

**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.,<sup>1</sup> :  
: 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 SECTION 1121(d) OF THE BANKRUPTCY CODE, FOR ENTRY  
OF AN ORDER EXTENDING THEIR EXCLUSIVE PERIODS TO FILE A PLAN  
OR PLANS OF REORGANIZATION AND SOLICIT ACCEPTANCES 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 section 1121(d) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order: (i) extending the period during which the Debtors have the exclusive right to file a plan or plans of reorganization (the “**Exclusive Filing Period**”) by approximately two months, through and including March 19, 2007; and (ii) extending the period during which the Debtors have the exclusive right to solicit acceptances thereof (the “**Exclusive Solicitation Period**” and, together with the Exclusive Filing Period, the “**Exclusive Periods**”) through and including May 18, 2007, or approximately 60 days after the expiration of the Exclusive Filing Period, as extended. In support of the Motion, the Debtors respectfully represent as follows:

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

## 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 predicate for the relief requested herein is section 365(d)(4) of the Bankruptcy Code.

## 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 the official committee of unsecured creditors (the “**Committee**”). 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**”).

7. On November 21, 2006, upon consideration of the Sales Motion, the Court entered the *Order Authorizing (A) Auctions of Liquidating Facilities, (B) Sale of Assets Free and*

*Clear of All Claims, Liens and Encumbrances, and (C) Debtors' Entry into an Asset Marketing Agreement on an Interim Basis* (Docket No. 248) (the “**Sales Order**”).

8. Pursuant to the Sales Order, the Debtors are in the process of liquidating substantially all of the assets located at the Debtors' facilities in Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan and Middlefield, Ohio (the “**Liquidating Facilities**”).

#### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek the entry of an order, pursuant to section 1121(d) of the Bankruptcy Code, extending the Exclusive Filing Period by approximately two months, through and including March 19, 2007 and the Exclusive Solicitation Period through and including May 18, 2007, or approximately 60 days after the expiration of the Exclusive Filing Period, as extended.

#### **BASIS FOR RELIEF REQUESTED**

10. Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization during the first 120 days after the commencement of a chapter 11 case. If a debtor files a plan during this exclusive filing period, section 1121(c)(3) of the Bankruptcy Code grants an additional 60 days during which the debtors may solicit acceptances of that plan and no party in interest may file a competing plan. In these Cases, the 120-day period set forth in section 1121(b) of the Bankruptcy Code ends on January 18, 2007, and the 180-day day period set forth in section 1121(c)(3) of the Bankruptcy Code ends on March 19, 2007.

11. Section 1121(d) of the Bankruptcy Code provides that the Court may, “for cause,” extend these periods: “[o]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in

this section.” 11 U.S.C. § 1121(d)(1). However, the 120-day period “may not be extended beyond a date that is 18 months after the [petition] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [petition] date. 11 U.S.C. § 1121(d)(2).

12. Although the Bankruptcy Code does not define “cause,” a number of courts have construed the term by examining the Bankruptcy Code’s underlying legislative history. *See, e.g., In re Ravenna Indus., Inc.*, 20 B.R. 886, 889 (Bankr. N.D. Ohio 1982); *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996); *accord Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 643 (B.A.P. 8th Cir. 2003); *In re Newark Airport/Hotel Ltd. P’ship*, 156 B.R. 444, 451 (Bankr. D.N.J.), *aff’d sub nom. FGH Realty Credit Corp. v. Newark Airport/Hotel Ltd. P’ship*, 155 B.R. 93 (D.N.J. 1993). As discussed below, the legislative history of section 1121(d) and the applicable case law support the Debtors’ requested extension of the Exclusive Periods.

13. In determining whether cause exists for an extension of a debtor’s exclusive periods, courts have relied on a variety of factors, each of which may constitute sufficient grounds for extending the periods. These factors include (a) the size and complexity of the debtor’s case; (b) the existence of good faith progress towards reorganization; (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors to accede to the Debtor’s reorganization demands; and (d) the fact that the debtor is paying its bills as they come due. *Official Equity Sec. Holders’ Comm. v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 176 B.R. 143, 147 (Bankr. S.D. Ohio 1994); *In re Crescent Mfg. Co.*, 122 B.R. 979, 982-83 (Bankr. N.D. Ohio 1990); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *Amko Plastics, Inc.*, 197 B.R. at 76-77. The Debtors respectfully submit that, under all of these factors, as explained below, the Exclusive Periods should be extended.

**The Requested Extension of the Exclusive Periods Is Justified By the Size and Complexity of the Debtors' Chapter 11 Cases**

14. Both Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for extension of a debtor's exclusive period. *See In re Serv. Merch. Co.*, 256 B.R. 744, 752 (Bankr. M.D. Tenn. 2000) ("There is absolutely no question that this is a large and complex case requiring tremendous coordination to administer. It is not unreasonable for a retailer of this size to request an extension to make intelligent, informed decisions with respect to the direction and future of the business."); *In re Crescent Mfg. Co.*, 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990) (extending exclusivity period and citing size and complexity as factors that establish cause under section 1121(d) of the Bankruptcy Code."); *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) ("The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods."); H.R. REP. NO. 95-595, at 231, 232, 406 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191, 6362 ("[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement.").

15. As of the Petition Date, the Debtors operated 10 manufacturing facilities in Ohio, Michigan, Alabama, South Carolina and Mexico, employed approximately 1,106 employees in the United States and supplied custom molders and extruders of rubber and plastic products to General Motors, Delphi Corporation, Visteon, Nissan, Daimler-Chrysler, Honda and GKN Automotive. The gross sales of the Debtors' business were projected to be approximately \$190 million for fiscal 2006. Additionally, the Debtors' Cases have been complex, involving a complicated DIP facility that has successfully balanced the demands of the Committee with the

needs of the Debtors' major customers. Accordingly, the Debtors believe that the size and complexity of their businesses and these Cases justify the requested extension of the Exclusive Periods.

***The Debtors' Progress in These Chapter 11  
Cases Warrants an Extension of the Exclusive Periods***

16. An extension of a debtor's exclusive periods also is justified by the debtor's progress in resolving issues facing its estates and creditors. *See, e.g., Serv. Merch. Co.*, 256 B.R. at 753-54; *Amko Plastics, Inc.*, 197 B.R. at 76; *McLean Indus., Inc.*, 87 B.R. at 835. During the first two months of these Cases, the Debtors have made substantial progress towards completing the liquidation of their estates.

17. The Debtors' achievements in resolving key restructuring issues to date include:

- negotiating, documenting and obtaining Court approval of the Debtors' DIP facility, which has addressed the Debtors' liquidity needs;
- negotiating and implementing a performance bonus plan that helped motivate the Debtors' workforce to meet the demands of certain customers during the early stages of the Debtors' liquidation;
- completing the sales of the Debtors' facility in Tuscaloosa, Alabama and certain of the Debtors' property in Chihuahua, Mexico and Hermosillo, Mexico;
- substantially completing the liquidation of the Debtors' assets located at the Liquidating Facilities (Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan and Middlefield, Ohio);
- establishing a claims bar date of March 1, 2007 for most general unsecured claims in the Debtors' Cases (*See* Docket No. 284); and
- beginning to review and analyze the Debtors' executory contracts and unexpired leases to which one or more of the Debtors are a party and beginning the process of rejecting those executory contracts that no longer are necessary to the Debtors' restructuring.

18. The Debtors also believe that the progress made in the first two months of these Cases likely will result in meaningful recovery to the Debtors' unsecured creditors — a result not

fully anticipating on the Petition Date. Accordingly, the Debtors' progress on these critical issues in such a short period of time justifies the requested extension of the Exclusive Periods.

***The Requested Extension of the Exclusive Periods Will Not Harm the Debtors' Creditors or Other Parties In Interest and Will Be Used for a Proper Purpose***

19. The Debtors respectfully submit that the extension of the Exclusive Periods requested herein will not harm the Debtors' creditors or other parties in interest and will be used for a proper purpose — to formulate a liquidating plan that is fair to all parties in interest. The Debtors intend to formulate this plan with significant input from the Committee and their key constituencies during these Cases. Indeed, the Debtors have been actively working with the Committee to formulate a liquidating plan and anticipate filing a liquidating plan on or before March 19, 2007.

20. The Debtors believe that neither their creditors nor any other party in interest will be harmed by the requested extension of the Exclusive Periods. This request is not a negotiation tactic, but instead, merely a reflection of the fact that the Debtors are not yet in a position to file a plan. Accordingly, the relief requested herein will not result in any delay of the liquidation process that is nearing completion; rather, it will simply permit the process to move forward in an orderly fashion.

***The Debtors Are Satisfying Their Postpetition Payment Obligations as They Come Due and Have the Ability to Continue to Do So***

21. Courts considering an extension of exclusivity must also assess a debtor's liquidity and solvency. *See McLean Indus., Inc.*, 87 B.R. at 834. The Debtors have remained current on all or nearly all of their postpetition obligations and anticipate that there will be a meaningful recovery in these Cases to unsecured creditors.

22. For the reasons set forth above, the Debtors respectfully submit that ample cause exists under the Bankruptcy Code and the applicable case law for the requested extensions of the Exclusive Periods. Extensions longer than the mere two-month extension requested by this Motion have been granted by courts in this District and elsewhere, including in other Chapter 11 cases filed since the enactment of BAPCPA. *See, e.g., In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. June 28, 2006) (exclusivity initially extended by approximately six months); *In re Calpine Corp.*, No. 05-60200 (BRL) (Bankr. S.D.N.Y. Apr. 11, 2006) (exclusivity initially extended by approximately eight months); *In re Phar-Mor, Inc.*, No. 01-44007 through 01-44015 (WTB) (Bankr. N.D. Ohio Jan. 11, 2002) (exclusivity initially extended by approximately six months); *In re LTV Steel Co.*, No. 00-43866 (WTB) (Bankr. N.D. Ohio Apr. 24, 2001) (exclusivity initially extended by approximately five months).

23. The Debtors reserve the right to request further extensions of the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

#### **NOTICE**

24. Notice of the Motion 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 Motion (where applicable).

25. 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 A**, granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: December 22, 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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