

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

----- X
In re: :
 : Case No. 06-61796
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
 :
Debtors. : Chapter 11
 :
 : Honorable Russ Kendig
----- X

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR
THE ENTRY OF AN ORDER: (I) ESTABLISHING PROCEDURES
FOR RESOLVING RECLAMATION CLAIMS ASSERTED AGAINST
THE DEBTORS; AND (II) GRANTING CERTAIN RELATED RELIEF**

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), 362 and 546(c) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order: (i) establishing procedures for resolving reclamation claims asserted against the debtors; and (ii) granting certain related relief. 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:

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).

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

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), 362 and 546(c) of Bankruptcy Code and Bankruptcy Rule 9019(b).

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 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**

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

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 respectfully request that the Court enter an order, pursuant to sections 105(a), 362 and 546(c) of the Bankruptcy Code and Bankruptcy Rule 9019(b), (a) establishing procedures for resolving reclamation claims asserted against them and (b) granting certain related relief, as described below.

BASIS FOR RELIEF REQUESTED

23. Prior to the Petition Date and in the ordinary course of their business, the Debtors purchased certain components, raw materials and other goods used in their manufacturing and business operations (collectively, the “**Goods**”) on credit. As of the Petition Date, the Debtors were in possession of certain Goods that had been delivered to them, but for which they had not yet been invoiced by, or made payment to, the suppliers. As a result of the commencement of these bankruptcy cases, the Debtors expect to receive written reclamation demands from various vendors or other parties (collectively, the “**Sellers**”) with respect to the Goods. The Debtors also anticipate that a number of Sellers, after becoming aware of the commencement of these Cases, might attempt to interfere with the delivery of Goods to the Debtors, or attempt forcibly to repossess delivered Goods from the Debtors.

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.

24. Upon the commencement of a Chapter 11 case, reclamation rights are governed by section 546(c) of the Bankruptcy Code. Section 546(c) provides that a seller who sold goods to a debtor, in the ordinary course of the seller's business, within 45 days before the petition date, may assert reclamation rights if: (a) the debtor received the goods while insolvent; and (b) the seller makes a reclamation demand in writing (i) before 45 days after receipt of the goods by the debtor or (ii) if the 45 day period expires after the petition date, not later than 20 days after the petition date.

25. Section 546(c) of the Bankruptcy Code also specifies, however, that reclamation rights are “subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof.” 11 U.S.C. § 546(c)(1). Indeed, it is well established that a lender or other creditor with a security interest in after-acquired property who acted in good faith and for value is a good faith purchaser to whose claim that of a reclaiming seller is subject. *Yenkin-Majestic Paint Corp. v. Wheeling-Pittsburgh Steel Corp. (In re Pittsburgh-Canfield Corp.)*, 309 B.R. 277, 284 (B.A.P. 6th Cir. 2004); *In re Phar-Mor, Inc.*, 301 B.R. 482, 496-497 (Bankr. N.D. Ohio 2003); *see also In re Pester Ref. Co.*, 964 F.2d 842, 844-45 (8th Cir. 1992); *Galey & Lord Inc. v. Arley Corp. (In re Arlco, Inc.)*, 239 B.R. 261, 270-71 (Bankr. S.D.N.Y. 1999). “[A]fter the secured creditors' superior interests have been satisfied or released, the reclaiming seller retains a priority interest in any remaining goods, and in any surplus proceeds from the secured creditors' foreclosure sale . . . where the value of the reclaiming seller's rights is worthless because of the secured lien, the reclamation request is not denied, but is of no value.” *In re Child World*, 145 B.R. 5, 7 (Bankr. S.D.N.Y. 1992); *see Phar-Mor, Inc.*, 301 B.R. at 497 (“[I]f the buyer's secured creditor releases its security interest in the goods to be reclaimed, the seller may enforce its right to reclaim. In the bankruptcy context, the secured creditor's decision determines the value of the seller's right to reclaim.”).

26. To avoid piecemeal litigation that would interfere with the Debtors' reorganization efforts, the Debtors seek authority, pursuant to sections 105(a), 362 and 546(c) of the Bankruptcy Code, to establish exclusive procedures for the reconciliation and allowance of all asserted reclamation claims. It is of paramount importance for the Debtors to maintain normal business operations and avoid costly and distracting litigation relating to reclamation claims. If the Debtors are unable to establish and implement uniform procedures for addressing reclamation claims, the Debtors will face the prospect of simultaneously defending multiple reclamation proceedings or other enforcement efforts at a time when they need to focus on critical aspects of the reorganization process.

27. Therefore, the Debtors seek entry of an order establishing the following procedures (the "**Reclamation Procedures**") for resolving all asserted reclamation claims in these cases (collectively, the "**Reclamation Claims**"):

- a. Any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements under applicable law and demonstrate that it has satisfied all legal elements entitling it to a right of reclamation;
- b. Any Seller asserting a Reclamation Claim must deliver a copy of its written reclamation demand to the Debtors, at the following addresses: (i) CEP Holdings, LLC, 3650 W. Market St., Suite 340, Akron, Ohio 44333 (Attn: Joseph Mallak); and (ii) Baker & Hostetler LLP, 3200 National City Center, 1900 East 9th Street, Cleveland, OH 44114-3485, (Attn: Joseph F. Hutchinson, Esq.). Upon receipt of any written reclamation demand, the Debtors will serve upon the Seller, at the address indicated in its reclamation demand, a copy of this Motion or, if this Motion has been granted, the order approving this Motion;
- c. After receipt of all timely reclamation demands and an opportunity to review such demands — including, without limitation, whether the demand is subordinate to the prior rights of a holder of a security interest in the applicable Goods or the proceeds thereof — but, absent further order of the Court, no later than **120 days** after the Petition Date (the "**Reclamation Notice Deadline**"), the Debtors will file a Notice (the "**Reclamation Notice**"), listing the Reclamation Claims and amount, if any, that the Debtors determine to be valid for each such Reclamation Claim. The Debtors will serve the Reclamation Notice on the following parties (collectively, the

“Notice Parties”): (i) the Office of the United States Trustee for the Northern District of Ohio (the **“U.S. Trustee”**); (ii) counsel to any official committee of unsecured creditors (the **“Committee”**) appointed in these cases; (iii) each Seller that is subject to the Reclamation Notice at the address indicated in its reclamation demand; and (iv) counsel to Wachovia;

- d. If the Debtors fail to file the Reclamation Notice within the required period of time, any holder of a Reclamation Claim may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim, but may not bring any such motion until the expiration of the Reclamation Notice Deadline;
- e. All Notice Parties shall have the right and opportunity to object to the proposed allowance or disallowance of any asserted Reclamation Claim in the Reclamation Notice as set forth therein;
- f. Any Reclamation Claim that is included in the Reclamation Notice and is not the subject of an objection within **20 days** after service of the Reclamation Notice, shall be deemed a valid Reclamation Claim allowed by the Court in the amount identified in the Reclamation Notice; provided that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved;
- g. Notwithstanding and without limiting the foregoing, the Debtors are authorized, but not required, to negotiate, in their sole discretion, with any Seller and to seek an agreement with any Seller to resolve its Reclamation Claim. If the Debtors and a Seller are able to agree on the validity, amount and/or treatment of the Seller's Reclamation Claim, the Debtors shall prepare a notice of settlement (the **“Settlement Notice”**), file it with the Court and serve such Settlement Notice on counsel to the Banks, counsel to the Committee, the U.S. Trustee and the Seller subject to the settlement. The Banks, the Committee and the U.S. Trustee shall have **10 days** from the date of the Settlement Notice to file with the Court an objection thereto (a **“Settlement Objection”**). Settlement Objections must be served so as to be received by the Debtors, the Debtors' counsel, the applicable Seller, counsel to the Banks, counsel to the Committee and the U.S. Trustee within the **10 day** objection period;
- h. If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the Reclamation Claim at issue shall be allowed and treated in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection with respect to a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a **“Settlement Stipulation”**). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within **30 days**

after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors shall thereafter file a motion for the Court to resolve the Settlement Objection; and

- i. Nothing in the Reclamation Procedures shall modify the automatic stay of section 362(a) of the Bankruptcy Code with respect to any Goods. As such, the Reclamation Procedures shall not alter in any way the procedures, standards and burden of proof applicable or required pursuant to section 362(a) of the Bankruptcy Code with respect to any attempt by a Seller to obtain possession of any of the Goods or otherwise to collect its Reclamation Claim. Without limiting the foregoing, no Seller shall be entitled to obtain possession of any Goods without first filing a motion with the Court for relief from the automatic stay or obtaining the prior express written consent of the Debtors. The Debtors and all other parties in interest reserve all rights to object to any such motion for relief from the automatic stay. Sellers shall be prohibited from seeking relief from the stay with respect to any reclamation demand until the time a Reclamation Notice is filed by the Debtors with respect to such reclamation demand or the Reclamation Notice Deadline otherwise expires.

28. The Debtors propose that the foregoing Reclamation Procedures be the sole and exclusive method for the handling of Reclamation Claims asserted against the Debtors. As a result, the Debtors request that all Sellers be prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including, without limitation: (a) commencing adversary proceedings against the Debtors in connection with any Reclamation Claims; (b) seeking to obtain possession of any Goods, except as permitted by the Reclamation Procedures; or (c) interfering with the delivery of any Goods to the Debtors. Section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Section 362 of the Bankruptcy Code further prohibits creditors from undertaking impermissible collection activities on account of a debtor's prepetition obligations. *See* 11 U.S.C. § 362.

29. The Debtors' business will be severely disrupted if Sellers are allowed to exercise their reclamation rights without a uniform procedure that is fair to all parties. Further, the attention

of the Debtors' management and operational personnel would be diverted from more important operational issues if the Reclamation Procedures are not approved and the Debtors instead are required to respond to and resolve each Reclamation Claim on an *ad hoc* basis, as numerous, individual adversary proceedings or contested matters are filed or as other actions are taken by the Sellers seeking to enforce their reclamation rights. Instead, the Reclamation Procedures effectively and efficiently will streamline the process of resolving the Reclamation Claims for the Debtors and the Sellers alike, without impacting the parties' substantive rights to pursue or contest the Reclamation Claims.

30. Therefore, the Debtors submit that establishing and implementing the Reclamation Procedures is necessary and appropriate pursuant to sections 105(a) and 362 of the Bankruptcy Code and Bankruptcy Rule 9019(b), and that the Reclamation Procedures are consistent with the provisions of section 546(c) of the Bankruptcy Code. The Debtors believe that their ability to resolve Reclamation Claims in this uniform manner will assist in the consensual resolution of such claims and, ultimately, the maximization of value for the Debtors, their estates and their creditors. Therefore, it is in the best interests of the Debtors and their respective estates and creditors to implement the Reclamation Procedures.

31. Relief similar to that requested in this Motion relating to reclamation procedures has been granted in other Chapter 11 cases in this District and elsewhere, including in a case filed since the recent amendments to the Bankruptcy Code's reclamation provisions. *See, e.g., In re Phar-Mor, Inc.*, Nos. 01-44007 through 01-44015 (WTB) (Bankr. N.D. Ohio Jan. 9, 2002); *accord In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 6, 2006); *In re FLYi, Inc.*, No. 05 20011 (MFW) (Bankr. D. Del. Dec. 5, 2005); *In re Delta Air Lines, Inc.*, No. 05 17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); *In re Levitz Home Furnishings, Inc.*, No. 05 45189 (BRL) (Bankr.

S.D.N.Y. Oct. 12, 2005); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 30, 2002); *In re Kmart Corp.*, No. 02 02474 (SPS) (Bankr. N.D. Ill. Feb. 22, 2002).⁴

NOTICE

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

33. 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.

34. 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.

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

⁴ 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.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially the form attached hereto as **Exhibit A**, establishing procedures for the treatment of valid Reclamation Claims and granting such other and further relief as is just and proper under the circumstances.

Date: 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 ESTABLISHING PROCEDURES FOR
RESOLVING RECLAMATION CLAIMS ASSERTED AGAINST
THE DEBTORS AND GRANTING CERTAIN RELATED RELIEF**

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 (i) establishing procedures for resolving reclamantion claims asserted against the debtors and (ii) granting certain related relief; 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 interests of

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.

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 hereby are authorized to resolve all Reclamation Claims in accordance with the exclusive Reclamation Procedures set forth below, which are hereby approved and authorized in their entirety:
 - a. Any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements under applicable law and demonstrate that it has satisfied all legal elements entitling it to a right of reclamation;
 - b. Any Seller asserting a Reclamation Claim must deliver a copy of its written reclamation demand to the Debtors, at the following addresses: (i) CEP Holdings, LLC, 3650 W. Market St., Suite 340, Akron, Ohio 44333 (Attn: Joseph Mallak); and (ii) Baker & Hostetler LLP, 3200 National City Center, 1900 East 9th Street, Cleveland, OH 44114-3485, (Attn: Joseph F. Hutchinson, Jr. Esq.). Upon receipt of any written reclamation demand, the Debtors will serve upon the Seller, at the address indicated in its reclamation demand, a copy of this Motion or, if this Motion has been granted, the order approving this Motion;
 - c. After receipt of all timely reclamation demands and an opportunity to review such demands — including, without limitation, whether the demand is subordinate to the prior rights of a holder of a security interest in the applicable Goods or the proceeds thereof — but, absent further order of the Court, no later than **120 days** after the Petition Date (the “**Reclamation Notice Deadline**”), the Debtors will file a Notice (the “**Reclamation Notice**”), listing the Reclamation Claims and amount, if any, that the Debtors determine to be valid for each such Reclamation Claim. The Debtors will serve the Reclamation Notice on the following parties (collectively, the “**Notice Parties**”): (i) the Office of the United States Trustee for the Northern District of Ohio (the “**U.S. Trustee**”); (ii) counsel to any official committee of unsecured creditors (the “**Committee**”) appointed in these cases; (iii) each Seller that is subject to the Reclamation Notice at the address indicated in its reclamation demand; and (iv) counsel to Wachovia;

- d. If the Debtors fail to file the Reclamation Notice within the required period of time, any holder of a Reclamation Claim may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim, but may not bring any such motion until the expiration of the Reclamation Notice Deadline;
- e. All Notice Parties shall have the right and opportunity to object to the proposed allowance or disallowance of any asserted Reclamation Claim in the Reclamation Notice as set forth therein;
- f. Any Reclamation Claim that is included in the Reclamation Notice and is not the subject of an objection within **20 days** after service of the Reclamation Notice, shall be deemed a valid Reclamation Claim allowed by the Court in the amount identified in the Reclamation Notice; provided that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved;
- g. Notwithstanding and without limiting the foregoing, the Debtors are authorized, but not required, to negotiate, in their sole discretion, with any Seller and to seek an agreement with any Seller to resolve its Reclamation Claim. If the Debtors and a Seller are able to agree on the validity, amount and/or treatment of the Seller's Reclamation Claim, the Debtors shall prepare a notice of settlement (the "**Settlement Notice**"), file it with the Court and serve such Settlement Notice on counsel to the Banks, counsel to the Committee, the U.S. Trustee and the Seller subject to the settlement. The Banks, the Committee and the U.S. Trustee shall have **10 days** from the date of the Settlement Notice to file with the Court an objection thereto (a "**Settlement Objection**"). Settlement Objections must be served so as to be received by the Debtors, the Debtors' counsel, the applicable Seller, counsel to the Banks, counsel to the Committee and the U.S. Trustee within the **10 day** objection period;
- h. If no Settlement Objection with respect to a Settlement Notice is timely filed and served, the Reclamation Claim at issue shall be allowed and treated in accordance with the Settlement Notice without further order of the Court. If a Settlement Objection with respect to a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a "**Settlement Stipulation**"). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court. If no consensual resolution of a Settlement Objection is reached within **30 days** after the date of the Settlement Objection, unless such period is extended by mutual agreement of the Debtors and the party filing the Settlement Objection, the Debtors shall thereafter file a motion for the Court to resolve the Settlement Objection; and

- i. Nothing in the Reclamation Procedures shall modify the automatic stay of section 362(a) of the Bankruptcy Code with respect to any Goods. As such, the Reclamation Procedures shall not alter in any way the procedures, standards and burden of proof applicable or required pursuant to section 362(a) of the Bankruptcy Code with respect to any attempt by a Seller to obtain possession of any of the Goods or otherwise to collect its Reclamation Claim. Without limiting the foregoing, no Seller shall be entitled to obtain possession of any Goods without first filing a motion with the Court for relief from the automatic stay or obtaining the prior express written consent of the Debtors. The Debtors and all other parties in interest reserve all rights to object to any such motion for relief from the automatic stay. Sellers shall be prohibited from seeking relief from the stay with respect to any reclamation demand until the time a Reclamation Notice is filed by the Debtors with respect to such reclamation demand or the Reclamation Notice Deadline otherwise expires.

3. The foregoing Reclamation Procedures are the sole and exclusive method for the resolution and payment of reclamation claims asserted against the Debtors. All Sellers are prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including, without limitation: (a) commencing adversary proceedings against the Debtors in connection with any reclamation claims; (b) seeking to obtain possession of any Goods; or (c) interfering with the delivery of any Goods to the Debtors.

4. All adversary proceedings and contested matters in these cases relating to Reclamation Claims, whether currently pending or initiated in the future, except those proceedings initiated by the Debtors in accordance with these Reclamation Procedures, are stayed and the claims asserted therein shall be resolved exclusively pursuant to the Reclamation Procedures set forth herein, unless otherwise ordered by the Court.

5. Nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other orders of this Court, regardless of whether such creditors have asserted Reclamation Claims.

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

7. 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.

8. 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