

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

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

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

JURISDICTION AND VENUE

1. This Court has jurisdiction over this 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.² The Debtors also maintain a Technical Center in Livonia, Michigan which offers design assistance and program management services for the Debtors' businesses.

B. Prepetition Debt Structure

10. The Debtors were formed as part of two separate purchase transactions on August 16, 2005 and December 20, 2005, respectively. As part of the August 16, 2005 transaction, the CEPP and CEP Mexico businesses were purchased from the Carlisle Companies. In conjunction

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

with the transaction, CEP Acquisition LLC n/k/a CEPP entered into a Loan and Security Agreement, dated as of August 16, 2005 (the “**Prepetition CEPP Credit Agreement**”) with Wachovia Capital Finance Corporation (Central) (“**WCFC**”), as both Agent and Lenders thereunder. The Prepetition CEPP Credit Agreement provided two term loans and a revolving credit facility to CEPP in the maximum amount of \$45 million (collectively, the “**CEPP Prepetition Loan**”). The CEPP Prepetition Loan is secured by substantially all the assets of CEPP, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, real property, accounts receivable, other personal property and proceeds thereof (collectively, the “**Prepetition CEPP Collateral**”). As of the Petition Date, the amount outstanding under the CEPP Prepetition Loan was not less than \$21,693,507.60 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition CEPP Credit Agreement and applicable law).

11. As part of the December 20, 2005 transaction, CEPP purchased the Thermoplastics business from Parker Hannifan Corporation. In conjunction with the transaction, Thermoplastics entered into a Loan and Security Agreement, dated as of December 21, 2005 (the “**Prepetition Thermoplastics Credit Agreement**” and together with the Prepetition CEPP Credit Agreement, the “**Prepetition Credit Agreements**”) with WCFC, as both Agent and Lenders. The Prepetition Thermoplastics Credit Agreement provided a term loan and a revolving credit facility to Thermoplastics in the maximum amount of \$5 million (collectively, the “**Thermoplastics Prepetition Loan**” and together with the CEPP Prepetition Loan, the “**Prepetition Loans**”). The Thermoplastics Prepetition Loan is secured by substantially all the assets of Thermoplastics, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, accounts receivable, other personal property and proceeds thereof

(collectively, the “**Prepetition Thermoplastics Collateral**” and together with the Prepetition CEPP Collateral, the “**Prepetition Collateral**”). As of the Petition Date, the amount outstanding under the Thermoplastics Prepetition Loan was not less than \$4,219,688.58 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition Thermoplastics Credit Agreement and applicable law). The Prepetition Credit Agreements are cross-defaulted and cross-collateralized.

12. Prior to the Petition Date, Visteon Corporation, General Motors Corporation and Delphi Corporation (collectively, the “**Customers**”) and WCFC entered into a Subordinated Participation Agreement dated June 30, 2006 and a First Amendment to Subordination Participation Agreement dated August 18, 2006 pursuant to which the Customers purchased subordinated, last out participation interests (the “**Participation Interests**”) in the Prepetition Loan Facilities. The Customers purchased \$2.9 million of Participation Interests, the proceeds of which were used by the Debtors to fund their operations and the building of the Customers’ parts.

C. Events Leading To The Filing Of These Chapter 11 Cases

13. The Debtors and other automotive suppliers and manufacturers have faced a series of unanticipated operational and market challenges that have adversely affected their operations and cash flows. These challenges have impaired both the Debtors’ suppliers and customers which in turn have severely affected the Debtors’ operations and businesses.

14. With respect to suppliers, the September 2005 hurricanes in the Gulf Coast region have disproportionately damaged manufacturers who rely on plastic resins. Shortly after the hurricanes, the Debtors began experiencing sharp increases in their principal raw materials (plastic resins) which increases were attributable to interrupted refining capacity. With prices already high due to increased global demand, insecurity and supply constraint issues, the

hurricanes magnified the rise in the price of crude oil and natural gas. The Debtors have continued to experience significantly higher costs for raw materials.

15. With respect to the Debtors' customers, the Debtors have been unsuccessful in recovering much of these increases in raw material costs from their customers through price increases. The structure of the American automotive industry is such that it is difficult for manufacturers such as the Debtors to pass rising material costs on to customers. Faced with rising costs, the Debtors have expended substantial effort in attempting to source cheaper alternatives (such as recycled materials and alternative formulations) for substitution of higher cost materials. Despite these efforts, most of the Debtors' customers have delayed approving these material substitutions. Although the Debtors are now starting to experience success in receiving approvals of the material substitutions, the damage to the Debtors' liquidity is irreversible outside the protections of the Bankruptcy Code.

16. In addition to increased material costs, the general instability of the industry has directly harmed the Debtors' liquidity. For example, the Debtors have been impaired by the bankruptcy filing of several large OEM's, including Delphi Corporation, the Debtors' second largest customer. The bankruptcy filing of Delphi in October 2005 alone resulted in a cash loss to the Debtors of nearly \$1.7 million based on the Debtors' unpaid prepetition claim in that case.

17. In addition to bankruptcy filings in the industry, the general credit downgrade has led to delays and increasingly delinquent customer payments for approved tooling programs. These programs are typically managed and paid for by the Debtors for the benefit of a particular customer which subsequently reimburses the Debtors. The increased delays and failure of customers to pay for these programs have decreased the portion of accounts receivable against

which Wachovia will lend under the Prepetition Credit Agreements. This, in turn, has further impaired the Debtors' liquidity.

18. The Debtors have further experienced excess capacity at their plants due to decisions by their customers. For example, GM's transfer from the GMT800 platform to the GMT900 platform has led to substantial idling of capacity. In late 2005, GM started phasing out the GMT800 platform, a manufacturing platform in which the Debtors were heavily involved. The Debtors have been harmed by this action because (i) the Debtors have significant up front costs invested in the GMT800 platform and (ii) GM has not provided the Debtors with replacement work in the new GMT900 platform. Thus, the Debtors have not recovered their costs associated with the GMT800 platform and are operating at significantly lower capacity at several manufacturing plants due to a failure to receive work under the GMT900 platform.

D. Prepetition Activities

19. In an attempt to create maximum value for the Debtors' creditors, the Debtors worked with the Customers and WCFC to allow the Debtors to formulate a restructuring plan which would reorganize the Debtors outside of a chapter 11 proceeding. As part of this plan, in May 2006 the Debtors entered into a series of forbearance, accommodation and access and security agreements with WCFC and the Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. This window expired September 6, 2006.

20. Given the size and complexity of the Debtors' operations and the continuation of the market circumstances described above, the Customers, WCFC and the Debtors ultimately determined that an out-of-court restructuring was not feasible. Thus, after exploring all options and faced with a severe liquidity crisis, the Debtors have no choice but to commence these cases

as the only means of preserving the Debtors as going concerns, and, thus, maximize the value of the Debtors' assets for their creditors.

21. With the aide of this Court and the support of WCFC and the Customers, the Debtors' goal is to stabilize their business operations and financial situation and sell their assets in a manner to maximize value for the Debtors' Creditors. As detailed in the Debtors' DIP Financing Motion,³ filed contemporaneously herewith, WCFC and the Customers have agreed to provide post-petition financing and cash infusions to the Debtors which financing and cash infusions will fund the Debtors' costs of operations, wind down, restructuring and liquidation until such time that the Debtors' assets are sold pursuant to section 363 of the Bankruptcy Code. The Debtors believe that this course of action will maximize the value of their assets for all creditors.

RELIEF REQUESTED

22. 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

³ The full title of the DIP Financing Motion is CEP Holdings, LLC's Motion for Emergency Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief.

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:

Title	Hourly Rate
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.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 20, 2006
Cleveland, OH

CEP HOLDINGS, LLC, et al.,
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.
One of Their Attorneys

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