UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	
	:	Case No. 06-51848
CEP HOLDINGS, LLC, et al.,[1]	:	(Jointly Administered)
	:	
Debtors.	:	Chapter 11
	:	
	:	Honorable Marilyn Shea-Stonum
	:	

OBJECTION OF DEBTORS AND DEBTORS IN POSSESSION TO MOTION OF ARJ MANUFACTURING, LLC PURSUANT TO 11 U.S.C. §§ 503(b)(9) AND 363 TO COMPEL ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM

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 object (the "**Objection**") to the *Motion of ARJ Manufacturing, LLC Pursuant to 11 U.S.C. §§ 503(b)(9) and 363 to Compel Allowance and Payment of Administrative Expense Claim* (Docket No. 106) (the "**Motion**"), which was filed by ARJ Manufacturing LLC ("**ARJ**") on or about October 5, 2006. In support of this Objection, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

By the Motion, ARJ improperly seeks to divert the Debtors' and this Court's attention and resources away from the proposed sale process,[2] and force the Debtors to litigate prepetition

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

[2] On October 4, 2006, the Debtors filed the *Motion for Order (A) Granting Authority for the Sale of Assets Pursuant to § 363(b); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such*

section 503(b)(9) claims on an *ad hoc* basis apart from an efficient claims process. ARJ further seeks relief that is not provided by the plain language of section 503(b)(9) of the Bankruptcy Code and that violates various fundamental principles of statutory construction. There is no statutory basis that could reasonably be said to compel the immediate payment of section 503(b)(9) claims in these Cases or any other Chapter 11 case. Accordingly, for the reasons set forth herein, the Motion should be denied.

BACKGROUND

General Background

1. On September 20, 2006 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). Pursuant to an order entered by the Court on September 26, 2006, the Cases are being jointly administered for procedural purposes only.

2. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 28, 2006, the United States Trustee appointed an official committee of unsecured creditors. No trustee or examiner has been appointed.

3. October 5, 2006, fifteen (15) days after the Petition Date, ARJ filed the Motion.

Relevant Facts

4. ARJ is listed on the list of creditors holding the 20 largest unsecured claims against the Debtors filed on the Petition Date. As of the Petition Date, the Debtors estimate that the amount due and owning to ARJ is $318,013.48.

Contracts and Leases Pursuant to § 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; and (E) Approving Form of Notice (Docket No. 103).

5. ARJ asserts that during the 20 days prior to the Petition Date it shipped $101,553.18 worth of goods to the Debtors for which it has not received any payment. ARJ further asserts that it holds a valid administrative expense claim pursuant to section 503(b)(9) of the Bankruptcy Code on account of its shipment of these goods (the "**ARJ Claim**"). By its Motion, ARJ seeks the entry of an order compelling the Debtors to immediately pay the ARJ Claim.

OBJECTION

6. The Debtors object to the Motion on two grounds. First, the litigation of section 503(b)(9) administrative claims on an *ad hoc* basis is inappropriate under the Bankruptcy Code. The Debtors submit that the Motion should be denied for this reason alone. Second, the immediate payment of section 503(b)(9) administrative claims is not required under the plain language of section 503(b) of the Bankruptcy Code or applicable law.

A. The Allowance of the ARJ Claim Should be Determined Through the Claims Resolution Process

7. Now is not the time to determine whether prepetition claims should be allowed or disallowed against the Debtors' estates. The litigation of the ARJ Claim, at this time, would require the Court to divert its attention away from the proposed sale process and would turn the claims resolution process generally applied in Chapter 11 cases on its head by giving individual claimants, and not Chapter 11 debtors, the ability to mandate when and how litigation will occur regarding prepetition claims. Nothing suggests that a wholesale re-writing of the claims resolution process was intended by Congress in enacting section 503(b)(9) of the Bankruptcy Code. Accordingly, the Motion should be denied and ARJ should be directed to file its claim in connection with the claims process to be established by the Court in these Cases.

8. ARJ is a "creditor" of the Debtors under the Bankruptcy Code. Section 101(10)(A) of the Bankruptcy Code defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or ***before*** the order for relief . . ." 11 U.S.C. § 101(10)(A) (emphasis added). The ARJ Claim is based on goods delivered to the Debtors before the Petition Date. Accordingly, ARJ, and all other entities holding prepetition section 503(b)(9) claims, are "creditors" under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

9. Because ARJ and other entities holding prepetition section 503(b)(9) claims are "creditors," such entities must file a proof of claim for their claim to be allowed. *See* Bankruptcy Rule 3002(a) ("An ***unsecured creditor*** or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed") (emphasis added); *see also* 11 U.S.C. § 501(a) ("A ***creditor*** or an indenture trustee may file a proof of claim.") (emphasis added).[3]

10. Additionally, because entities holding prepetition section 503(b)(9) claims are "creditors," such entities are subject to the claim filing and objection process established by sections 501 and 502 of the Bankruptcy Code and Bankruptcy Rules 3001 through 3007. Under this process, the debtor (and not the creditor) has control over the timing of objections to claims and, thus, the timing of litigation in respect of prepetition claims. *See* 11 U.S.C. § 502(b) (providing that if an objection to a claim is made by the debtor, "the court, after notice and a hearing, shall determine the amount of such claim").

11. This process is consistent with section 503 of the Bankruptcy Code, which grants administrative expense priority status to certain claims in the first instance. Section 503 of the Bankruptcy Code provides that "[a]n entity may timely file a request for payment of an

[3] ARJ has expressed its intention to file a proof of claim in these Cases. *See* Motion at ¶ 8, fn.2.

administrative expense . . . ." 11 U.S.C. § 503(a). Unlike postpetition administrative claims, this may be done with respect to section 503(b)(9) claims by filing a proof of claim (just as proofs of claim are filed for other prepetition claims entitled to priority status). *See* Bankruptcy Rule 3002(a); *see also* 11 U.S.C. § 501(a). Once an entity files such a request on a proof of claim form, "[a]fter notice and hearing, there shall be allowed administrative expenses . . ., including — the value of any goods received by the debtor within 20 days before the date of commencement of a [chapter 11 case, but only if such] goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). The filing of the proof of claim provides an opportunity for review by the debtor and, if necessary, an objection and a hearing. Under section 102 of the Bankruptcy Code, "after notice and a hearing" means "after such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). Thus, addressing section 503(b)(9) claims through the proof of claim process is consistent with the Bankruptcy Code and the Bankruptcy Rules.

12. ARJ, by filing its Motion, seeks to circumvent this process and require the Debtors to initiate prepetition claims litigation on an *ad hoc* basis immediately after the Debtors' bankruptcy filing. Considering the Motion at this time likely would cause numerous other claimants to file copycat motions for immediate payment of section 503(b)(9) claims, which would require the Debtors to focus on resolving prepetition claims through a contested court process rather than on completing the sale and liquidation of the Debtors' assets for the benefit of all parties in interest. Such a result is inappropriate and unwarranted at this early stage in these Cases. The Debtors should not be forced to resolve section 503(b)(9) claims at this time. Nothing in the Bankruptcy Code or in the Bankruptcy Rules suggests that such a result is appropriate in this or any other Chapter 11 case.

13. Accordingly, the Debtors request that the Court deny the Motion as procedurally improper without prejudice to ARJ's right to re-file a claim under any separate claims process.

B. ARJ Does Not Have a Statutory Right to Immediate Payment

14. Even if litigation of the ARJ Claim was appropriate at this time, ARJ is not entitled to the relief it seeks. Section 503(b)(9) of the Bankruptcy Code does not give ARJ the right to immediate payment of the ARJ Claim.

1. The Plain Language of Section 503(b)(9) of the Bankruptcy Code Does Not Give ARJ the Right to Immediate Payment

15. First, ARJ's proposed construction of section 503(b)(9) of the Bankruptcy Code violates the plain language of section 503(b)(9) and other relevant sections of the Bankruptcy Code and, thus, contravenes various fundamental principles of statutory construction.

16. It is well-established that the interpretation of the Bankruptcy Code, as with all statutes, begins with the statutory language itself. *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). Where the statute is plain, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

17. Additionally, it is well-established that discerning the plain language of a statute is a "holistic endeavor." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Different sections of the Bankruptcy Code, or statutes that are in *pari materia*, should be interpreted together. *In re Briggs*, 143 B.R. 438, 446 n.9 (Bankr. E.D. Mich. 1992) ("I interpret the statute under consideration with reference to other provisions of the Bankruptcy Code. This is appropriate because statutes in *pari materia* 'should be construed together.'"). Provisions of the Bankruptcy Code cannot be read in isolation but must be interpreted in light of the remainder of the statutory scheme. *In re Howard*, 972 F.2d 639, 640

(5th Cir. 1992) ("Provisions of the bankruptcy code cannot be read in isolation but should be interpreted in light of the remainder of the statutory scheme.").

18. Accordingly, this Court must consider the plain language of section 503(b)(9) of the Bankruptcy Code and other relevant sections of the Bankruptcy Code in considering ARJ's demand for immediate payment. Section 503(b)(9) of the Bankruptcy Code provides:

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including — the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9).

19. Nowhere in section 503(b)(9) or any other part of the Bankruptcy Code is the immediate payment of section 503(b)(9) claims called for. Section 503(b)(9) simply ameliorates the impact of secured debt on reclamation claims by essentially transforming an otherwise worthless reclamation claim arising within 20 days of the petition date into an administrative expense claim.[4] Section 503(b)(9) of the Bankruptcy Code does not call for the immediate payment of such claims or otherwise elevate them above other general administrative expense claims. Section 503(b)(9) of the Bankruptcy Code, by its plain terms, simply accords administrative priority status to a claim for "the value of any goods received by the debtor within 20 days before the date of commencement of a [chapter 11 case, but only if such] goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). There is nothing more to this section.

[4] *See, e.g., Yenkin-Majestic Paint Corp. v. Wheeling Pittsburgh Steel Corp. (In re Pittsburgh-Canfield Corp.)*, 309 B.R. 277, 287-88 (B.A.P. 6th Cir. 2004) (applying section 546(c) of the Bankruptcy Code prior to the enactment of BAPCPA and holding that reclaiming sellers are not entitled to a replacement lien or an administrative expense priority when their reclamation rights are rendered valueless by a prior secured claim in the subject goods).

20. Moreover, requiring the Debtors to immediately pay the ARJ Claim would effectively elevate the ARJ Claim to superpriority status. Congress clearly knows how to create superpriority claims. *See* 11 U.S.C. § 364(c)(1) (providing for the creation of superpriority claims to secured postpetition extension of credit after notice and a hearing before the credit is extended). There is no language in section 503(b)(9) of the Bankruptcy Code that remotely suggests that section 503(b)(9) claims are entitled to superpriority status or immediate payment prior to the claims resolution process. There is no evidence that Congress intended to create, *sub silento*, an additional class of superpriority claims by the enactment of section 503(b)(9) of the Bankruptcy Code.

21. Indeed, the vast majority of courts that considered similar arguments made by landlords after the adoption of section 365(d)(3) of the Bankruptcy Code rejected the notion that a class of superpriority claims can exist absent explicit and intentional Congressional action. *See, e.g.*, *In re Milton D. Myer Co.*, No. 02-40351 (WTB) (Bankr. N.D. Ohio June 3, 2003) ("The elevation of unpaid post-petition lease obligations to super-priority status requires an act of Congress. Absent such congressional action, it would be inappropriate to grant an administrative claim arising under § 365(d)(3) super-priority status over other administrative expense claims."); *In re Microvideo Learning Sys., Inc.*, 232 B.R. 602, 605 (Bankr. S.D.N.Y. 1999) (collecting authorities and stating, "The vast majority of courts have held that § 365(d)(3) does not create, *sub silento*, an additional class of super-priority administrative claims."), *aff'd*, 254 B.R. 90 (S.D.N.Y. 1999), *aff'd*, 227 F.3d. 474 (2d Cir. 2000); *In re Cardinal Indus., Inc.*, 109 B.R. 738, 742 (Bankr. S.D. Ohio 1989) ("This Court . . . is persuaded by those courts which have adopted the rationale that 'had Congress intended to create a super-priority for sub-section 365(d)(3), it would have done so by express statutory language.'") (quotation omitted); *In re*

Dieckhaus Stationers of King of Prussia, Inc., 73 B.R. 969, 973 (Bankr. E.D. Pa. 1987) ("It would be inappropriate to imply the existence of an automatic superpriority status [under section 365(d)(3) of the Bankruptcy Code], particularly since, by its terms, section 364(c) authorizes the allowance of a superpriority only upon notice and hearing before the credit has been extended.").[5]

22. The landlords in these cases at least had some textual basis for arguing for immediate payment of their administrative expense claims given the use of the word "timely" in section 365(d)(3) of the Bankruptcy Code. *See, e.g.*, *In re Telesphere Commc'ns, Inc.*, 148 B.R. 525, 528 (Bankr. N.D. Ill. 1992) (rejecting the majority view under section 365(d)(3) of the Bankruptcy Code, in part, due to the use of the term "timely" is section 365(d)(3) of the Bankruptcy Code). In contrast, there is no language in section 503(b)(9) of the Bankruptcy Code that suggests that a debtor must pay these claims prior to the effective date of a plan of reorganization. ARJ's legal position, thus, has less textual support than the arguments made and overwhelming rejected by courts interpreting section 365(d)(3) of the Bankruptcy Code.

23. In sum, ARJ asks this Court to abandon fundamental principles of statutory construction and effectively add language to section 503(b)(9) that would create a new class of superpriority claims by requiring the immediate payment of section 503(b)(9) claims. Congress knows how to create such rights, *see* 11 U.S.C. § 364(c)(1), and Congress has not given such rights to ARJ or any other section 503(b)(9) claimant, *see* 11 U.S.C. § 503(b)(9). Accordingly,

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[5] Section 365(d)(3) of the Bankruptcy Code provides, in relevant part:

> The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3).

pursuant to the plain language of section 503(9) and other relevant sections of the Bankruptcy Code, the ARJ's Motion must be denied as a matter of law.

2. The Payment of Administrative Claims Generally Does Not Occur Until a Plan has Been Confirmed

24. Second, section 503(b)(9) of the Bankruptcy Code does not give ARJ the right to payment for its section 503(b)(9) claim prior to the effective date of a plan of reorganization. In most Chapter 11 cases, a debtor in possession is not required to pay postpetition administrative expense claims until the effective date of a plan of reorganization. *In re Cardinal Indus., Inc.*, 109 B.R. 738, 743 (Bankr. S.D. Ohio 1989) (payment of post-rejection rent claims "shall be finally determined and paid along with all other administrative expense claims upon confirmation of a plan"); *In re Budget Uniform, Inc.*, 71 B.R. 652, 654 (Bankr. E.D. Pa. 1987) ("As with any administrative claim, the respondent must wait for confirmation of a plan before becoming entitled to payment."); *see* 11 U.S.C. § 1129(a)(9).[6]

25. In most Chapter 11 cases, a debtor in possession will pay many of the administrative claims for goods and services that it receives postpetition in the ordinary course of business as a debtor in possession. With respect to "ordinary course" administrative claims incurred postpetition, a debtor in possession is authorized to pay such claims pursuant to section 363(c)(1) of the Bankruptcy Code.[7] *See, e.g.*, *Telesphere Commc'ns, Inc.*, 148 B.R. at 531

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[6] Section 1129(a)(9) of the Bankruptcy Code provides:

> Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that — (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, ***on the effective date of the plan***, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

11 U.S.C. § 1129(a)(9) (emphasis added).

[7] Section 363(c)(1) of the Bankruptcy Code provides:

> If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into

(recognizing that a Chapter 11 debtor has the authority to pay postpetition debts incurred in the ordinary course of business); *In re Vernon Sand & Gravel, Inc.*, 109 B.R. 225, 258 (Bankr. N.D. Ohio 1989) (same); *In re W. Farmers Ass'n*, 13 B.R. 132, 135 (Bankr. W.D. Wash. 1981) (same).

26. It is well-established, however, that section 363(c)(1) of the Bankruptcy Code does not require immediate payment of postpetition administrative claims incurred in the ordinary course of business. *In re LTV Steel Co.*, 288 B.R. 775, 778-79 (Bankr. N.D. Ohio 2002) ("§ 363 never requires the immediate payment of expenses. Similarly, § 503 permits claims for administrative expenses, however it does not require immediate payment of these expenses."); *In re Microwave Prods. of Am., Inc.*, 100 B.R. 379, 385 (Bankr. W.D. Tenn. 1989) ("As to administrative claims other than interim fees pursuant to section 331, courts in chapter 11 cases have generally deferred payments until plan confirmation or liquidation, while some have allowed earlier payment unless special circumstances dictate otherwise. . . . However, there is no authority for the principle that administrative claims should generally be paid immediately.").

27. ARJ's reliance upon *Telesphere Communications*, *Vernon Sand & Gravel* and *Western Farmers Association* in support of its Motion seeking to force the Debtors to pay the ARJ Claim is misleading and misplaced. *See* Motion at ¶ 13. Section 363(c)(1) of the Bankruptcy Code simply gives a debtor the authority to pay postpetition administrative claims incurred in the ordinary course of business when the debtor deems it appropriate; it does not compel a debtor to make such payments.

> transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

28. When a debtor chooses not to pay an administrative claim for goods and services that it receives postpetition in the ordinary course of business under section 363(c)(1) of the Bankruptcy Code, the claimant generally must demonstrate "exceptional" circumstances in order for a court to compel a debtor to pay its postpetition administrative claim prior to the effective date of a plan of reorganization. *In re Continental Airlines, Inc.*, 146 B.R. 520, 531 (Bankr. D. Del. 1992) ("To qualify for exceptional immediate payment, a creditor must show that 'there is a necessity to pay and not merely that the Debtor has the ability to pay.'") (quoting *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 178-179 (Bankr. S.D.N.Y. 1989)); *see Microwave Prods. of Am., Inc.*, 100 B.R. at 385.

29. Claims arising under section 503(b)(9) of the Bankruptcy Code, however, do not arise from the postpetition delivery of goods or services to a debtor in possession that provides value to the debtor's estate, but from the prepetition delivery of goods. There is no postpetition transaction with the debtor in possession. Thus, a debtor in possession is not authorized to pay prepetition section 503(b)(9) claims under section 363(c)(1) of the Bankruptcy Code even if it desired to pay such claims absent court approval. *See, e.g.*, *Employee Transfer Corp. v. Grigsby (In re White Motor Corp.)*, 831 F.2d 106, 112 (6th Cir. 1987) (holding that a debtor does not have the authority under section 363(c)(1) of the Bankruptcy Code to enter into a contract without court approval that obligates the debtor to pay prepetition claims and stating, "[s]ection 363(c)(1) applies on its face only to postpetition transactions"); *In re Miller Min., Inc.*, 219 B.R. 219, 224 (Bankr. N.D. Ohio 1998) ("Postpetition payment of a prepetition debt is not authorized by 11 U.S.C. § 363(c)(1).") (quoting *N. Bank v. Metro. Cosmetic & Reconstructive Surgical Clinic (In re Metro. Cosmetic & Reconstructive Surgical Clinic)*, 115 B.R. 185, 189 (Bankr. D. Minn. 1990)). Accordingly, to the extent that a section 503(b)(9) creditor could ever compel a

debtor to pay a prepetition claim prior to the effective date of a plan of reorganization, it follows that such creditor would have to demonstrate something beyond "exceptional circumstances" to justify the payment.

30. The ARJ Claim is based upon the prepetition delivery of goods to the Debtors. There is no postpetition transaction between ARJ and the Debtors as debtors in possession. The Debtors are not required to pay the ARJ Claim until the effective date of a plan of reorganization. *See* 11 U.S.C. § 1129(a)(9). Indeed, the Debtors are not authorized to pay the ARJ Claim prior to the effective date of a plan of reorganization in the "ordinary course of business" pursuant to section 363(c)(1) of the Bankruptcy Code because the ARJ Claim is a prepetition claim. *See, e.g., White Motor Corp.*, 831 F.2d at 112; *Miller Min., Inc.*, 219 B.R. at 224; *Metro. Cosmetic & Reconstructive Surgical Clinic*, 115 B.R. at 189.

31. The Debtors have not sought authority under sections 105(a) and 363(b) of the Bankruptcy Code to pay the ARJ Claim. The fact that the Debtors have sought authority to pay certain prepetition claims (mainly prepetition claims owed to or for the benefit of the Debtors' workforce) does not mean ARJ can compel the Debtors, over this Objection, to pay the ARJ Claim. The fact that other Chapter 11 debtors have sought authority to pay section 503(b)(9) claims prior to the effective date of a plan of reorganization, *see, e.g.*, *In re Oneida Ltd.*, No. 06-10489 (ALG) (Bankr. S.D.N.Y. Mar. 19, 2006) (motion of debtors seeking authority to, among other things, pay prepetition section 503(b)(9) claims); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006) (same), likewise does not mean ARJ can compel the Debtors in these Cases, over this Objection, to pay the ARJ Claim.

32. Moreover, ARJ has failed to allege the existence of "exceptional circumstances" that would justify the immediate payment of a postpetition administrative claim, let alone an

administrative claim arising from the prepetition shipment of goods to the Debtors. ARJ has not even attempted to show that it is entitled to payment ahead of other administrative creditors that, unlike ARJ, have provided a benefit to the Debtors' estates by entering into postpetition transactions with the Debtors. Accordingly, ARJ's attempt to circumvent the claims process and effectively re-write section 503(b)(9) must fail as a matter of law.

CONCLUSION

The Motion is procedurally defective. ARJ cannot divert the Debtors' and this Court's attention away from the sale process and force the Debtors to litigate section 503(b)(9) claims on an *ad hoc* basis during this stage of the Debtors' bankruptcy. Moreover, ARJ is not entitled to the relief it seeks as a matter of law. Accordingly, for the reasons set forth above, the relief requested in the Motion should be denied in its entirety.

Dated: October 19, 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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