

**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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**APPLICATION OF DEBTORS AND  
DEBTORS IN POSSESSION FOR ENTRY OF AN  
ORDER PURSUANT TO 28 U.S.C. § 156(c) AND BANKRUPTCY  
RULE 2002 AUTHORIZING EMPLOYMENT AND RETENTION OF  
BMC GROUP, INC. AS CLAIMS, NOTICING AND BALLOTING AGENT**

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 apply (the “**Application**”), pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and 28 U.S.C. § 156(c), for entry of an order authorizing and approving the retention of BMC Group, Inc. (“**BMC**”) as claims, noticing and balloting agent for the Debtors. In support of this Application, the Debtors rely upon the Affidavit of Joseph Mallak in Support of Chapter 11 Petitions and First Day Motions (the “**Mallak Affidavit**”), filed contemporaneously herewith, and the Declaration of Tinamarie Feil (the “**Feil Declaration**”), attached hereto as **Exhibit A** and incorporated by reference herein, 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. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application 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 Bankruptcy Rule 2002 and 28 U.S.C. § 156(c).

## **BACKGROUND**

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under title 11 of the United States Code (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. The Debtors seek entry of an order authorizing the appointment of BMC as the official claims, noticing, and balloting agent to (a) maintain, process and docket claims and interests filed in these Cases, (b) provide case information and transmit notices to appropriate parties as required by the Bankruptcy Code and the Bankruptcy Rules, (c) assist in the preparation of the Debtors' schedules and statements of financial affairs (the "**Schedules**"), (d) assist the Debtors with the dissemination of solicitation materials relating to a plan of reorganization, and (e) assist the Debtors in the process of receiving and tabulating ballots submitted in connection therewith. The Debtors believe that BMC is well-qualified to serve in

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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.



this capacity and that BMC's retention is in the best interests of the Debtors' estates and their creditors.

**BASIS FOR RELIEF REQUESTED**

23. The relief requested herein is appropriate under 28 U.S.C. § 156(c) which governs staffing and expenses of the Court and states in pertinent part:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid out of the assets of the estate and are not charged to the United States.

28 U.S.C. § 156(c).

24. The Debtors have identified in excess of two-thousand entities or persons to which notice must be given for various purposes. Such a large number of parties makes utilization of an outside claims and noticing agent necessary and appropriate in these Cases.

25. Pursuant to the engagement letter attached as **Exhibit 1** to the Feil Declaration (the "**Engagement Letter**"), BMC will provide the following services to the Debtors:

- (a) Assisting the Debtor, Counsel & Office of the Clerk (the "**Clerk**" with noticing and claims handling;
- (b) Assisting Debtor with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort;
- (c) At Debtor's, Counsel's or the Clerk's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy cases (including any court order authorizing BMC's engagement, BMC will:
  - 1) Prepare and serve those notices required in the bankruptcy cases;
  - 2) Receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases;
  - 3) Create and maintain the official claims registers;

- 4) Receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e)
- 5) Maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases
- 6) Assist Debtor and Counsel with the administrative management, reconciliation and resolution of claims;
- 7) Mail and tabulate ballots for purposes of plan voting;
- 8) Assist with the preparation and maintenance of Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities; with the preparation and maintenance of Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities;
- 9) Assist with the production of reports, exhibits and schedules of information for use by the third parties;
- 10) Provide other technical and document management services of a similar nature requested by Debtors or the Clerk's office;
- 11) Facilitate or perform distributions; and
- 12) Maintain a call center.

26. The Debtors believe that the employment of BMC as claims and noticing agent will (a) relieve the clerk's office of a significant administrative burden, (b) avoid delay in processing proofs of claim and interests, (c) reduce legal fees that would be otherwise incurred in connection with the retrieval of proof of claim copies from the clerk's office and responding to numerous claim-related inquiries and (d) reduce costs of notice to parties and provide an efficient medium to communicate case information. In addition, the Debtors' management and professionals will coordinate responsibilities with BMC to ensure that no unnecessary duplication of services occurs.

27. BMC is well-qualified to perform claims processing and the various services set forth in the Engagement Letter. BMC specializes in providing data processing services to

Chapter 11 debtors in connection with administration and reconciliation of claims, as well as administration of plan of reorganization balloting. BMC is an approved claims agent for the U.S. Bankruptcy Court of the Northern District of Ohio, Eastern Division.

28. BMC has provided identical or substantially similar services in many other chapter 11 cases in a variety of jurisdictions. *See, e.g., In re Musicland Holding Corp.*, No. 06-10064 (Bankr. S.D.N.Y.); *In re Oxford Auto., Inc.*, et al., No. 04-74377 (Bankr. E.D. Mich.); *In re ATA Holdings Corp.*, No. 04-19866 (Bankr. S.D. Ind.); *In re Am. Commercial Lines*, No. 03-90305 (Bankr. S.D. Ind.); *In re Fansteel*, 02-10109 (Bankr. D. Del.); *In re Conseco, Inc.*, 02-B-49672 (Bankr. N.D. Ill.).

29. As compensation for the services provided, BMC will bill the Debtors in accordance with the amounts and procedures set forth in the Engagement Letter. In an effort to reduce the administrative expenses related to BMC's retention, no fee application or other filing with this Court will be required. The prices set forth in the Engagement Letter are at least as favorable as those charged by BMC to other Chapter 11 debtors for similar services.

30. BMC received a prepetition retainer of \$20,000 to cover prepetition services. BMC has requested its retainer be increased to \$50,000 for the postpetition services to be provided under the Engagement Letter.

31. The customary hourly rates, subject to periodic adjustments, charged by the professionals anticipated to be assigned to these Cases are as follows:

<b>Title</b>	<b>Hourly Rate</b>
Seniors/Principals	\$180 - \$275 per hour
Consultants	\$100-\$175 per hour
Case Support	\$65-\$95 per hour
Data Entry/Administrative Support	\$45 per hour

32. BMC will comply with all requests of the clerk of the Court and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

**BMC's Disinterestedness**

33. To the best of the Debtor's knowledge, and as disclosed in the Feil Affidavit, the officers and employees of BMC: (a) do not have any adverse connection with the Debtors, the Debtors' creditors or any other party in interest or their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee; and (b) do not hold or represent an interest adverse to the Debtor's estate.

34. To the best of the Debtor's knowledge, BMC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that its officers and employees:

- (a) are not creditors, equity security holders, or insiders of the Debtors;
- (b) are not and were not investment bankers for any outstanding security of the Debtors;
- (c) have not been, within three (3) years before the date of filing of the Debtors' chapter 11 petition, (i) investment bankers for a security of the Debtors, or (ii) an attorney for such investment banker in connection with the offer, sale, or issuance of a security of the Debtors; and
- (d) were not, within two (2) years before the date of filing of the Debtors' chapter 11 petition, a director, officer, or employee of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph.

35. Upon information and belief, BMC, in connection with its appointment as notice, claims, and balloting agent in this Chapter 11 Case:

- (a) is not and will not be employed by any federal or state agency (the "**Government**") and will not seek any compensation from the Government;

- (b) by accepting employment in this Chapter 11 Case, it waives any right to receive compensation from the Government for any work performed pursuant to this retention;
- (c) is not an agent of the Government and is not acting on behalf of the Government;
- (d) will not misrepresent any fact to the public; and
- (e) will not employ any past or present employees of the Debtor for work involving these Chapter 11 Case.

36. BMC will conduct an ongoing review of its files to ensure that no conflict or other disqualifying circumstances exist or arise. If any new facts or relations are discovered, BMC will supplement its disclosure to the Court.

#### **Indemnification Provisions**

37. The Retention Agreement provides that the Debtors shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from the Debtor as to anything arising in connection with its performance under this Agreement. The Retention Agreement also provides that, except with respect to certain breaches of confidentiality (which are more fully described in the Retention Agreement), (i) BMC shall be without liability to the Debtors with respect to any performance or non-performance, in accordance with the terms of the Retention Agreement or instructions properly received pursuant thereto, if done in good faith and without negligence or willful or wanton misconduct; and (2) BMC's liability to the Debtors for any losses or damages, whether direct or indirect, arising out of the Retention Agreement shall not exceed the total amount billed or billable to the Debtors for the portion of the particular work which gave rise to the loss or damage; and (3) in no event shall BMC be liable for any indirect, special or

consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in the Retention Agreement.

38. The Debtor request that the indemnification provisions of the Retention Agreement be approved.

#### **Basis for Relief**

39. The preceding indemnification procedures are a “market” term of consideration for professional services provided to Chapter 11 debtors and the procedures are in substantially the same form as the indemnification procedures that were negotiated with certain United States Trustees and approved by courts in the following cases: *See, e.g., In re Enron Corp.*, No. 01-16034 (Bankr. S.D.N.Y.); *In re Global Crossing Ltd.*, No. 02-40188 (Bankr. S.D.N.Y.); *In re Worldcom, Inc.*, No. 02-13533 (Bankr. S.D.N.Y.); *In re Hayes Lemmerz Int’l, Inc.*, No. 01-11508 (Bankr. D. Del.); and *In re Mpower Holding Corp.*, No. 02-11047 (Bankr. D. Del); *In re Exide Techs.*, Case No. 02-11125 (JCA) (Bankr. D. Del. August 21, 2002); *In re United Artists Theatre Co.*, Case No. 00-03514 (SLR) (Bankr. D. Del. Sept. 7, 2000); *In re Ameriserve Food Distribution, Inc.*, Case No. 00-0358 (PJW) (Bankr. D. Del. May 9, 2000).

40. The terms and conditions of the Retention Agreement, including the indemnification provisions contained therein, were negotiated by the Debtors and BMC at arm’s length and in good faith. The Debtors respectfully submits that the indemnification provisions contained in the Retention Agreement, viewed in conjunction with the other terms of BMC’s proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors.

**NOTICE**

41. Notice of the Application 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.

42. Because this Application 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 rule 9013-1(a) of the Local Bankruptcy Rules for the Northern District of Ohio that the Debtors file a separate memorandum of law in support of this Application.

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

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

**[Intentionally Left Blank]**

**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

Joseph F. Hutchinson, Jr. (0018210)  
Thomas M. Wearsch (0078403)  
Eric R. Goodman (0076035)  
BAKER & HOSTETLER LLP  
3200 National City Center  
1900 East 9th Street  
Cleveland, Ohio 44114-3485  
Phone: 216.621.0200  
Fax: 216.696.0740

*Proposed Counsel for the Debtors and Debtors-in-Possession*

/s/ Joseph Mallak  
Joseph Mallak  
CEO of the Debtors



**EXHIBIT A**

FEIL DECLARATION

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

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In re: :  
: Case No. 06-\_\_\_\_\_

CEP HOLDINGS, LLC, et al.,<sup>1</sup> : (Jointly Administered)  
: :  
Debtors. : Chapter 11  
: :  
: Honorable Russ Kendig  
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**DECLARATION OF TINAMARIE FEIL IN SUPPORT OF  
APPLICATION OF DEBTORS AND DEBTORS IN POSSESSION  
FOR ENTRY OF AN ORDER AUTHORIZING EMPLOYMENT  
AND RETENTION OF BMC GROUP, INC AS CLAIMS, NOTICING AND  
BALLOTING AGENT FOR THE DEBTORS AND DEBTORS IN POSSESSION**

Tinamarie Feil, under penalty of perjury, states that the following is true to the best of my knowledge, information and belief:

1. I am the Chief Financial Officer of BMC Group, Inc. (“**BMC**”), with offices located at 77 W. Wacker Dr., Ste. 1400, Chicago, IL 60601 (312-423-1400) and whose headquarters are located at 720 Third Ave., 23rd Fl. Seattle, WA 98104 (206-516-3300). I submit this declaration (the “**Declaration**”) in support of the application (the “**Application**”)<sup>2</sup> of CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”) for entry of an order authorizing the appointment of BMC as claims, noticing and balloting agent for the Debtors in the Cases.

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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> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Application.

2. The services my firm proposes to render to the Clerk of the Court (the “**Clerk**”) and the Debtors as consulting agent and custodian of court records are set forth in the Engagement Letter attached as **Exhibit 1**.

3. BMC specializes in providing consulting and data processing services to Chapter 11 debtors in connection with administration and reconciliation of claims as well as administration of plan of reorganization balloting. BMC has provided identical or substantially similar services to other Chapter 11 debtors in this and other jurisdictions. *See, e.g., In re Musicland Holding Corp.*, No. 06-10064 (Bankr. S.D.N.Y.); *In re Oxford Auto., Inc.*, et al., No. 04-74377 (Bankr. E.D. Mich.); *In re ATA Holdings Corp.*, No. 04-19866 (Bankr. S.D. Ind.); *In re Am. Commercial Lines*, No. 03-90305 (Bankr. S.D. Ind.); *In re Fansteel*, 02-10109 (Bankr. D. Del.); *In re Conseco, Inc.*, 02-B-49672 (Bankr. N.D. Ill.). Accordingly, I believe that BMC is well qualified to act as agent for the Clerk in this matter.

4. Based on the information available to me, I believe that BMC is a “disinterested person” within the meaning of 101(14) of the Bankruptcy Code and holds no interest adverse to the Debtors and their estates for the matters for which BMC is to be employed.

5. I am not related or connected to and, to the best of my knowledge, no other employee or consultant of BMC is related or connected to any United States Bankruptcy Judge or the United States Trustee or to any employee in the offices thereof.

6. As part of its diverse business, BMC is the notice, claims and balloting agent for debtors in numerous cases, proceedings and transactions involving many different creditors, professionals, including attorneys, accountants, investment bankers and financial consultants, some of which may represent claimants and parties-in-interest in these Chapter 11 Cases. Further, BMC has in the past, and may in the future, be represented by attorneys and law firms in

the legal community, some of whom may be involved in these proceedings. In addition, BMC has in the part and will likely in the future be working with or against other professionals involved in these Chapter 11 Cases in matters unrelated to these Chapter 11 Cases. Based on my current knowledge of the parties involved, and to the best of my knowledge, none of these business relations constitute interests adverse to the Debtors' estates with respect to the matters upon which BMC is to be engaged.

7. BMC is not a creditor of the Debtors.

8. As compensation for the services provided, BMC will bill the Debtors in accordance with the amounts and procedures set forth in the Engagement Letter. In an effort to reduce the administrative expenses related to BMC's retention, no fee application or other filing with this Court will be required. The prices set forth in the Engagement Letter are at least as favorable as those charged by BMC to other Chapter 11 debtors for similar services.

9. BMC received a prepetition retainer of \$20,000 to cover prepetition services. BMC has requested its retainer be increased to \$50,000 for the postpetition services to be provided under the Engagement Letter.

10. The customary hourly rates, subject to periodic adjustments, charged by the professionals anticipated to be assigned to these Cases are as follows:

<b>Title</b>	<b>Hourly Rate</b>
Seniors/Principals	\$180 - \$275 per hour
Consultants	\$100 - \$175 per hour
Case Support	\$65 - \$95 per hour
Data Entry / Administrative Support	\$45 per hour

11. BMC has no agreement with any other entity to share with such entity any compensation received by BMC in connection with these Chapter 11 Cases.

12. BMC will comply with all requests of the Clerk of the Court and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

To the best of my knowledge and belief, I declare that the foregoing is true and correct under penalty of perjury as provided for by 28 U.S.C. § 1746.

Dated: September 5, 2006  
El Segundo, California

  
Tinamarie Feil

**EXHIBIT 1**

ENGAGEMENT LETTER

## **AGREEMENT FOR SERVICES**

This Agreement (the "Agreement") dated as of June \_\_, 2006, is entered between Creative Engineered Polymer Products, LLC and its affiliates and subsidiaries ("Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

### **TERMS AND CONDITIONS**

#### **I. SERVICES**

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, ~~BMC agrees to provide services as follows: (a) assisting the Customer, Counsel and Office of the Clerk with noticing and claims handling and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy case(s); (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy case(s); (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy case(s); (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities, (9) assist with the production of reports, exhibits and schedules of information for use by the Customer, Counsel or to be delivered to the Court, the Clerk's Office, the U.S. Trustee or third parties; (10) provide other technical and document management services of a similar nature requested by the Customer or the Clerk's office; (11) facilitate or perform distributions; and (12) maintain a Customer call center.~~

#### **II. TECHNOLOGY SUPPORT**

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, data base modification, and/or other features.

#### **III. PRICES, CHARGES AND PAYMENT**

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. At the commencement of the Agreement, Customer will provide BMC with an initial advance payment retainer ("Initial Retainer") in the amount of twenty thousand dollars (\$20,000). In the event that a filing under Title 11 of Chapter 11 of the United States Code is necessary, Customer agrees to increase the amount of the retainer (the "Increased Retainer") to fifty thousand dollars (\$50,000), however, such a filing (or expectation of such a filing) is not a prerequisite to an increase of the retainer and BMC may request and Customer may increase such retainer irrespective of such filing. Customer shall keep the

Initial Retainer or Increased Retainer, as applicable, "evergreen" by making weekly payments, as necessary, to BMC, in the amount necessary to restore the balance of the retainer to \$20,000.00 or \$50,000, as applicable.<sup>1</sup> The retainer or any portion thereof may be applied as set forth in Paragraph III.E below to payment for postage and courier charges, provided however, that In addition, the retainer will be applied to BMC's final bill for services and expenses rendered or incurred on behalf of Customer. After application to the final bill, the unapplied portion of the retainer (if any) shall be refunded to Customer. Wire transfer information for transmission of the retainer is as follows:

Bank : Citibank  
Bank Address : 15233 Ventura Blvd. 1st Floor  
Sherman Oaks, CA 91403  
~~ABA/Routing # : 322271724~~  
Account #: 201381993 - BMC Group

- C. BMC raises its rates from time to time and generally does so each January to reflect changes in the business and economic environment.
- D. Customer agrees to pay BMC for reasonable out-of-pocket expenses for transportation, lodging, meals and related items.
- E. In connection with noticing services, for good cause and with advance notice to Customer, BMC may request and, in such event, Customer agrees to prepay, BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- F. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Interest shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- G. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connection with this Agreement.

#### **IV. RIGHTS OF OWNERSHIP**

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed by BMC during the course of this Agreement shall be the exclusive property of BMC.

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<sup>1</sup> BMC agrees, with respect to such retainer that BMC will, on a weekly basis, confer with the Company and obtain agreement from the Company for (1) the amount necessary to replenish the retainer to required amounts and (2) projections of the fees and expenses anticipated to be incurred by BMC in the following 7-day (or longer if requested) period.



- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full unless otherwise ordered by a court of competent jurisdiction, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. ~~Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media.~~ After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

#### **V. NON-SOLICITATION**

Customer agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement, unless mutually agreed upon by both parties.

#### **VI. CONFIDENTIALITY**

BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VI "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five (5) business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

#### **VII. TERMINATION**

- A. This Agreement shall remain in full force and effect until terminated by Customer on twenty (20) days' prior written notice received by BMC, or, by BMC upon thirty (30) days' prior written notice received by the Customer. In the event the Customer files for bankruptcy protection, the Agreement shall not be terminated without 10 day advance written notice to the Clerk of the United States Bankruptcy Court unless the party or parties seeking termination have received the court's authorization to terminate the agreement.

- B. In the event that this Agreement is terminated, regardless of the reason for such termination, BMC shall (i) cooperate with the Clerk of the United States Bankruptcy Court to effect an orderly transition of data and functions and (ii) cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records, and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

**VIII. SYSTEM IMPROVEMENTS**

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operation procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminals and other equipment and the BMC data center serving the Customer.

**IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION**

Except with respect to breaches under Section VI "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VI "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VI "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VI "Confidentiality", in no event shall BMC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

**X. INDEPENDENT CONTRACTORS**

Customer and BMC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

**XI. NOTICES**

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile and overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc. Attn: Tinamarie Feil, CFO 720 Third Avenue, 23rd Floor Seattle, WA 98104 Telephone (206) 516-3300 Facsimile (206) 516-3304	Creative Engineered Polymer Products, LLC Attn: Joseph Mallak, President & CEO 3560 West Market Street, Ste 340 Akron, Ohio 44333 Telephone (330) 664-2942 Facsimile (330) 664-2959
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.

**XII. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

**XIII. ENTIRE AGREEMENT/ MODIFICATIONS**

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may be modified or altered by ~~written instrument duly executed by both parties.~~ Customer represents that it has the authority to enter into this Agreement, and understands it may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer's bankruptcy case(s), the terms of the order shall govern.

**XIV. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<b>BMC Group, Inc.</b> By: <i>Tinamarie Feil</i> Name: Tinamarie Feil Title: CFO Date: <i>6/30/06</i>	<b>Creative Engineered Polymer Products, LLC</b> By: <i>Dale M Hart</i> Name: Joseph Mallak Title: President & CEO Date: <i>6/29/06</i>
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**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.,<sup>1</sup> : (Jointly Administered)  
: :  
Debtors. : Chapter 11  
: :  
: Honorable Russ Kendig  
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**INTERIM ORDER PURSUANT TO 28 U.S.C. §156(c) AND FEDERAL  
RULE OF BANKRUPTCY PROCEDURE 2002 AUTHORIZING DEBTORS TO  
EMPLOY BMC GROUP, INC. AS CLAIMS, NOTICING AND BALLOTING AGENT**

Upon the application (the “**Application**”)<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 appointing BMC Group, Inc. (“**BMC**”) as claims, noticing, and balloting agent; the Court having reviewed the Application 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 Feil Declaration,; 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 Application was sufficient under the circumstances, and (iv) the legal and factual bases set forth in the Application, the Mallak Affidavit, the Feil Declaration, and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Application is in the best interests of the Debtors, their estates and their

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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 Application.

creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED on an interim basis to the extent provided herein.
2. The Debtors are authorized to retain BMC to perform the noticing and other services set forth in the Application and the Engagement Letter attached to the BMC Affidavit as **Exhibit 1**. BMC is authorized to receive, maintain, record and otherwise administer the proofs of claim filed in these Cases and such other administrative matters as may be necessary or appropriate, including, without limitation, services at the Debtors' request as balloting agent under any plan of reorganization filed in these Cases.
3. BMC is appointed as Agent for the clerk of the Court (the "**Clerk**") and custodian of court records and, as such, is designed as the authorized recipient and repository for all proofs of claim filed in these Cases and is authorized and directed to maintain the official claims register for the Debtors and to provide the Clerk with a certified duplicate as directed.
4. BMC shall timely respond to all reasonable requests for information or documents in its possession propounded by the Clerk, the Debtors or any official committee appointed in these Cases.
5. The Debtors are authorized to compensate BMC on a monthly basis, in accordance with the Engagement Letter between the parties, upon the receipt of reasonably detailed invoices setting forth the services provided by BMC in the prior month and the rates charged for each, and to reimburse BMC for all reasonable and necessary expenses it may incur upon the presentation of appropriate documentation.
6. Upon request of the Clerk or conversion of these cases to one under chapter 7 of the Bankruptcy Code, BMC shall generate a creditor matrix in computer readable format in accordance with the Local Rules and deliver the same to the Clerk.

7. Any party wishing to object to the relief granted herein being granted on a permanent basis shall file such objection with the Court, together with proof of service thereof, and served upon: (a) Debtors' counsel, Joseph F. Hutchins, Jr. at [jhutchinson@bakerlaw.com](mailto:jhutchinson@bakerlaw.com) and Thomas M. Wearsch at [twearsch@bakerlaw.com](mailto:twearsch@bakerlaw.com); (b) counsel for any committee appointed in these cases; and (c) the Office of the United States Trustee for the Northern District of Ohio, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East - Suite 441, Cleveland, Ohio 44114, so as to be received no later than [\_\_\_\_], 2006 at 4:00 p.m. (prevailing Eastern Time).

8. Any objection to the relief granted herein on a permanent basis must be filed with this Court in accordance with (a) Rule 9037-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the Northern District of Ohio (the "**Local Rules**"), (b) Court's General Order (Provisions For Electronic Case Filing), (c) General Order No. 02-2, dated September 6, 2002, and (d) Sections II (A) and (B) of the Electronic Case Filing (ECF) Administrative Procedures Manual – Administrative Procedures for Filing, Signing, Maintaining, and Verifying, and Serving Pleadings and Papers in the ECF System.

9. In the event an objection is timely served and filed in accordance with this Order, there shall be a hearing held on [\_\_\_\_], 2006 at :\_\_.m. (prevailing Eastern Time) to consider such objection, and pending entry of an order following the conclusion of said hearing, the relief granted herein shall remain in effect on an interim basis.

10. If no objection to the relief granted herein on a permanent basis is timely served and filed in accordance with this Order, this Order shall be deemed a final order without further notice or hearing and the Application shall be granted in its entirety, and the relief requested in the Application shall be made effective permanently *nunc pro tunc* to the Petition Date.



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

12. 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.

13. The Court shall retain jurisdiction over any matters arising from or relating to the implementation and interpretation of this Order.

Dated: September \_\_, 2006  
Canton, OH

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UNITED STATES BANKRUPTCY JUDGE