UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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In re: :	**Case No. 06-51848**
:	[Jointly Administered Case Nos. 06-51847 through 06-51849]
CEP HOLDINGS, LLC, ***et al.,***[1] :	
:	
Debtors. :	Chapter 11
:	
--x	Honorable Marilyn Shea-Stonum

VISTEON CORPORATION'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING HEARING TO CONSIDER ENTRY OF FINAL FINANCING ORDER

Visteon Corporation ("Visteon"), by its attorneys, Dickinson Wright PLLC, for its Proposed Findings of Fact and Conclusions of Law, states as follows:

A. Visteon intends to support the Debtor in obtaining entry of the Final Financing Order (the "Financing Order"). It submits these proposed findings of fact and conclusions of law on issues related to its status as a Participating Customer.

B. To the extent Visteon's position diverges from that of the Debtor, Visteon reserves the right to amend or add additional proposed findings of fact and conclusions of law.

Proposed Findings Of Fact

1. Visteon along with Delphi Automotive Systems, LLC ("Delphi") and General Motors Corporation ("GM", along with Visteon, and Delphi, the "Participating Customers") are customers of the Debtor.

2. The Debtor supplies component parts to the Participating Customers pursuant to purchase orders and/or other supply agreements. The Debtor is the sole source of supply for these component parts.

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1 The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC (collectively, the "Debtor")

3. The Debtor supplies the components parts on a "just in time" delivery method which means that neither the Debtor nor Visteon maintain a significant supply of inventory but rather rely on frequent and timely shipments from the Debtor.

4. If the Debtor fails to supply the component parts ordered by Visteon, certain of Visteon's assembly lines will be shut down along with those of its customers.

5. In that event, Visteon will suffer irreparable harm in the form of huge damage claims which the Debtor will be unable to pay along with the loss of goodwill. These damage claims will either be administrative expense claims or unsecured claims, which in either case will significantly dilute the pool of unsecured claims. See, for example, *Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.*, 749 F.Supp. 794, 798 n.7 (E.D.Mich. 1990) (Irreparable injury suffered by a buyer in the automotive industry if a supplier ceases to provide the buyer with parts under a "just-in-time" requirements contract. "A supplier's failure to make scheduled shipments may have immediate and dramatic consequences…. Thus, a breach of contract in the automotive industry may be more coercive than in other industries.").

6. In addition to paying the purchase price under its purchase orders and providing a host of other accommodations, the Participating Customers provided $2.9 million in prepetition secured funding (the "Prepetition Customer Secured Funding") to the Debtor through the purchase of subordinated participations in the working capital loan provided by Wachovia Capital Finance Corporation (Wachovia"). The purpose of the Prepetition Customer Secured Funding was to stabilize operations and provide for continued production while the Debtor formulated a business plan that would be acceptable to all constituents. Although several efforts were made, there was no acceptable plan since under any scenario the Debtor would have ongoing liquidity issues.

7. Approximately $1.175 million of the $2.9 million in Prepetition Customer Secured Funding was used to pay antecedent trade debt and additional amounts were used to satisfy a cash deficit caused by prior "hostage" payments of antecedent trade debt totaling approximately $2.9 million.

8. Pursuant to the Interim Financing Order (the " Interim Financing Order"), in addition to paying the purchase price under its purchase orders, the Participating Customers funded approximately $9.8 million of the Debtor's wind down costs, restructuring costs and operating costs, including a $150,000 carveout for the professionals for the Unsecured Creditors' Committee (the "Committee") to cover its fees and costs for a three month period. Of the $9.8 million in approximate postpetition funding (the " Postpetition Customer Funding"), $8.3 million was made in the form of cash infusions for which the Participating Customers may not be repaid.

9. Typically, in Chapter 11 automotive cases, funding similar to the Postpetition Customer Funding would either be made by the existing working capital lender or by the customers in the form of secured debt. Therefore, the Participating Customers agreement to allow $8.3M of the Postpetition Customer Funding to be treated as cash infusions greatly benefits the estate.

10. It is anticipated that approximately $1.5 million of the Postpetition Customer Funding will be secured debt in the form of a participation in the Debtor in Possession loan made by Wachovia. This $1.5 million secured debt relates to the Tuscaloosa, Alabama facility which Visteon designated as a Sale Facility under the terms of the Interim Order.

11. Absent a default, Visteon has agreed not to resource production from the Tuscaloosa facility through the sale closing date of approximately December 17, 2006.

12. The postpetition secured financing provided by Visteon with respect to the Tuscaloosa, Alabama facility benefits the Estate as it preserves jobs and going concern value.

13. There is no harm to the Estate in continuing production at the Debtor's remaining facilities as the Participating Customers along with the Assisting Customers have agreed to fund all direct and indirect expenses, including overhead, employee costs, and costs of administration for the period during which they receive production.

14. In addition, the Participating Customers have agreed to: (1) accelerate payment terms to net immediate, which for Visteon means a reduction in payment terms of approximately 45 days; (2) limit their setoff rights; (3) buy back inventory; and (4) as part of the Postpetition Customer Funding, fund professional fees and US Trustee fees of $1,787,400, and an employee incentive plan totaling $1.3 million.

15. The Equipment option granted to the Participating Customers under the Financing Order is fair, reasonable and benefits the Estate as the required option of price of 90% of orderly liquidation value identified on a one-year old appraisal exceeds the current value of such equipment. The $110,000 cap on the option price for the equipment designated by Visteon at the Tuscaloosa facility is also fair, reasonable and beneficial to the Estate.

16. Assumption of the Access Agreement and the granting of the tooling acknowledgement provided to the Participating Customers in the Financing Order benefits the Estate as they are reasonable accommodations by the Debtor in return for obtaining the Postpetition Customer Funding.

17. The right of the Participating Customers to setoff for direct vendor payments is fair, reasonable, and benefits the Estate.

18. The conditions and formula related to the "inventory buy back" obligation of the Participating Customers is fair, reasonable, and benefits the Estate.

Proposed Conclusions Of Law

1. The Financing Order benefits the Estate and is approved in all respects.

2. There is no binding authority or Bankruptcy Code provision requiring a guaranteed distribution to unsecured creditors. *In re Stone & Webster, Inc.*, 286 B.R. 532, 545 (Bankr.D.Del. 2002) ("Section 1129(a)(7) 'is an individual guaranty to each creditor or interest holder that it will receive at least as much in reorganization as it would in liquidation.'").

3. There is no binding authority or Bankruptcy Code provision requiring a carveout for the professionals to the Committee. *In re Evanston Beauty Supply, Inc.*, 136 B.R. 171, 175-177 (Bankr.N.D.Ill. 1992) ("Traditionally, the estate and not the secured creditors bears the costs of the administrative expenses of the estate." A carveout is merely an express consent on behalf of the secured party to allow a party's expenses to be paid out of the secured party's collateral.)

4. In considering whether there is a benefit to the Estate, the Court can consider whether there is a benefit to parties other than unsecured creditors. See generally, *Mellon Bank, N.A. v. Dick Corp.*, 351 F.3d 290, 293-294 (7th Cir. 2003) (The term "for the benefit of the estate" under § 550 does not require that some benefit flow to unsecured creditors. "Section 550(a) speaks of benefit to *the estate* – which in bankruptcy parlance denotes the set of all potentially interested parties – rather than to any particular class of creditors.") (emphasis in original); *In re Furrs*, 294 B.R. 763, 772, (Bankr.D.N.M.2003) quoting *In re NextWave Personal Communications, Inc., 235 B.R. 305, 308 (Bankr.S.D.N.Y. 1999)* ("[T]he term 'estate' is broader than the term 'creditors' … A better working definition would be that the estate benefits when the action increases the value or assets of the estate."); *In re Payless Cashways, Inc.*, 290 B.R. 689 (W.D.Mo. 2003) (holding that trustee was permitted to pursue preference action to recover funds "for the benefit of the estate," even though recovery would go to satisfy administrative expenses, and it was unlikely that unsecured creditors would receive anything); *In re Acequia, Inc.*, 34 F.3d 800, 811 (9th Cir. 1994) ("Courts construe the 'benefit to the estate' requirement broadly,

permitting recovery under section 550(a) even in cases where distribution to unsecured creditors is fixed by a plan of reorganization and in no way varies with recovery of avoidable transfers").

5. The Prepetition Customer Secured Funding was advanced by the Participating Customers in good faith and any challenge of it at this point is procedurally improper. *In re Copper King Inn, Inc.*, 918 F.2d 1404, 1406 (9th Cir. 1990) (the proper procedure to resolve a claim for subordination is by filing an adversary proceeding pursuant to Fed.R.Bankr.P 7001); *In re Todd*, 289 B.R. 379 (Bankr.N.D.Ind. 2003); *In re Protarga Inc.*, 2004 WL 1906145 (Bankr.D.Del. 2004)

6. It is a proper use of Chapter 11 for the Debtor to liquidate its facilities in lieu of reorganizing. *Sandy Ridge Development Corp. v. Louisiana National Bank (In re Sandy Ridge Development Corp.)*, 881 F.2d 1346, (5th Cir. 1989) (under Section 1123(b)(4) a plan may provide for the sale of property of the estate, and although Chapter 11 is titled "Reorganization" a plan may result in liquidation of the debtor); *In re Mount Vernon Plaza Community Urban Redevelopment Corp.*, 79 B.R. 306, 310 (Bankr.S.D.Ohio 1987) ("Reorganization clearly contemplates sales of all or part of debtors' assets.").

7. Assumption of the Access Agreement in connection with entry of the Financing Order is procedurally proper. See, for example, *In re Borne Chemical Co., Inc.*, 9 B.R. 263, 268 (Bankr.D.N.J. 1981) (a debtor may assume or ratify other agreements which may be annexed and incorporated into a financing order).

8. Visteon reserves the right to add additional findings of facts and conclusions of law as they become known to it in connection with the hearing on October 24, 2006 or otherwise.

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