

**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
: :
: Hearing Date: 1/16/07 at 9:30 a.m.
: Objection Deadline: 1/12/07 at 4:00 p.m.
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTIONS 501 AND 502 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 2002 AND 3003(c)(3), FOR
AN ORDER ESTABLISHING BAR DATES FOR FILING PROOFS OF
CLAIM AND APPROVING FORM AND MANNER OF NOTICE THEREOF**

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**”), pursuant to sections 501 and 502 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002 and 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order: (i) establishing the general bar date by which all entities must file proofs of claim in these Cases (the “**General Bar Date**”); (ii) establishing the date by which all governmental units² must file proofs of claim in these Cases (the “**Government Bar Date**”); (iii) establishing the date by which proofs of claim relating to the Debtors’ rejection of executory contracts or unexpired leases must be filed in these Cases (the “**Rejection Bar Date**”); (iv) establishing the date by which entities must file

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

² The term “governmental unit,” used herein, has the meaning given to it in section 101(27) of the Bankruptcy Code.

proofs of claim in these Cases as a result of the Debtors' amendment of their schedules of assets and liabilities (the "**Amended Schedule Bar Date**" and, collectively with the General Bar Date, the Government Bar Date and the Rejection Bar Date, the "**Bar Dates**"); and (v) approving the form and manner of notice of the Bar Dates. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion 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 501 and 502 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c)(3).

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 13, 2006, the Court entered the *Order Pursuant to 28 U.S.C. § 156(c) and Federal Rule of Bankruptcy Procedure 2002 Authorizing Debtors to Employ BMC Group, Inc. as Claims, Noticing and Balloting Agent* (Docket No. 133) (the "**BMC Order**"). Pursuant

to the BMC Order, BMC Group, Inc. (“**BMC**”) has been serving as the Debtors’ claims and noticing agent in these Cases.

7. On October 30, 2006, the Debtors filed their schedules of assets and liabilities (Docket No. 194) (the “**Schedules**”).

**REQUEST FOR AN ORDER (A) ESTABLISHING
BAR DATES AND RELATED CLAIMS PROCEDURES AND
(B) APPROVING FORM AND MANNER OF NOTICE THEREOF**

8. The Debtors are in the process of liquidating their assets pursuant to section 363 of the Bankruptcy Code. To this end, the Debtors anticipate filing a liquidating plan of reorganization in 2007 (the “**Plan**”). To achieve this goal, the Debtors require, among other things, complete and accurate information regarding the nature, validity and amount of all claims³ that will be asserted in these Cases. This information is critical to permit solicitation of votes on the Plan and, ultimately, to make distributions thereunder once confirmed by the Court. Consequently, to avoid any delay in the liquidation process, the Debtors request that the Court (a) establish the Bar Dates and related claims procedures proposed herein and (b) approve the form and manner of notice of the Bar Dates.

A. Establishment of the Bar Dates

9. The General Bar Date. Bankruptcy Rule 3003(c)(3) provides that “[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” Fed. R. Bankr. P. 3003(c)(3). Accordingly, the Debtors request that the Court fix the General Bar Date for **March 1, 2007**. The General Bar Date will be the date by which all entities,⁴ other than governmental units, holding claims against the Debtors (whether secured,

³ The term “claim,” used herein, has the meaning given to it in section 101(5) of the Bankruptcy Code.

⁴ The term “entity,” used herein, has the meaning given to it in section 101(15) of the Bankruptcy Code.

unsecured priority or unsecured nonpriority) that arose prior to the Petition Date, including, without limitation, claims entitled to administrative priority status under section 503(b)(9) of the Bankruptcy Code, must file a proof of claim form.⁵ The Debtors will serve a proof of claim form within 10 days after an order is entered approving this Motion and establishing the Bar Dates (the “**Bar Date Order**”) upon all known entities holding potential prepetition claims.⁶

10. The Government Bar Date. Section 502(b)(9) of the Bankruptcy Code provides, in relevant part, that “[a] claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the [Bankruptcy Rules] may provide.” 11 U.S.C. § 502(b)(9). Accordingly, pursuant to section 502(b)(9) of the Bankruptcy Code, a proof of claim filed by a governmental unit in these Cases is deemed timely if it is filed within 180 days after the Petition Date, or on or before March 19, 2007. The Debtors therefore request that **March 19, 2007** be established as the Government Bar Date in these Cases. The Government Bar Date will apply to all governmental units holding claims against the Debtors (whether secured, unsecured priority or unsecured nonpriority) that arose prior to the Petition Date, including, without limitation, governmental units with claims against the Debtors for unpaid taxes, when such claims arise from prepetition tax years or periods or prepetition transactions to which a Debtor was a party.

⁵ For the purposes of this Motion, the term “prepetition claim” is defined to include, among other things, claims entitled to administrative priority status under section 503(b)(9) of the Bankruptcy Code. The Debtors believe that is it appropriate for the holders of section 503(b)(9) claims to file proofs of claim because such claims arose before the Petition Date. *See* 11 U.S.C. § 101(10)(A) (defining 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. § 503(b)(9) (defining “administrative expenses” to include, among other things, the value of certain goods “received by the debtor within 20 days before the date of commencement of a case under this title . . .”); Fed. R. Bankr. P. 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.”).

⁶ A complete description of the procedures by which this service will be accomplished is contained in paragraphs 17 through 21 of this Motion.

11. The Rejection Bar Date. The Debtors anticipate that certain entities may assert claims in connection with the Debtors' rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Debtors propose that, any claim arising out of, or otherwise related to, the Debtors' rejection of an executory contract or unexpired lease (a "**Rejection Damage Claim**") must be filed on or before the earlier of: (a) the date that is 30 days after the effective date of rejection identified in the notice of rejection or order authorizing rejection with respect to such executory contract or unexpired lease; or (b) the date that is 30 days following the effective date of any plan of reorganization confirmed by the Court in these Cases.

12. The Amended Schedule Bar Date. The Debtors propose further that they will retain the right to (a) dispute, or assert offsets or defenses against, any filed claim of any claim listed in the Schedules as to nature, amount, liability, classification or otherwise; (b) subsequently designate any claim as disputed, contingent or unliquidated; and (c) otherwise amend their Schedules; provided, however, that if a Debtor amends its Schedules to reduce the undisputed, noncontingent and liquidated amount or to change the nature of classification of a claim against the Debtor, the affected claimant will have until the Amended Schedule Bar Date to file a proof of claim or to amend any previously filed proof of claim in respect of the amended scheduled claim. The Debtors request that the Amended Schedule Bar Date be established as the later of: (a) the General Bar Date or Government Bar Date, as applicable; and (b) 30 days after the date that notice of the applicable amendment to the Schedules is served on the claimant. Notwithstanding the foregoing, nothing contained herein will preclude the Debtors from objecting to any claims, whether scheduled or filed, on any grounds.

B. Entities That Must File Proofs of Claim by the General Bar Date or the Government Bar Date

13. The Debtors propose that, subject to the provisions proposed in paragraphs 11 and 12 of this Motion for holders of claims subject to the Rejection Bar Date or the Amended Schedule Bar Date, the following entities must file proofs of claim on or before the General Bar Date or, with respect to claims of governmental units, on or before the Government Bar Date:

- a. Any entity (i) whose prepetition claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as disputed, contingent or unliquidated and (ii) that desires to participate in any of these Cases or share in any distribution in any of these Cases;
- b. Any entity that believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and
- c. Any entity holding a claim allowable under section 503(b)(9) of the Bankruptcy Code.

C. Entities Not Required to File Proofs of Claim by the General Bar Date or the Government Bar Date

14. The Debtors propose that the following entities, whose claims otherwise would be subject to the General Bar Date or the Government Bar Date, need not file proofs of claim:

- a. Any entity that already has filed a proof of claim against one or more of the Debtors in accordance with the procedures described herein;
- b. Any entity (i) whose claim against a Debtor is not listed as disputed, contingent or unliquidated in the Schedules and (ii) that agrees with the nature, classification and amount of its claim as identified in the Schedules;
- c. Any entity whose claim against a Debtor previously has been allowed by, or paid pursuant to, an order of the Court;
- d. Any Debtor having a claim against another Debtor, or any of the direct or indirect nondebtor subsidiaries of the Debtors having a claim against any of the Debtors;

- e. Any entity holding a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code); and
- f. Any entity whose claim is limited exclusively to a claim for “Prepetition Debt” as such term is defined and identified in paragraph I of the Final DIP Order (Docket No. 192) as constituting a legal, valid and binding obligation of the Debtors.

D. No Requirement to File Proofs of Interest

15. The Debtors propose that any entity holding an interest in any Debtor (an “**Interest Holder**”), which interest is based exclusively upon the ownership of a membership interest in a limited liability company (an “**Interest**”), need not file a proof of interest on or before the General Bar Date; provided, however, that Interest Holders that wish to assert claims against any of the Debtors that arise out of or relate to the ownership or purchase of an Interest must file proofs of claim on or before the General Bar Date, unless another exception identified in paragraph 14 of this Motion applies.⁷

E. Effect of Failure to File Proofs of Claim

16. The Debtors propose that, pursuant to Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim in these Cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order with respect to a particular claim against the Debtor, but that fails to do so by the applicable Bar Date, should be forever barred, estopped and enjoined from: (a) asserting any claim against the Debtors that the entity has that (i) is in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature or a different classification than any claim identified in the Schedules on behalf of such entity (any such claim

⁷ The Debtors reserve the right to seek relief at a later date requiring Interest Holders to file proofs of interest. Because it is anticipated that all such Interests will be extinguished under the Plan, such relief is not likely to be needed.

under this subparagraph (a) being referred to as an “**Unscheduled Claim**”); or (b) voting upon, or receiving distributions under, the Plan or any plan of reorganization in these Cases in respect of an **Unscheduled Claim**.

F. Procedures for Providing Notice of Bar Dates and Filing Proofs of Claim

17. The Debtors propose to serve on all known entities holding potential prepetition claims: (a) a notice of the Bar Dates substantially in the form of the notice attached hereto as **Exhibit A** and incorporated herein by reference (the “**Bar Date Notice**”); and (b) a proof of claim form substantially in the form of Official Notice Form No. 10, as attached hereto as **Exhibit B** and incorporated herein by reference (the “**Proof of Claim Form**” and, collectively with the Bar Date Notice, the “**Bar Date Notice Package**”).⁸

18. The Bar Date Notice states, among other things, that proofs of claim must be filed with BMC on or before the applicable Bar Date. Within 10 days after the entry of the Bar Date Order, the Debtors will mail the Bar Date Notice Package by first class United States mail, postage prepaid, to all known potential claimants and their counsel (if known), all parties that have requested notice in these Cases, all interest holders, the U.S. Trustee and all taxing authorities for the jurisdictions in which the Debtors do business. The proposed Bar Dates will give each applicable claimant more than the 20-day notice period required by Bankruptcy Rule 2002(a)(7).⁹

19. The Proof of Claim Form mailed to potential claimants will state, along with the claimant’s name: (a) whether the entity is listed in the Schedules; and (b) if so, (i) the Debtor

⁸ The Proof of Claim Form is substantially in the form of the Official Bankruptcy Form No. 10, but has been modified, and may be further modified in certain limited respects, to accommodate the claims process in these Cases.

⁹ Bankruptcy Rule 2002(a)(7) states that “the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days’ notice by mail of . . . the time fixed for filing proofs of claim pursuant to [Bankruptcy] Rule 3003(c) . . .” Fed. R. Bankr. P. 2002(a)(7).

against which the entity's claim is scheduled; (ii) whether the claim is listed as disputed, contingent or unliquidated; and (iii) whether the entity's claim is listed as a secured, unsecured nonpriority or priority claim. If a claim is listed in the Schedules in a liquidated amount that is not disputed or contingent, the dollar amount of the claim (as listed in the Schedules) also will be identified on the Proof of Claim Form. Any entity that relies on the information in the Schedules will bear responsibility for determining that its claim is accurately listed therein.

20. For any claim to be validly and properly filed, a signed original of a completed proof of claim, together with any accompanying documentation required by Bankruptcy Rules 3001(c) and 3001(d),¹⁰ must be delivered to BMC at the address identified on the Bar Date Notice so as to be received no later than 5:00 p.m., Eastern Time, on the applicable Bar Date. The Debtors propose that claimants be permitted to submit proofs of claim in person or by courier service, hand delivery or mail. Proofs of claim submitted by facsimile or e-mail will not be accepted and will not be deemed to have been validly and properly filed. Proofs of claim will be deemed filed when actually received by BMC. If a claimant wishes to receive acknowledgement of BMC's receipt of a proof of claim, the claimant also must submit to BMC by the applicable Bar Date and concurrently with submitting its original proof of claim (a) a copy of the original proof of claim and (b) a self-addressed, stamped return envelope.

¹⁰ Bankruptcy Rule 3001(c) requires as follows:

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

Fed. R. Bankr. P. 3001(c). Bankruptcy Rule 3001(d) requires that "[i]f any security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected." Fed. R. Bankr. P. 3001(d). The Debtors propose that, upon their advance express written consent, a claimant's proof of claim may be filed without the documents required by Bankruptcy Rules 3001(c) and 3001(d); provided, however, that any claimant that receives such a written consent will be required to transmit these documents in support of its claim to BMC, the Debtors or other parties in interest within 10 days after the date of a written request for such documents.

21. The amount of time provided to claimants under the procedures set forth in paragraphs 17 through 21 of this Motion will provide potential claimants with ample time after the mailing of the Bar Date Notice within which to review the Schedules and compare the information contained therein with their own books and records. The Debtors submit that the notice period set forth herein provides an adequate amount of time for creditors to review the Schedules and prepare and file proofs of claim, if necessary.

G. Filing Proofs of Claim Against Multiple Debtors; Failure to Identify a Debtor

22. The Debtors also propose that all entities asserting claims against more than one Debtor be required to file a separate proof of claim with respect to each such Debtor and identify on each proof of claim the particular Debtor against which their claim is asserted. Requiring parties to identify the Debtor against which a claim is asserted will greatly expedite the Debtors' review of proofs of claim in these Cases and will not be unduly burdensome on claimants.

23. The Debtors propose that if more than one Debtor is listed on the proof of claim form, then the Debtors will treat such claim as filed only against the first listed Debtor. The Debtors also propose that any claim filed under the joint administration case number (CEP Holdings, LLC, Case No. 06-51848) or otherwise without identifying a Debtor be deemed as filed only against Creative Engineered Polymer Products, LLC. Finally, because the Debtors believe that few, if any, valid claims exist against CEP Holdings, LLC, the Debtors propose to treat any claim improperly filed against CEP Holdings, LLC as a claim file against Creative Engineered Polymer Products, LLC or Thermoplastics Acquisition, LLC if the Debtors' books and records clearly indicate that the claim should have been filed against Creative Engineered Polymer Products, LLC or Thermoplastics Acquisition, LLC.

H. Publication by Notice

24. In light of the size, complexity and geographic diversity, potential claims against the Debtors may exist that the Debtors were unable to identify on the Schedules. Such unknown potential claims may include, for example, (a) claims of trade vendors that failed to submit invoices to the Debtors, (b) claims of former employees, (c) claims of entities with potential unasserted causes of action against the Debtors, (d) claims that, for various other reasons, are not recorded in the Debtors' books and records. Accordingly, the Debtors believe that (a) it is necessary to provide notice of the Bar Dates to entities whose names and addresses are unknown to the Debtors and (b) it is advisable to provide supplemental notice to known holders of potential claims. Therefore, pursuant to Bankruptcy Rule 2002(l),¹¹ the Debtors request authority to publish notice of the Bar Dates substantially in the form of the Bar Date Notice (the "**Publication Notice**") on or before **January 31, 2007**, in the daily edition of the *Canton Repository* and the national edition of the *The Wall Street Journal* or *The New York Times*.

25. Relief similar to the relief requested herein has been granted by courts in this District and elsewhere in other Chapter 11 cases. *See, e.g., In re Nexpak Corp.*, No. 04-63816 (RK) (Bankr. N.D. Ohio Aug. 3, 2004); *In re WCI Steel, Inc.*, 03-44662 (WTB) (Bankr. N.D. Ohio Dec. 9, 2003); *In re Phar-Mor, Inc.*, No. 01-44007 through No. 01-44015 (WTB) (Bankr. N.D. Ohio Jan. 11, 2002); *accord In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. July 19, 2006); *In re Delphi Corp.*, No. 05-44481 (RDD) (Bankr. S.D.N.Y. Apr. 12, 2006); *In re Collins & Aikman Corp.*, No. 05-55927 (SWR) (Bankr. E.D. Mich. Nov. 22, 2005).

¹¹ Bankruptcy Rule 2002(l) provides that "[t]he court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(l).

NOTICE

26. Notice of the Motion has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors.

27. No prior request for the relief sought in this Motion has been made to this or any other Court.

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: December 12, 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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