

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

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In re: : Case No. 06-51848
: (Jointly Administered)
CEP HOLDINGS, LLC, et al.,¹ :
: Chapter 11
Debtors. :
: Honorable Marilyn Shea-Stonum
: :
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**APPLICATION OF DEBTORS AND DEBTORS IN
POSSESSION, PURSUANT TO SECTIONS 327(a), 328 AND
330 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6005,
FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING THEM
TO EMPLOY BIDITUP AUCTIONS WORLDWIDE, INC. AS AUCTIONEER**

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**”),² pursuant to sections 327(a), 328 and 330 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6005 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of interim and final orders authorizing them to employ Biditup Auctions Worldwide, Inc. as auctioneer (the “**Auctioneer**” or “**Biditup**”) to sell personal property (the “**Sale Assets**”) located in Vandalia, Ohio, Canton, Ohio, Crestline, Ohio, Middlefield, Ohio, Bishopville, South Carolina, Belleville, Michigan and Lapeer, Michigan (the “**Closing Facilities**”) at the auctions (the “**Auctions**”), pursuant to the terms and conditions of proposed auction agreement (the “**Auction Agreement**”), a copy of

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

² Contemporaneously with the filing of this Application, the Debtors have filed a motion requesting the entry of an order scheduling an expedited hearing on this Application.

which is attached hereto as **Exhibit A** and fully incorporated herein by reference. In support of the Application, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the 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 sections 327(a), 328 and 330 of the Bankruptcy Code and Bankruptcy Rule 6005.

BACKGROUND

4. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of 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.

5. 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.

6. 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 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) (the “**Sales Motion**”).³

7. By the Sales Motion, the Debtors contemplated the liquidation of certain Closing Facilities by an auctioneer once the production of Component Parts for Participating or Assisting Customers, as the case may be, ceases. Upon the entry of an Order with respect to the Sales Motion, the Debtors will have the authority to sell the Sales Assets free and clear of liens, claims, encumbrances and interests pursuant to sections 363(b) and 363(f) of the Bankruptcy Code.

8. Except for the facility in Middlefield, Ohio, production of Component Parts at the Debtors’ Closing Facilities has ceased. Accordingly, the personal property located at these facilities is no longer needed by the Debtors to conduct business. By this Application, the Debtors hereby seek authority to employ Biditup, pursuant to sections 327(a), 328 and 330 of the Bankruptcy Code, as the auctioneer in connection with the sale of the Debtors’ assets at the Closing Facilities under sections 363(b) and 363(f) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

9. The retention of Biditup as auctioneer to sell the Sale Assets free and clear of all liens, claims, encumbrances and interests at the Auctions is warranted under sections 327(a), 328 and 330 of the Bankruptcy Code, Bankruptcy Rule 6005 and applicable case law. Section 327(a) of the Bankruptcy Code provides:

Except as otherwise provided in this section, the trustee, with the court’s approval, may employ one or more attorneys, accountants, appraisers, ***auctioneers***, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties under this title.

³ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Sales Motion.

11 U.S.C. § 327(a) (emphasis added). Bankruptcy Rule 6005 provides that an “order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation.” Fed. R. Bankr. P. 6005.

10. Bidityup is willing to provide the Debtors with the auction based services set forth in the Auction Agreement. Prior to choosing Bidityup, the Debtors considered bids and proposals from six (6) other auctioneers, and, after several rounds of bidding, determined that it was in the best interest of the Debtors’ estates to retain Bidityup because Bidityup’s offer provided the greatest (a) guarantee to the Debtors’ estates and secured by a letter of credit, and (b) likelihood of upside recovery. The Debtors believe that the compensation to be paid to Bidityup under the Auction Agreement is reasonable and appropriate under the circumstances.

11. Bidityup meets the requirements set by section 327(a) of the Bankruptcy Code. As set forth in the declaration of Steve Mattes (the “**Declaration**”), Bidityup does not hold or represent an interest adverse to the Debtors’ estates and is a “disinterested person” as such term is defined pursuant to section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that Bidityup:

- a. is not a creditor, an equity security holder, or an insider;
- b. is not and was not within two years before the Petition Date, a director, officer, or employee of the Debtors; and
- c. does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

A copy of the Declaration is attached hereto as **Exhibit B**.

12. Accordingly, the employment of Bidityup meets the requirements of section 327(a) of the Bankruptcy Code and should be approved to assist in the sale of the Sales Assets pursuant to sections 363(b) and 363(f) of the Bankruptcy Code.

13. Relief similar to the relief requested herein has been granted by courts in this District in other Chapter 11 cases. *See, e.g., In re The Austin Co.*, No. 05-93363 (PMC) (Bankr. N.D. Ohio Apr. 10, 2006) (order authorizing the employment of an auctioneer and the sale of assets free and clear of liens and encumbrances); *In re Snyders Drug Stores, Inc.*, No. 03-44577 (WTB) (Bankr. N.D. Ohio Nov. 18, 2003) (order approving the employment of auctioneers and the sale of personal property outside of the ordinary course of business).

NOTICE

14. Notice of the Application has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors and any other parties in interest directly affected by this Application, including all parties with an interest in the Sales Assets.

15. 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.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order substantially in the form attached hereto as **Exhibit C**, granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: November 8, 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

Counsel for the Debtors and Debtors-in-Possession

/s/ Joseph Mallak
Joseph Mallak
CEO of the Debtors