

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

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In re: :  
 : Case No. 06-51848  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> : (Jointly Administered)  
 :  
Debtors. : Chapter 11  
 :  
 : Honorable Marilyn Shea-Stonum  
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**MOTION FOR ORDER (A) GRANTING AUTHORITY TO SELL CERTAIN  
EQUIPMENT LOCATED IN HERMOSILLO, MEXICO PURSUANT  
TO §§ 363(b) and 541; AND (B) AUTHORIZING THE DEBTORS AS  
MAJORITY SHAREHOLDER TO DIRECT NONDEBTOR SUBSIDIARY  
TO DISPOSE OF ITS ASSETS IN HERMOSILLO, MEXICO**

CEP Holdings, LLC and its affiliated debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors” or “CEP”) in the above-captioned Chapter 11 cases (the “Cases”), hereby move (the “Motion”) for Order (A) Granting Authority to Sell Certain Equipment Located in Hermosillo, Mexico pursuant to Sections 363(b) and 541 of the Bankruptcy Code; and (B) Authorizing the Debtors as Majority Shareholder to Direct Nondebtor Subsidiary to Dispose of its Assets in Hermosillo, Mexico. In further support of this Motion, the Debtors 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.

## **BACKGROUND**

### **A. The Filing and Jurisdiction**

1. On September 20, 2006 (the "**Petition Date**"), the Debtors each filed a voluntary petition in this Court for relief under title 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. An official committee of unsecured creditors was appointed in these cases on September 28, 2006.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are Bankruptcy Code Sections 363(b) and 541.

### **B. The Debtors' Capital Structure and Business Operations**

5. Debtor 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 debtor 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 only asset is its

membership interests in CEPP. CEPP has three subsidiaries including Composite Parts Mexico S.A. de C.V. f/k/a Carlisle 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 (“**TRG**”). The .01% ownership interest in CEP Mexico was granted to TRG because under Mexican law corporations may not have only one shareholder. TRG has consented to the relief requested by this Motion.

6. CEP and its debtor subsidiaries are custom molders and extruders of rubber and plastic products, primarily for the OEM automotive market. The Debtors operate 10 manufacturing plants in Ohio, Michigan, Alabama, South Carolina and Mexico.

### **C. The Debtors’ Mexican Operations**

7. Through non-debtor CEP Mexico, CEPP operates two plants in Mexico. One plant is located in Hermosillo and the other is located in Chihuahua. CEP Mexico is a *maquiladora* for CEPP which means that CEP Mexico is essentially an alter ego of CEPP under Mexican law which allows CEPP to operate in Mexico without facing import and export taxes under Mexican law.

8. When CEPP purchased its business operations from Carlisle Engineered Products (“**Carlisle**”) in August 2005 (the “**August Transaction**”), it also purchased the CEP Mexico business. Prior to the August Transaction, the machinery and equipment (the “**Mexican M&E**”) used at the facilities in Hermosillo and Chihuahua were titled to Carlisle and leased by Carlisle to its *maquiladora*, Carlisle Mexico S.A. de C.V. (“**Carlisle Mexico**”) for use in manufacturing operations at the Mexican Facilities. Carlisle Mexico owned real property lease

rights for the Mexican facilities and also owned a small amount of personal property including office furniture and similar items.

9. Through the August Transaction, CEPP bought substantially all of the assets of Carlisle, including the Mexican M&E. Thus, title to the Mexican M&E is held by debtor CEPP. Rather than establish a new *maquiladora*, CEPP purchased Carlisle's shares in Carlisle Mexico and renamed it Composite Parts Mexico S.A. de C.V. In connection with the August Transaction, CEPP entered into a bailment/lease agreement with CEP Mexico whereby CEPP leased the Mexican M&E to CEP Mexico for use in the manufacturing operations at Hermosillo and Chihuahua.

10. CEP Mexico continues to hold the real property lease rights to the facilities in Hermosillo and Chihuahua and owns minimal personal property such as office equipment. At this time, the only customer at both Hermosillo and Chihuahua is Delphi Automotive Systems, LLC ("**Delphi**"). All other customer business has been resourced from these facilities.

#### **D. The Proposed Sale Transaction**

11. Pursuant to this Motion, CEPP requests the authority to (i) sell the Mexican M&E related to the Hermosillo facility to Delphi and to vote its interest in CEP Mexico to have CEP Mexico enter into the Purchase Agreement. Although the management of CEP Mexico, as a non-debtor entity, believes that it can authorize the transaction under Mexican law without authorization from this Court, out of an abundance of caution, CEPP, as the majority

shareholder, requests authority from this Court to vote its shares of CEP Mexico in support of the proposed transaction (the “**Transaction**”).

12. Attached hereto as Exhibit A is a copy of the proposed purchase agreement (the “**Purchase Agreement**”) by and among Delphi, Alanbrados y Circuitos Electricos S.A. de C.V., Delphi’s *Maquiladora* (“**Delphi Mexico**”), CEPP and CEP Mexico. The Debtors respectfully request authority to enter into the Purchase Agreement.

13. The key terms of the Purchase Agreement include:

- a. Purchase Price: \$2.4 million plus the value of inventory.
- b. Deposit: Delphi has paid CEPP a \$120,000 deposit.
- c. Purchased Assets: include the Mexican M&E at Hermosillo, the inventory at Hermosillo, any personal property owned by CEP Mexico and located at Hermosillo.
- d. Executory Contracts and Leases: CEP Mexico will assign its interest in the Hermosillo real property lease to Delphi Mexico. No leases or executory contracts will be assumed by the Debtors and assigned to Delphi pursuant to Section 365 of the Bankruptcy Code.
- e. Accounts Receivable: No accounts or notes receivable will be transferred to Delphi or Delphi Mexico as part of the Transaction.
- f. Employee Obligations: Delphi has agreed to enter into an employer substitution agreement and further to assume all employee severance obligations which may arise under Mexican law.
- g. Closing: Closing must occur on or before November 30, 2006.

#### **E. The Sale Process**

14. The Debtor’s investment banker, Glass & Associates, has solicited offers from various parties regarding the sale of the Hermosillo facility. In order to receive any value for the Hermosillo facility, it is necessary for the Debtors to move forward with the Purchase

Agreement with Delphi. First, Delphi is the only perspective purchaser that has submitted an offer for the Hermosillo facility. Second, the Debtors, Wachovia and the Committee believe that the value offered by Delphi under the Purchase Agreement represents very good value to the Debtors' estates for the purchased assets. Third, Delphi has stated that it will resource its business from Hermosillo if a transaction is not closed by November 30, 2006. Delphi is the only perspective purchaser that can close a transaction in that timeframe. If Delphi resources its business at Hermosillo, there will be no value left for the Debtors' estates because the Hermosillo Facility will have to be closed. Under Mexican law, employees at a closed facility are entitled to up to 10 months of severance. Mexican law permits the employees to seize the Mexican M&E to satisfy these claims. Thus, the Debtors believe that these will be of no value in the Hermosillo assets if the facility is closed. Thus, it is imperative to close the Transaction before Delphi resources its business at Hermosillo.

15. Finally and perhaps most importantly, under the terms of the Final Financing Order, Delphi and the other Participating Customers had the right (the "**Purchase Option**") to designate certain of the Debtors' machinery and equipment for purchase at 90% of order liquidation value. Delphi designated all of the Mexican M&E at Hermosillo. Attached hereto as Exhibit B is Delphi's designation of the equipment at the Hermosillo facility. The practical implication is that without Delphi's consent, the Debtors cannot sell the Mexican M&E to any other party due to the Purchase Option. Given this reality and that 90% of orderly liquidation value for the Mexican M&E at Hermosillo is \$1.9 million, the Debtors believe that the purchase price which is \$500,000 greater than the Purchase Option exercise price represents a very good value for the Debtors' estates.

**F. Liens, Claims and Proceeds**

16. The Debtors and the Committee do not believe that there are any perfected security interests in the Mexican M&E or the other assets to be transferred under the Purchase Agreement. Wachovia Capital Finance Corporation (Central), the Debtors and the Committee have reserved all rights regarding the Mexican assets. All parties have agreed that the proceeds of this Transaction shall be held in escrow pending adjudication of rights to the proceeds.

**RELIEF REQUESTED**

17. The Debtors' respectfully request an order of this Court (A) granting authority to the Debtors to sell the Mexican M&E pursuant to Sections 363(b) and 541 of the Bankruptcy Code; and (B) authorizing the Debtors as majority shareholder to direct CEP Mexico to enter into the Purchase Agreement.

**APPLICABLE AUTHORITY**

**A. The Mexican M&E and the CEP Mexico Shares are Property of the Estate Pursuant to Section 541(a)**

18. Section 541(a) of the Bankruptcy Code provides:

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, *wherever located* and by *whomever held*:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541 (emphasis added). As a general matter, Section 541 was meant by Congress to be interpreted broadly. *See Weingarten Nostat, Inc. v. Service Merchandise Company, Inc.*, 396 F.3d 737, 742 (6th Cir. 2005).

19. Even though the Mexican M&E is located in Mexico, it is property of the estate under Section 541(a) and, therefore, subject to the jurisdiction of this Court. Generally speaking, “Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. [citation omitted] This broad grant of jurisdiction extends to extraterritorial application of the Bankruptcy Code as it applies to property of the estate.” *In re Yukos Oil Company*, 321 B.R. 396, 406 (S.D. Texas 2005). Where a debtor holds title to property, but such property is located outside the United States, Section 541(a) grants jurisdiction over such property. *See French V. Liebman (In re French)*, 440 F.3d 145, 151 (4th Cir. 2006) (“Pursuant to § 541 of the Bankruptcy Code, all of a debtor’s property, whether domestic or foreign, is “property of the estate” subject to the bankruptcy court’s *in rem* jurisdiction.”); *H.S.B.C v. Simon (In re Simon)*, 153 F.3d 991, 996 (9<sup>th</sup> Cir. 1998) (“The court’s exercise of “custody” over the debtor’s property, via exercise of *in rem* jurisdiction, essentially creates a fiction that the property—regardless of actual location – is *legally* located within the jurisdictional boundaries of the district in which the court sits”); *In re Lykes Bros. Steamship Co., Inc. v. Hanseatic Marine Service, GmbH*, 207 B.R. 282, 287 (Bankr. M.D. Fla. 1997) (personal property located outside the United States is property of debtor’s bankruptcy estate because “Section 541 (a) makes it clear that property of the estate is not confined but consists of all property ‘wherever located’ in which the debtor has



an interest”). Thus, the Mexican M&E is subject to the jurisdiction of this Court and can be dealt with as property of the estate.

20. CEPP’s shares in CEP Mexico are also property of the estate under Section 541(a) and therefore subject to the jurisdiction of this Court. Courts uniformly hold that while the assets of non-debtor subsidiaries are not property of the estate, the shares of the subsidiary owned by a debtor are property of the debtor’s estate. *See Cummins v. Hays (In re Cummins)*, 166 B.R. 338, 358 (Bankr. W.D. Ark. 1994) (stock certificates part of debtor’s bankruptcy estate); *Murray v. Marres (In re Murray)*, 147 B.R. 688, 690 (Bankr. E.D. Va. 1992) (shares of non-debtor corporation’s stock owned by debtor, not assets of non-debtor corporation, are property of the estate under Section 541); *Deak & Co., Inc. v. R.M.P (In re Deak & Co.)*, 63 B.R. 422, 427 (shares of non-debtor corporation’s stock owned by debtor considered “legal or equitable interests” within the property of the debtor’s estate); *Peoples Bankshares, Ltd. v. Dept. of Banking (In re Peoples Bankshares, Ltd.)*, 68 B.R. 536, 539 (Bankr. N.D. Iowa 1986) (same). Thus, CEPP’s 99.9% interest in the shares of CEP Mexico is property of the Debtors’ estates.

**B. The Court has authority under Section 363(b) to Authorize the Transaction**

21. The Debtors seek authority, pursuant to Section 363(b), to sell the Mexican M&E free and clear of all liens claims and encumbrances and to vote CEPP’s shares of CEP Mexico to have CEP Mexico enter into the Transaction. Both actions requested by the Debtors represent an appropriate exercise of this Court’s jurisdiction over property of the estate.

22. Section 363(b) provides in pertinent part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of

the estate.” 11 U.S.C. § 363(b). In general, a debtor may sell property of the estate outside of the ordinary course of business where the sale of such property represents an exercise of the debtor’s sound business judgment. *See e.g., Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *See also In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Work Recovery, Inc.*, 202 B.R. 301, 303 (Bankr. D. Ariz. 1996) (affirming that a debtor selling estate property should do so with good business judgment); *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (affirming the sound business test as “a more sensible approach for providing creditors with a measure of protection outside the plan-confirmation process”); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business judgment test of *In re Lionel Corp.*).

23. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F. 3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re The Ohio Corrugating Co.*, 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985); *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (“It is a very well-established principle of bankruptcy law that the objective of bankruptcy sales and the [debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”)

24. The Debtors believe that the proposed Transaction will accomplish a “sound business purpose” and will maximize the value of Debtors’ interest in the Mexican M&E and the Debtors shares of CEP Mexico in the most expeditious way possible. As set forth above,

the Transaction will be the result of good faith arm's length negotiation with a disinterested bidder, Delphi. The Debtors have determined that the sale as proposed herein will best further the intended purpose of expeditiously liquidating Debtors' estates and maximizing returns for creditors. For these reasons, the Debtors submit that the proposed Transaction will be undertaken in good faith and will be for fair value within the meaning of 11 U.S.C. § 363(m). The Debtors further submit that the notice procedures requested herein will provide all parties with adequate notice and time to object to the sales requested hereunder.

25. With respect to assets being disposed by the Debtors (the Mexican M&E), the proposed Transaction satisfies the requirements of Section 363(f) for a sale free and clear of liens, claims, encumbrances and interests. Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property as an entity other than the estate only if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- (4) such interest is in bona fide dispute;
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

26. Because Section 363(f) is drafted in the disjunctive, satisfaction of any of these five (5) requirements will suffice to approve any proposed sale of some or all of the Property. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793-96 (Bankr. D. Del. 2002) (Section

363(f) is written in the disjunctive; the court approved the sale “free and clear” where only one of the five subsections of section 363(f) were met); *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988).

27. The Debtors propose that liens, if any, against the Mexican M&E will be transferred from the Mexican M&E to the proceeds of such sale to the same extent and with the same priority and validity prior to the closing of such Transaction.

**C. The Court Can Grant Authority to CEPP to Vote its Interest in CEP Mexico to have CEP Mexico Enter into the Transaction**

28. Section 363(b) of the Bankruptcy Court allows the Debtors to use their property outside the ordinary course of business if so authorized by this Court after notice and a hearing. 11. U.S.C. § 363(b). The Debtors respectfully request that this Court authorize the Debtors to use their voting interest in the shares of CEP Mexico. Bankruptcy courts can authorize Debtors under Section 363(b) to vote the shares of non-debtor subsidiaries to participate in liquidating transactions. *See In re LTV Steel Co.*, 285 B.R. 259, 271 (Bankr. N.D. Ohio 2002) (noting the sale of non-debtor railroad entities); *In re Naron & Wagner, Chartered*, 88 B.R. 85, 88-90 (Bankr. D. Md. 1988) (authorizing debtor under Section 363 to dispose of its non-debtor subsidiary).

29. The Debtors have a sound business justification to vote CEPP’s shares of CEP Mexico to authorize entry into the Transaction. The Debtors have the right to sell the Mexican M&E because they hold title to these assets. Without equipment to operate at the Mexican facilities, CEP Mexico has no business prospects and no reason to continue. Therefore, the shareholder of CEP Mexico is justified in voting to authorize CEP Mexico to enter into the Transaction so as to receive value for CEP Mexico’s lease rights and limited personal property.

### **Notice**

30. Contemporaneously with the filing of this Motion, the Debtors have provided notice by electronic mail on the following entities:

- a. All creditors (if any) asserting a security interest, lien, encumbrance or other interest against all or any portion of the Presses;
- b. The Office of the United States Trustee;
- c. All parties who have requested notice in these Chapter 11 cases; and
- d. all other parties on the Master Service List maintained in this case.

The Debtors respectfully submit that such notice is proper under the circumstances of this Motion.

### **No Prior Request**

31. No prior request for the relief sought in this Sale Procedures Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court (i) authorize the Debtors to sell the Mexican M&E and vote CEPP's shares of CEP Mexico to authorize CEP Mexico to enter into the Purchase Agreement and (ii) grant such other relief as is just and proper.

Dated: November 8, 2006  
Cleveland, Ohio

Respectfully submitted,

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

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

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