

**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 FOR ENTRY OF AN ORDER AUTHORIZING THE
MAINTENANCE OF BANK ACCOUNTS, CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM AND BUSINESS FORMS, AND WAIVING INVESTMENT
AND DEPOSIT GUIDELINES OF SECTION 345(b) OF THE BANKRUPTCY CODE**

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), 345 and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order (a) authorizing the maintenance of bank accounts, (b) authorizing the continued use of the existing cash management system and business forms, and (c) waiving the investment and deposit requirements of section 345(b) of the Bankruptcy Code. 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. This 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 sought herein are sections 105(a), 363 and 345 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.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. By this Motion, the Debtors seek an order (a) authorizing the maintenance of existing bank accounts, (b) authorizing the continued use of the existing cash management system and business forms, and (c) waiving the investment and deposit requirements of section 345(b) of the Bankruptcy Code. The Debtors respectfully submit that each of these requests is in the best interests of their estates and their creditors.

BASIS FOR RELIEF

I. Maintenance of Existing Bank Accounts

23. The Office of the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases.

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.

These guidelines require Chapter 11 debtors to, *inter alia*, (a) close all existing bank accounts and open new debtor-in-possession bank accounts, (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes, (c) maintain a separate debtor-in-possession account for cash collateral, and (d) obtain checks for all debtor-in-possession accounts which bear the designation “Debtor-In-Possession,” the bankruptcy case number, and the type of account. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims.

24. Prior to the commencement of these Cases, in the ordinary course of business, the Debtors maintained a substantially integrated and complicated centralized cash management system (the “**Cash Management System**”) consisting of various accounts (collectively, the “**Accounts**”). A summary chart of the Accounts, organized by Debtor, is attached hereto as **Exhibit A** and incorporated by reference herein.

25. The Cash Management System is organized by entity. Products and Thermoplastics each have lockbox accounts (the “**Products Lockbox Account**” and “**Thermoplastics Lockbox Account**,” respectively, and collectively, the “**Lockbox Accounts**”) at Wachovia Bank, N.A. (“**Wachovia Bank**”), an affiliate of Wachovia.

26. The Debtors derive their revenue from customer payments. Customers of each Debtor remit payment to the Debtors via deposit into their respective Lockbox Accounts. Prepetition, domestic customer payments owing to CEP Mexico are also deposited into the Products Lockbox. As part of the Cash Management System, each day, the Lockbox Accounts are swept by Wachovia. The swept amounts reduce the obligations owed by the Debtors to Wachovia Capital.

27. In addition, Products and Thermoplastics have separate operating accounts (the “**Products Operating Account**” and “**Thermoplastics Operating Account**,” respectively, and collectively, the “**Operating Accounts**”) into which Wachovia funds the Debtors under the Prepetition Loan Agreements. Each day, based on availability, the Debtors request funding from Wachovia under the Prepetition Loan Agreements. If availability exists, Wachovia funds the Operating Accounts as requested by the Debtors. The funds held in the Operating Accounts are used by the Debtors to make all payments that are made by wire transfer, including, but not limited to: (a) payroll, (b) insurance premiums, and (c) large vendor payments. All of the Operating Accounts are located at Wachovia Bank.

28. In addition, Products and Thermoplastics have separate controlled disbursement accounts (the “**Products Disbursement Account**” and “**Thermoplastics Disbursement Account**,” respectively, and collectively, the “**Disbursement Accounts**”) at Wachovia Bank. All of the Debtors’ checks are drawn on the Disbursement Accounts. The Disbursement Accounts are zero-balance accounts which are solely funded with the amount of a check once the check is issued by a Debtor. Thus, funds in the Disbursement Accounts are equal to the amount of issued, but outstanding checks at any given time.

29. Although prepetition, the Cash Management System was intertwined with the operations of non-debtor affiliate, CEP Mexico, the Debtors are required under the proposed DIP Financing Order to separate the business operations of CEP Mexico. The Debtors have sought authority to establish a bank account for CEP Mexico at Wachovia which will serve to segregate CEP Mexico’s receivables and payables from the Debtors. As provided in the DIP Financing Motion, CEP Mexico shall operate as a stand alone entity postpetition and will be supported by the Debtors’ customers at such facilities.

30. The Debtors further maintain a bank account (the “**National City Account**”) at National City Bank (account #982674652) with a balance of approximately \$3,200. It is not necessary for the Debtors to maintain the National City Account and the Debtors request the authority to close this account.

31. Continuation of the Cash Management System with its complex structure of lockboxes and accounts is essential to maintaining the stability of the Debtors’ financial structure while operating in Chapter 11. By preserving business continuity and avoiding the operational and administrative paralysis that would accompany the closing of all accounts and the re-establishment of new ones, the relief requested herein is in the best interests of the Debtors’ estates and all parties in interest. The Debtors likewise require continued use of their Cash Management System so that they may continue the operation of their businesses without disruption and unnecessary confusion. This will assist the Debtors in their efforts to maximize the value of their assets.

32. The operation of the Debtors’ businesses require that their Cash Management System remain in place during the pendency of these Cases. Requiring the Debtors to adopt a new, segregated cash management architecture at this early and critical stage of their Cases would be expensive, disruptive, and create unnecessary administrative difficulties. Any disruption in the Debtors’ operations could have a severely adverse impact upon the Debtors’ operations especially given the Debtors’ acute liquidity problems. Accordingly, maintenance of the existing Cash Management System is not only essential, but is in the best interests of all creditors and parties in interest.

33. The foregoing practices directly and indirectly help maintain and preserve the value of the Debtors’ enterprise. Indeed, the Debtors’ operations and asset values depend on the

continuation of these cash management practices. Otherwise, the Debtors might not be able to trace their receipts and disbursements or efficiently manage their liquid assets. As a result: (a) the Debtors would not be able to timely meet postpetition obligations; (b) interest on the Debtors' funds would be lost; (c) payroll for thousands of employees would be disrupted; and (d) the Debtors' ability to service its customers would be impeded. Accordingly, absent the relief requested herein, the Debtors' businesses could be disrupted and their asset values irreparably harmed.

34. The Debtors believe that the continuation of the Cash Management System with its complex structure of lockboxes and accounts is essential to maintaining the stability of the Debtors' financial structure while operating in Chapter 11. By preserving business continuity and avoiding the operational and administrative paralysis that would accompany the closing of all accounts and the re-establishment of new ones, the relief requested herein is in the best interests of the Debtors' estates and all parties in interest. Consequently, the Debtors respectfully request that the Court waive the requirements of the United States Trustee's "Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11."

35. Subject to a prohibition against honoring prepetition checks without specific authorization from this Court, the Debtors hereby request that the Accounts be deemed debtor-in-possession accounts, and that this Court authorize their maintenance and continued use in the same manner and with the same account numbers, styles, and document forms as those employed by the Debtors prior to the Petition Date.

36. In other large Chapter 11 cases, courts in this district have recognized that strict enforcement of the requirement that a debtor-in-possession close its bank accounts does not necessarily serve the best rehabilitative process of Chapter 11. *See In re RMA Mgmt. Assocs.*,

Inc., No. 05-43959 (KW) (Bankr. N.D. Ohio July 8, 2005); *In re Nexpak*, No. 04-63816 (RK) (Bankr. N.D. Ohio July 19, 2004).⁴ Accordingly, this Court has waived such requirements and replaced them with similar alternative procedures. A similar authorization is appropriate in these Cases.

II. Continued Use of Existing Cash Management System

37. The Debtors likewise require continued use of their Cash Management System and intercompany transfer system so that they may continue the operation of their businesses without disruption and unnecessary confusion.

38. As described above, the Cash Management System utilized by the Debtors is similar to those commonly employed by other parties in the automotive industry. Because the aforementioned cash management procedures constitute the Debtors' usual, ordinary and essential business practices, the Debtors seek this Court's authorization to continue such practices during these Cases. If this relief is granted, the Debtors will maintain records of all postpetition intercompany transfers so that all transactions can be readily ascertained.

39. The operation of the Debtors' businesses require that their Cash Management System remain in place during the pendency of these Cases. Requiring the Debtors to adopt a new, segregated cash management architecture at this early and critical stage of their Cases would be expensive, disruptive, and create unnecessary administrative difficulties. Any disruption in the Debtors' operations could have a severe adverse impact upon the Debtors' operations especially given the Debtors' acute liquidity problems. Accordingly, maintenance of

⁴ Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of such orders will be made available to parties upon request from the Debtors' counsel.

the existing Cash Management System is not only essential, but is in the best interests of all creditors and parties in interest.

40. The Debtors submit that the foregoing practices directly and indirectly help maintain and preserve the value of their enterprise. Indeed, the Debtors' operations and asset values depend on the continuation of these cash management practices. Otherwise, the Debtors might not be able to trace their receipts and disbursements or efficiently manage their liquid assets. As a result: (a) the Debtors would not be able to timely meet postpetition obligations; (b) interest on the Debtors' funds could potentially be lost; (c) payroll for thousands of employees could be disrupted; and (d) the Debtors' ability to service their customers could be impeded which in turn could shut down production lines at GM, Delphi, Visteon and other customers. Accordingly, absent the relief requested herein, the Debtors' businesses could be disrupted and their asset values and estates irreparably harmed.

41. The Debtors' request for authorization to continue their Cash Management System has been held to be consistent with section 363(c)(1) of the Bankruptcy Code, which allows a debtor-in-possession to "use property of the estate in the ordinary course of business." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *In re Enron Corp.*, No. 01-16034 (ALG), 2003 WL 1562202, at *15 (Bankr. S.D.N.Y. Mar. 21, 2003); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (Bankr. S.D.N.Y. 1997).

42. Included within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtors seek authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, and disbursement of cash pursuant to their Cash Management System described above.

43. The Court may exercise its equitable powers to grant the relief requested herein. section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). Continuing the Debtors' Cash Management System without interruption is vital to the survival of the Debtors. As noted, the Cash Management System enable the Debtors to operate their businesses efficiently. The Debtors seek to maintain and utilize the Cash Management System during these Cases. Moreover, the Court and other courts have routinely granted the relief requested herein in other 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).

III. Continued Use of Existing Business Forms

44. In the ordinary course of their businesses, the Debtors use a multitude of checks and other business forms. Due to the nature and scope of the Debtors' business operations and the large number of suppliers of goods and services with which the Debtors deal on a regular basis, it is important that the Debtors be permitted to continue to use their existing checks and

other business forms without alteration or change. To avoid disruption of their Cash Management System and unnecessary expense, moreover, the Debtors request that they not be required to include the legend “Debtor in Possession” or a “debtor in possession number” on any checks or other business forms.

45. Consistent with the relief granted in numerous other cases, the Court should authorize the Debtors’ continued use of existing checks and other business forms. *See 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); *accord In re Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997) (finding that the debtor was not required to obtain new checks imprinted with the “Debtor in Possession” legend); *In re Johnson*, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (same).

IV. Waiver of the Investment and Deposit Guidelines of Section 345(b)

46. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) generally requires the depository institution to issue a bond in favor of the United States secured by the undertaking of an adequate corporate surety.

47. A court may, however, waive the section 345(b) of the Bankruptcy Code requirements for cause. The Debtors believe that such cause exists in the instant case. The Lockbox and Disbursement Accounts are maintained as zero balance accounts and do not

maintain balances over time. The Accounts that do maintain balances, such as the Operating Accounts, maintain minimal balances and are kept at Wachovia. The Debtors believe that Wachovia is financially stable and is otherwise FDIC or FSLIC insured.

48. For this reason, the Debtors' believe that the funds held in deposit are safe, and that any risks associated with such accounts are so *de minimus* that it would be a waste of estate resources to incur the cost required to close such accounts and establish entirely new ones. *See, e.g., In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (waiving section 345(b) of the Bankruptcy Code bonding requirement based on Congressional Record noting that “[w]hile this [bonding] requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.”) (citing to HR Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4. 1994); 140 Cong. Rec. H10767 (Oct. 4. 1994)). This Court and other courts in this jurisdiction have also allowed the debtor-in-possession to waive such requirements. *See 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). This is especially the case where, as here, the manner of the proposed investments is safe and prudent. The Debtors submit that their prepetition cash management practices generally conform with the intent of section 345(b) of the Bankruptcy Code to protect and maximize the value of their estates.

NOTICE

49. 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 lender, (c) the Debtors' largest 50 unsecured creditors on a consolidated basis and (d) National City Bank. The Debtors submit that, under the circumstances, no other or further notice need be given.

50. 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.

51. 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.

52. 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 that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and 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

CHART OF ACCOUNTS

The Debtors' Bank Accounts

Creative Engineered Polymer Products, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028319768	Wachovia Bank, N.A.
Operating Account	(075)2000028319771	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951065699	Wachovia Bank, N.A.
Bank Account	982674652	National City Bank

Thermoplastics Acquisition, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028345677	Wachovia Bank, N.A.
Operating Account	(075)2000028345680	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951067600	Wachovia Bank, N.A.

EXHIBIT B

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)
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Debtors. : Chapter 11
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 : Honorable Russ Kendig
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**ORDER AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS,
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM
AND BUSINESS FORMS, AND WAIVING INVESTMENT AND
DEPOSIT GUIDELINES OF SECTION 345(b) OF THE BANKRUPTCY CODE**

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), 345(b) and 363(a) of the Bankruptcy Code authorizing the maintenance of bank accounts, (b) authorizing the continued use of the existing cash management system and business forms, and (c) waiving the investment and deposit requirement of section 345(b) 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

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.

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 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. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, the Debtors, in their discretion, are authorized and empowered to: (a) designate, maintain and continue to use any and all of their respective accounts (collectively, the “**Accounts**”) in existence as of the Petition Date, with the same account numbers, including, *inter alia*, the accounts identified in **Exhibit 1** attached hereto; and (b) treat the Accounts for all purposes as accounts of the Debtors, in their capacity as debtors in possession. The Debtors are authorized, but not directed, to close the National City Account.
3. All banks at which the Accounts are maintained, including, without limitation, those banks set forth on **Exhibit 1** (the “**Banks**”), are authorized to continue to service and administer the Accounts as accounts of the Debtors, in their capacity as debtors in possession, without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks, drafts, or automated transfers (the “**Transfers**”) issued on the Accounts with respect to any claim (as such term is defined in section 101(5) of the Bankruptcy Code) arising on or after the Petition Date; *provided, however*, that sufficient funds, whether deposited prior or subsequent to the Petition Date, are in said Accounts to cover and permit payment thereof.

4. The Banks are directed not to honor any check, draft, or Transfers presented, issued or drawn on the Accounts on account of a claim (as such term is defined in section 101(5) of the Bankruptcy Code) arising before the Petition Date, except that the Banks maintaining Accounts set forth on Exhibit 1 are authorized to honor checks, drafts, or Transfers which constitute a payment authorized and provided for by an order of this Court, including, *inter alia*, payments of wages, fees, salaries, bonuses, commissions, severance pay, holiday and vacation pay, and sick leave pay, and payments for sales and use and withholding tax claims; *provided, however*, that:

Sufficient funds, whether deposited prior or subsequent to the Petition Date, are in said Accounts to cover and permit payment thereof;

Any depository transfers, Transfers, or other similar drafts issued in the name of any of the Debtors that are used to transfer moneys between the Debtors' Accounts shall be honored and paid to the extent consistent with past practices; and

Any payment of the above-described amounts by the Banks is without prejudice to the rights of the Banks to claim rights of setoff against any funds held by them as such rights existed immediately prior to the payment of such items.

5. The Debtors are hereby directed to immediately furnish to the Banks a list of those checks, drafts, Transfers and other withdrawals made, drawn or issued in payment of prepetition claims the payment of which has not been authorized by the Court. The Banks are authorized to accept and honor all representations from the Debtors as to which checks should be honored or dishonored, whether the checks are dated prior to, on or subsequent to the Petition Date and whether or not the Bank believes the payment is authorized by some other order of the Court.

6. Any prepetition final payment made by any Bank of a check, draft or other item drawn against any of the Accounts, or any cashier's check, treasurer's check or other instrument

issued by any Bank for the account of or on behalf of any Debtor, that was required to be made prepetition pursuant to a “midnight deadline” or otherwise, shall be deemed paid and cleared prepetition for all purposes, whether or not such payment was debited from the Accounts prior to the commencement of these Cases.

7. The Debtors shall serve a copy of this Order on all Banks whose Accounts are listed on Exhibit 1 within three (3) business days of the entry of this Order.

8. This Order is without prejudice to the Debtors’ rights to (a) close any of the Accounts or (b) open or close accounts other than the Accounts at any banking institution.

9. The Banks are authorized and directed to honor the Debtors’ requests to (a) close any of the Accounts and (b) to open or close accounts other than the Accounts.

10. For all purposes in this Order, any and all accounts opened by the Debtors on or after the Petition Date at any bank shall be deemed an Account (as if it had been opened prior to the Petition Date and listed on **Exhibit 1**) and any banks at which such accounts are opened similarly shall be subject to the rights and obligations of this Order.

11. The Debtors and the Banks are hereby authorized to continue to perform pursuant to the terms of the prepetition agreements that exist between them except to the extent expressly directed by the terms of this Order to the contrary. The parties to such agreements shall continue to enjoy the rights and remedies afforded to them under such agreements except to the extent modified by the terms of this Order or by operation of the Bankruptcy Code.

12. The Debtors are hereby authorized to execute any additional documents as may be required to carry out the intent and purpose of this Order.

13. Cause exists for waiving the investment and deposit requirements set forth in section 345(b) of the Bankruptcy Code, and the Debtors' obligation to comply with that section is hereby waived.

14. The Debtors are authorized and empowered to continue to manage their cash in a manner consistent with their practice prior to the Petition Date, provided, however, intercompany transactions with CEP Mexico shall be terminated and CEP Mexico shall be operated as a stand alone entity as required by the DIP Financing Order.

15. The Debtors are authorized to continue to use their existing checks and other business forms, without alteration, and shall not be required to include the legend "Debtor in Possession" or a "debtor in possession number" on such checks and business forms until such forms are exhausted..

16. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

17. 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.

18. 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

EXHIBIT 1

LIST OF ACCOUNTS

THE DEBTORS' BANK ACCOUNTS

Creative Engineered Polymer Products, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028319768	Wachovia Bank, N.A.
Operating Account	(075)2000028319771	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951065699	Wachovia Bank, N.A.

Thermoplastics Acquisition, LLC

<u>Account Type</u>	<u>Account Number</u>	<u>Bank Maintaining Account</u>
Lockbox	(075)2000028345677	Wachovia Bank, N.A.
Operating Account	(075)2000028345680	Wachovia Bank, N.A.
Controlled Disbursement Account	(075)2079951067600	Wachovia Bank, N.A.