (Bankr. N.D. Ohio Dec. 29, 2000). Such an order will, among other things, permit the Court and parties-in-interest to more effectively monitor the professional fees incurred in these Cases.

26. Briefly stated, the requested procedures would require each Professional to submit to the Debtors, the United States Trustee, the secured lenders, and the Committee (once appointed) a detailed statement of services rendered and expenses incurred by the Professional for the prior month. If there is no timely objection, the Debtors would pay eighty percent (80%) of the amount of fees incurred for the month, with a twenty percent (20%) holdback, and one hundred percent (100%) of disbursements for the month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process, approximately every one-hundred and twenty (120) days.

27. In accordance with Local Bankruptcy Rule 2016-1 and the Court's Guidelines for Compensation and Expense Reimbursement of Professionals (the "**Guidelines**"), the Debtors request issuance of an order establishing procedures for monthly compensation and reimbursement of expenses of professionals, and pursuant to sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2014.

28. Specifically, the Debtors propose that procedures for the monthly payment of compensation and reimbursement of expenses of the Professionals (the "**Compensation Procedures**") be structured as follows:

- (a) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Professional

seeking compensation will serve a monthly statement (I) by electronic mail upon CEP, Baker, the secured lenders, the Customers and the Committee using the following electronic mail addresses (1) jmallak@cepprod.com; (2) jhutchinson@bakerlaw.com; (3) twearsch@bakerlaw.com; (4) egoodman@bakerlaw.com; (5) jdowns@goldbergkohn.com; (6) dbaty@honigman.com; (7) radom@butzel.com; (8) mhammer@dickinson-wright.com; and (9) the email address selected by the Committee, and (II) by regular mail upon the Office of the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East - Suite 441, Cleveland, Ohio 44114, Attn: Maria D. Giannirakis (collectively, the “**Notice Parties**”);

- (b) The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding bankruptcy judge’s chambers because this Motion is not intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code and because professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules;
- (c) For those Professionals who bill based on time, each monthly fee statement must contain a list of the individuals and their respective titles (*e.g.*, attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be allowed pursuant to the Guidelines), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour;
- (d) Each person receiving a statement may review it and, in the event that he or she has an objection to the compensation or reimbursement sought in a particular statement, he or she shall, by no later than the thirty-fifth (35th) day following the end of the month for which compensation is sought, serve upon the Professional whose statement is objected to, and the Notice Parties, a written “Notice of Objection to Fee Statement” setting forth the nature of the objection and the amount of fees or expenses at issue;
- (e) At the expiration of the thirty-five (35) day period, the Debtors shall promptly pay eighty percent (80%) of the undisputed fees and one hundred percent (100%) of the undisputed expenses identified

in each monthly statement to which no objection has been served in accordance with paragraph (d);

- (f) If the Debtors receive an objection to a particular fee statement, they shall withhold payment on that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e);
- (g) Similarly, if the parties to an objection are able to resolve their dispute following the service of Notice of Objection to Fee Statement and if the party whose statement was objected to serves on the Notice Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the fees statement which is no longer subject to an objection;
- (h) All objections that are not resolved by the parties, shall be preserved and presented to the Court at the next interim or final fee application hearing to be held by the Court (*see* sub-paragraph (j) below);
- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- (j) Approximately every 120 days, but no more than every 150 days, each of the Professionals shall serve and file with the Court, in accordance with the Guidelines, an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Motion when due shall (i) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;

- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein, shall have any effect on the Court's interim or final allowance of compensation and reimbursement of any Professional; and
- (n) The attorneys for the Committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of Professionals, collect and submit statements of expenses (excluding individual committee members' counsel expenses), with supporting evidence of payment, from members of the Committee he or she represents; provided, however, that such Committee attorneys ensure that these reimbursement requests comply with the Guidelines.

29. The Debtors propose that the members of the Committee be permitted to obtain reimbursement for reasonable out-of-pocket expenses incurred in connection with committee membership as follows:

- (a) Each Committee member will submit statements of expenses and supporting vouchers and receipts (the "**Expense Statements**") to Committee counsel, who will collect and based thereon submit a comprehensive request for reimbursement to the Debtors and the U.S. Trustee and any secured pre or post petition lenders. Committee counsel will not be permitted to submit a request for reimbursement more frequently than once every thirty (30) days.
- (b) At the expiration of the fifteen (15) day objection period after receipt of a request from Committee counsel, the Debtors shall promptly pay for expenses, except with respect to any expense to which the Debtors object.
- (c) The Debtors, the Committee member to whose expense objection is made, Committee counsel, and any other objecting party shall attempt to resolve any such objection, but in the absence of a resolution, the Debtors shall issue a reimbursement check with respect to any expense subject to objection only pursuant to an order of the Court obtained by the applicable Committee member upon motion on notice to the Debtors and their counsel, the U.S. Trustee and any pre and postpetition secured lenders.

- (d) Committee member expenses need not be approved pursuant to any interim or final application process, unless necessary to resolve any pending objection to a reimbursement request.
- (e) Notwithstanding the failure to object to any reimbursement request, and notwithstanding payment pursuant to any reimbursement request, the Debtors and other parties in interest shall have the right, at any time during the Cases, upon motion and following notice and a hearing, to seek disgorgement of any amounts paid to any Committee member.

30. The procedure suggested herein will enable all parties to closely monitor the costs of administration of these Cases, and will enable the Debtors to maintain an appropriate level of cash flow availability.

31. The Debtors further request that the Court limit the notice of hearings to consider interim applications to the following parties: (a) the United States Trustee; (b) counsel to the Committee; (c) counsel to the Debtors; (d) counsel to the secured lenders; and (e) all parties-in-interest who have properly filed a notice of appearance in accordance with this Court's Order Authorizing Certain Electronic Notice, Case Management and Administrative Procedures.

32. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any Professional person employed under section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation or services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title . . .

11 U.S.C. § 331.

33. Thus, section 331 of the Bankruptcy Code, which generally permits professionals to file fee applications every 120 days, expressly contemplates that professionals may be compensated more frequently "if the court permits." The reality is that "when counsel must wait an extended period for payment, counsel is essentially compelled to finance the reorganization.

This result is improper and may discourage qualified practitioners from participating in bankruptcy cases; a result that is clearly contrary to Congressional intent.” *In re Knudsen Corp.*, 84 B.R. 668, 672 (9th Cir. B.A.P. 1988) (note omitted). Instead, “Congress relieved retained professionals of the burden of financing lengthy bankruptcy proceedings by permitting the professionals to submit interim requests for compensation.” *In re Child World*, 185 B.R. 14, 17 (Bankr. S.D.N.Y. 1995) (internal marks omitted).

34. The Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules . . .

11 U.S.C. § 105(a).

35. As noted above, procedures for the payment of professional compensation and disbursements have been adopted in other large Chapter 11 cases in this and other circuits. Among the relevant factors considered in connection with such procedures are “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.” *In re Int’l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981). The Debtors submit that the procedures sought herein are appropriate considering the above factors.

NOTICE

36. Notice of the Motion has been given to (a) the Office of the United States Trustee for the Northern District of Ohio, (b) the Debtors’ secured lenders, (c) the Debtors’ fifty (50)

largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice need be given.

37. Because this Motion presents no novel issues of law and the authorities relied upon are stated herein, the Debtors respectfully request that this Court waive the requirement contained in Local Bankruptcy Rule 9013-1(a) that the Debtors file a separate memorandum of law in support of this Motion.

38. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the Debtors request the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby.

39. No previous motion for the relief sought herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as the Court deems just and proper.

Dated: September 20, 2006
Cleveland, OH

CEP HOLDINGS, LLC, et al.,
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.
One of Their Attorneys

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Proposed Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: :
 : Case No. 06-61796
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
 :
Debtors. : Chapter 11
 :
 : Honorable Russ Kendig
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 331 AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014(a) ESTABLISHING
PROCEDURES FOR MONTHLY COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS AND COMMITTEE MEMBERS**

Upon the motion (the “**Motion**”)² of CEP Holdings, LLC and its affiliated debtors and debtors-in-possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), for entry of an order, pursuant to sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2014(a), establishing procedures for monthly compensation and reimbursement of expenses of professionals retained by order of this Court; the Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and upon the Mallak Affidavit; and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding, (iii) notice of the Motion was sufficient under the circumstances, and (iv) the legal and factual bases set forth in the Motion, the Mallak Affidavit, and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Motion is in the best

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

interests of the Debtors, their estates and their creditors; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. Except as may otherwise be provided in a Court order authorizing the retention of the specific Professionals, all Professionals in these Cases may seek monthly compensation in accordance with the following procedures:

- (a) On or before the twentieth (20th) day of each month following the month for which compensation is sought, each Professional seeking compensation will serve a monthly statement (I) by electronic mail upon CEP, Baker, the secured lenders, the Customers and the Committee using the following electronic mail addresses (1) jmallak@cepprod.com; (2) jhutchinson@bakerlaw.com; (3) twearsch@bakerlaw.com; (4) egoodman@bakerlaw.com; (5) jdowns@goldbergkohn.com; (6) dbaty@honigman.com; (7) radom@butzel.com; (8) mhammer@dickinson-wright.com; and (9) the email address selected by the Committee, and (II) by regular mail upon the Office of the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East - Suite 441, Cleveland, Ohio 44114, Attn: Maria D. Giannirakis (collectively, the “**Notice Parties**”);
- (b) The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding bankruptcy judge’s chambers because this Motion is not intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code and because professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules;
- (c) For those Professionals who bill based on time, each monthly fee statement must contain a list of the individuals and their respective titles (*e.g.*, attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be

allowed pursuant to the Guidelines), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour;

- (d) Each person receiving a statement may review it and, in the event that he or she has an objection to the compensation or reimbursement sought in a particular statement, he or she shall, by no later than the thirty-fifth (35th) day following the end of the month for which compensation is sought, serve upon the Professional whose statement is objected to, and the Notice Parties, a written "Notice of Objection to Fee Statement" setting forth the nature of the objection and the amount of fees or expenses at issue;
- (e) At the expiration of the thirty-five (35) day period, the Debtors shall promptly pay eighty percent (80%) of the undisputed fees and one hundred percent (100%) of the undisputed expenses identified in each monthly statement to which no objection has been served in accordance with paragraph (d);
- (f) If the Debtors receive an objection to a particular fee statement, they shall withhold payment on that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e);
- (g) Similarly, if the parties to an objection are able to resolve their dispute following the service of Notice of Objection to Fee Statement and if the party whose statement was objected to serves on the Notice Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the fees statement which is no longer subject to an objection;
- (h) All objections that are not resolved by the parties, shall be preserved and presented to the Court at the next interim or final fee application hearing to be held by the Court (*see* sub-paragraph (j) below);
- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;

- (j) Approximately every 120 days, but no more than every 150 days, each of the Professionals shall serve and file with the Court, in accordance with the Guidelines an application for interim or final Court approval and allowance, pursuant to Bankruptcy Code sections 330 and 331 (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Motion when due shall (i) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;
- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein, shall have any effect on the Court's interim or final allowance of compensation and reimbursement of any Professional; and
- (n) The attorneys for the Committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of Professionals, collect and submit statements of expenses (excluding individual committee members' counsel expenses), with supporting evidence of payment, from members of the Committee he or she represents; provided, however, that such Committee attorneys ensure that these reimbursement requests comply with the Guidelines.

3. All members of an official committee may seek monthly reimbursement of expenses in accordance with the following procedure:

- (a) Each Committee member will submit statements of expenses and supporting vouchers and receipts (the "**Expense Statements**") to Committee counsel, who will collect and based thereon submit a comprehensive request for reimbursement to the Debtors and the U.S. Trustee and any secured pre or post petition lenders. Committee counsel will not be permitted to submit a request for reimbursement more frequently than once every thirty (30) days.

- (b) At the expiration of the fifteen (15) day objection period after receipt of a request from Committee counsel, the Debtors shall promptly pay for expenses, except with respect to any expense to which the Debtors object.
- (c) The Debtors, the Committee member to whose expense objection is made, and Committee counsel and any other objecting party shall attempt to resolve any such objection, but in the absence of a resolution, the Debtors shall issue a reimbursement check with respect to any expense subject to objection only pursuant to an order of the Court obtained by the applicable Committee member upon motion on notice to the Debtors and their counsel, the U.S. Trustee and any pre and postpetition secured lenders.
- (d) Committee member expenses need not be approved pursuant to any interim or final application process, unless necessary to resolve any pending objection to a reimbursement request.
- (e) Notwithstanding the failure to object to any reimbursement request, and notwithstanding payment pursuant to any reimbursement request, the Debtors and other parties in interest shall have the right, at any time during the Cases, upon motion and following notice and a hearing, to seek disgorgement of any amounts paid to any Committee member.

4. The Debtors shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to each of the Professionals.

5. Any party may object to requests for payments made pursuant to this Order on the grounds that the Debtors have not timely filed monthly operating reports, remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or a manifest exigency exists by seeking a further order of this Court, otherwise, this Order shall continue and shall remain in effect during the pendency of these Cases.

6. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. Any and all other and further notice of the relief requested in the Motion shall be, and hereby is, dispensed with and waived; provided, however, that the Debtors must serve a copy of this Order on the Notice Parties.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

9. The requirement pursuant to Local Bankruptcy Rule 9013-1(a) that the Debtors file a memorandum of law in support of the Motion is hereby waived.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: September ____, 2006
Canton, OH

UNITED STATES BANKRUPTCY JUDGE