

**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.,<sup>1</sup> : (Jointly Administered)  
 :  
Debtors. : Chapter 11  
 :  
 : Honorable Russ Kendig  
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,  
PURSUANT TO SECTIONS 503(b) AND 363(c) OF THE BANKRUPTCY  
CODE, FOR ENTRY OF AN ORDER (A) GRANTING ADMINISTRATIVE  
EXPENSE STATUS TO THE DEBTORS' UNDISPUTED OBLIGATIONS  
ARISING FROM POSTPETITION DELIVERY OF GOODS ORDERED  
DURING THE PREPETITION PERIOD AND (B) AUTHORIZING DEBTORS  
TO PAY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

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 503(b) and 363(c) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order authorizing the Debtors to assume certain undisputed obligations arising from the postpetition delivery of goods ordered in the prepetition period, granting administrative expense status to such obligations, and authorizing the Debtors to pay such obligations in the ordinary course of business. 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 (the “**Mallak Affidavit**”), filed contemporaneously herewith, and respectfully represent as follows:

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<sup>1</sup> 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 503(b) and 363(c) of the Bankruptcy Code.

## **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 business 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.<sup>2</sup> 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

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<sup>2</sup> 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,<sup>3</sup> 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. In the ordinary operation of the Debtors' businesses, numerous vendors and suppliers provide the Debtors with thousands of dollars of goods necessary for the operation of the Debtors' businesses, such as certain irreplaceable resins and other raw plastics. The majority of the Debtors' trade vendors will only deliver based on cash in advance. Nevertheless, some of the Debtors' vendors provide the Debtors with terms. As of the Petition Date, and in the ordinary course of their businesses, the Debtors had numerous prepetition purchase orders outstanding (the "**Outstanding Orders**") with various vendors and suppliers (the "**Vendors**") for such goods. Additionally, certain amounts may be due for charges by common carriers related to the delivery of the Outstanding Orders (the "**Common Carrier Charges**").

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<sup>3</sup> 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. By this Motion, the Debtors seek the entry of an order:

- (a) Granting certain of the Debtors' vendors administrative expense priority status under sections 503(b) and 507(a)(2) of the Bankruptcy Code for undisputed obligations arising from the Outstanding Orders for goods delivered to, and accepted by, the Debtors subsequent to the Petition Date, and out of an abundance of caution, authorizing the Debtors to satisfy such undisputed obligations to the Vendors in the ordinary course of business under section 363(c) of the Bankruptcy Code; and
- (b) Authorizing the Debtors to pay certain prepetition Common Carrier Charges under sections 105 and 363 of the Bankruptcy Code, and
- (c) Allowing the Debtors' banks and other financial institutions to process, honor and pay checks or electronic transfers issued by the Debtors to honor prepetition transfers made by the Debtors in connection therewith.

24. As a consequence of the commencement of these Cases, many of the Vendors which provide terms are concerned or assume that delivery of goods subject to prepetition Outstanding Orders after the Petition Date will leave those Vendors, who make such shipments postpetition, general unsecured creditors of the Debtors' estates with respect to such shipments. Accordingly, such Vendors may refuse to ship or deliver goods to the Debtors on prepetition orders unless the Debtors issue substitute purchase orders or obtain an order of the Court providing that undisputed obligations of the Debtors arising from the postpetition delivery of merchandise subject to prepetition Outstanding Orders are afforded administrative expense priority with respect to the goods received by the Debtors postpetition. The Debtors submit that the purchase obligations that arise in connection with the postpetition delivery and acceptance of goods, including goods ordered prepetition, are in fact administrative expense priority claims under section 503(b)(1)(A) of the Bankruptcy Code. Thus, satisfaction of the Outstanding Orders on a postpetition basis will not enhance the priority of the Vendors or prejudice the rights of general unsecured creditors or other parties in interest.

25. In addition, the Debtors' failure to pay the Common Carrier Charges may give rise to claims secured by various liens, including liens on goods and supplies or possessory liens under state and other applicable law.<sup>4</sup> Depending on the circumstances of a particular case, these liens may give rise to claims that the Debtors' estates would be required to pay in full. Accordingly, the immediate payment of certain Common Carrier Charges will affect only the timing of such payments and will not prejudice the rights of general unsecured creditors or other parties in interest.

26. These liens also may entitle the Common Carriers to refuse to release or deliver property which could impede the Debtors' ability to provide their customers the full range of goods and services necessary for Debtors' continued operations an uninterrupted supply of fresh, saleable inventory. For example, the assertion of a possessory lien could prevent the Debtors from receiving adequate resins and other products that are integral to its manufacturing process. All of these scenarios, among others, would cause delay and disruption to the Debtors' businesses, to the detriment of all parties in interest. Obligations arising from Outstanding Orders (where Vendors supply terms) and Common Carrier Charges average approximately \$150,000.00 per month.

27. In order to obtain delivery of the goods subject to the Outstanding Orders, which are necessary for the continued operation of the Debtors' businesses, the Debtors hereby seek entry of an order (i) granting administrative expense priority status under section 503(b) of the Bankruptcy Code for undisputed obligations arising from the Outstanding Orders and Common

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<sup>4</sup> For example, section 7-307 of the Uniform Commercial Code, as codified in title 13 of the Ohio Uniform Commercial Code, provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* OHIO REV. CODE ANN. § 1307.22(A).

Carrier Charges that are requested or incurred by the Debtors; and (ii) authorizing, but not requiring, the Debtors to pay undisputed obligations arising from the Outstanding Orders and Common Carrier Charges in the ordinary course of business.

#### **APPLICABLE AUTHORITY**

28. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). If the debtor’s determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 482-483 (Bankr. N.D. Ohio 1992) (a section 363 sale may be authorized when a sound business purpose dictates such action); *In re Federated Dept. Stores*, 1990 Bankr. LEXIS 122 (Bankr. S.D. Ohio 1990) (section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances, but the debtor must articulate some business justification); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor’s decision be supported by a “sound business purpose”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999). Once a debtor articulates a valid business judgment, “the business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *In re Engman*, 331 B.R. 277, 289 (Bankr. D. Mich. 2005) (the business judgment rule creates a presumption in favor of the fiduciary). The business judgment rule has vitality in Chapter 11 cases and shields a debtor’s management from judicial second-guessing. *In re Integrated Res., Inc.*, 147 B.R. at 650.

29. In addition, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a). The “doctrine of necessity” functions in a Chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. “It is well established that a bankruptcy court has authority to authorize payment of pre-petition claims where the payment of such claims is necessary to facilitate reorganization.” *In re Federated Dept. Stores*, Case No. 1-90-00130, 1990 Bankr. LEXIS 122, \*3 (Bankr. S.D. Ohio 1990) (citations omitted).

30. For example, under the “necessity of payment” doctrine, a bankruptcy court can exercise its equitable powers to permit the payment of prepetition claims of those parties whose goods or services are critical to the debtor’s reorganization. *See id.*; *In re Eagle-Picher Industries, Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (supporting principle that bankruptcy court can authorize payment of pre-petition claims where such payment is necessary to survival of debtor); *In re SIS Corp.*, 108 B.R. 608, 609-10 (Bankr. N.D. Ohio 1989) (recognizing that courts may authorize payments on account of pre-petition claims “premised upon overriding practical and policy reasons”); *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931-932 (Bankr. S.D. Ohio 1988) (agreeing in “principle that a bankruptcy court may exercise its equitable powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”) (citation omitted); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (“[I]f payment of a claim which arose prior to reorganization is essential to the continued operation of the railroad during reorganization,

payment may be authorized even if it is made out of corpus”); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *In re Columbia Gas Sys.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (necessity of payment doctrine is applicable where “payment is essential to continued operation of business”); *In re Ionosphere Clubs*, 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (stating that the rationale of the necessity of payment rule corresponds with the paramount goal under Chapter 11 of reorganizing the debtor and that section 105(a) allows the bankruptcy court to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor”) (citation omitted).

31. Moreover, section 503(b) of the Bankruptcy Code, which allows for the payment of administrative expenses, provides additional authority for this Motion to determine whether a creditor has an administrative claim: The expense must have arisen from a postpetition transaction between the creditor and the trustee (or debtor-in-possession), and the transaction must have directly and substantially benefited the estate. *In re Sunarhauserman, Inc.*, 126 F.3d 811 (6th Cir. 1997). *See also In re White Motor Corp.*, 831 F.2d 106, 110 (6th Cir. 1987); *In re Unimet Corp.*, 842 F.2d 879, 884 (6th Cir. 1988); *Wolf Creek Collieries Co. v. GEX Kentucky, Inc.*, 127 B.R. 374, 379 (N.D. Ohio 1991)(“[t]he Sixth Circuit has adopted a widely accepted two-part test for determining whether a claim qualifies as an administrative expense under § 503(b)(1)(A)... focus[ing] upon whether the claim arose postpetition or prepetition and whether the debt substantially benefited the estate”). Thus, inducement of the creditor’s performance by the debtor-in-possession is “crucial to a claim for administrative priority in the context of furnishing goods or services to the debtor.” *In re Mammoth Mart, Inc.*, 536 F.2d 950 (1st Cir.

1976). *See also In re White Motor Corp.*, 831 F.2d 106, 110 (6th Cir. 1987); *In re Visi-Trak, Inc.*, 266 B.R. 372, 375 (Bankr. N.D. Ohio 2001).

32. By requesting the Outstanding Orders, the Debtors have induced the Vendors to perform under the Outstanding Orders. The Debtors also submit that the transactions with the Vendors will “substantially benefit the estate.” The relief requested herein will ensure a continuous supply of goods indispensable to the operations of the Debtors. Absent such relief, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide the Vendors with the assurance of such administrative priority. The attendant disruption to the continuous flow of current goods for the Debtors’ operations could result in insufficiently stocks of inventory and resins, essential to the Debtors’ manufacture of automotive parts at a critical time and, thus, jeopardizing the prospects for a successful reorganization.

33. Relief similar to that requested herein has been granted in other large Chapter 11 cases. *See, e.g., 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. 6, 2003); *In re LTV Steel Co.*, No. 00-43866 (WTB) (Bankr. N.D. Ohio December 29, 2000); *accord In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006); *In re Tower Automotive, Inc.*, No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005).<sup>5</sup>

### **NOTICE**

34. 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, and (c) the Debtors’ fifty (50)

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<sup>5</sup> Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of these orders will be made available to parties upon request from the Debtors’ counsel.

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

35. 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.

36. Notwithstanding the possible applicability of rules 6004(h), 7062, 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) or otherwise, the Debtors request the relief sought by this Application be immediately effective and enforceable upon entry of the order requested hereby.

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

**[Intentionally Left Blank]**

**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.,<sup>1</sup> : (Jointly Administered)  
 :  
 Debtors. : Chapter 11  
 :  
 : Honorable Russ Kendig  
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**ORDER, PURSUANT TO SECTIONS 503(b) AND 363(c)  
OF THE BANKRUPTCY CODE, GRANTING (A) ADMINISTRATIVE  
EXPENSE STATUS TO THE DEBTORS' UNDISPUTED OBLIGATIONS  
ARISING FROM POSTPETITION DELIVERY OF GOODS ORDERED  
DURING THE PREPETITION PERIOD AND (B) AUTHORIZING DEBTORS  
TO PAY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)<sup>2</sup> 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 authorizing the Debtors to assume certain undisputed obligations arising from postpetition delivery of goods ordered in prepetition period, granting administrative expense status to such obligations and authorizing debtors to pay such obligations in the ordinary course of business pursuant sections 503(b) and 363(c) of the Bankruptcy Code; 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

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

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

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 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. The Debtors are authorized, but not required, pursuant to section 363 of the Bankruptcy Code, to request and receive the Outstanding Orders which, in the exercise of the Debtors' business judgment, are necessary to the Debtors' continued operations.
3. Each of the Vendors is granted an administrative expense priority, pursuant to section 503(b) of the Bankruptcy Code, for any undisputed obligations of the Debtors requested by the Debtors under an Outstanding Order.
4. Pursuant to section 363(c) of the Bankruptcy Code, the Debtors are authorized to pay undisputed obligations arising from the postpetition delivery or shipment by the Vendors of goods subject to the Outstanding Orders, including any Common Carrier Charges, consistent with their customary practices in the ordinary course of their business.
5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.
6. The requirement of Local Bankruptcy Rule 9013-1(a) to file a separate memorandum of law in support of the Motion is hereby waived.

7. 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

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UNITED STATES BANKRUPTCY JUDGE