

**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: 3/27/2007 at 2:30 p.m.
: Objection Deadline: 3/23/2007 at 4:00 p.m.
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTIONS 105(a), 363(b) AND/OR 1113(e) OF
THE BANKRUPTCY CODE, AUTHORIZING THEM TO TERMINATE
THEIR HEALTH AND WELFARE PLAN EFFECTIVE AS OF MARCH 31, 2007**

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 105(a), 363(b) and/or 1113(e) of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order authorizing them to terminate the Health and Welfare Plan maintained by the Debtors effective as of March 31, 2007. 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.

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

3. The statutory predicate for the relief requested herein are sections 105(a), 363(b) and/or 1113(e) of the Bankruptcy Code.

BACKGROUND

General 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 February 5, 2007, the Debtors and the Committee filed the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated February 5, 2007* (Docket No. 330) (the “**Plan**”).

The Health and Welfare Plan

7. Prior to the Petition Date, the Debtors provided group health care and dental benefits to their full-time and part-time hourly and salaried employees under the CEP Acquisitions LLC Health and Welfare Plan (the “**Health and Welfare Plan**”), a self-insured single employer welfare benefit plan. Under the Health and Welfare Plan, the Debtors provided the following benefits: (a) group health care benefits for union and non-unionized employees administered by Anthem Blue Cross and Blue Shield (“**Anthem**”); and (b) group dental benefits administered by Delta Dental (together, the “**Health and Welfare Benefits**”). The Debtors did not maintain any health care plans for the benefit of retired employees.

8. On the Petition Date, the Debtors filed the *Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b), 507(a)(4) and 541(d) of the Bankruptcy Code, for Entry of an Order (I) Authorizing Them to Pay: (A) Prepetition Employee and Independent Contractor Wages, Salaries and Related Items; (B) Prepetition Business Expenses; (C) Prepetition Contributions to and Benefits Under Employee Benefit Plans; (D) Prepetition Employee Payroll Deductions and Withholdings; (E) Additional Workforce Costs and (F) All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (II) Granting Certain Related Relief* (Docket No. 8) (the “**Employee Motion**”).

9. On September 22, 2006, upon consideration of the Employee Motion, the Court entered the *Interim Order, Pursuant to Sections 105(a), 363(b), 507(a)(4), 507(a)(5) and 541(d) of the Bankruptcy Code, (I) Authorizing the Debtors to Pay: (A) Prepetition Employee and Independent Contractor Wages, Salaries and Related Items; (B) Prepetition Business Expenses; (C) Prepetition Contributions to and Benefits Under Employee Benefit Plans; (D) Prepetition Employee Payroll Deductions and Withholdings; (E) Additional Workforce Costs and (F) All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (II) Granting Certain Related Relief* (Docket No. 50) (the “**Employee Order**”).

10. Pursuant to the Employee Order, the Debtors were authorized to maintain the Health and Welfare Plan and honor prepetition claims arising thereunder for the Debtors’ workforce, which included approximately 1,106 full-time and part-time hourly and salaried employees (of which approximately 455 were union employees) in Tuscaloosa, Alabama, Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan and Middlefield, Ohio. Employee Order at ¶ 2. Indeed, one of the main benefits to the Debtors’ orderly liquidation in Chapter 11 has been the Debtors’ ability to provide health care and dental

benefits to employees that would have otherwise been terminated and lost health care and dental coverage in September of 2006.

The Debtors' Operations Have Ceased

11. The Debtors' manufacturing operations have ceased at all of their plants. 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**").

12. On October 26, 2006, upon consideration of the Sales Motion, the Court entered the *Order (A) Establishing Bidding Procedures for the Debtors' Tuscaloosa, Alabama Sale Facility; (B) Setting Date for Auction and Hearing on Approval of Sale of Such Facility; and (C) Approving Form of Notice* (Docket No. 191) (the "**Tuscaloosa Bidding Procedures Order**").

13. 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 "**Liquidation Sales Order**"). Pursuant to the Liquidation Sales Order, the Debtors have liquidated substantially all of the assets located at the Debtors' facilities in Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan, Belleville, Michigan and Middlefield, Ohio (the "**Liquidating Facilities**").

14. On December 14, 2006, upon consideration of Sales Motion and having entered the Tuscaloosa Bidding Procedures Order, the Court entered the *Order (A) Granting Authority*

*for the Sale of Assets Pursuant to § 363(b), and (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 (Docket No. 282) (the “**Tuscaloosa Sale Order**”). Pursuant to the Tuscaloosa Sale Order, the Debtors sold substantially all of their assets at the Debtors’ facility in Tuscaloosa, Alabama as a going concern effective as of 11:59PM December 19, 2006.*

15. As of the date of this Motion, the Debtors have ceased manufacturing operations at the Liquidating Facilities and in Tuscaloosa, Alabama. The Debtors closed their plants located in Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan and Belleville, Michigan on October 31, 2006 and terminated the employment of all except for a few employees needed to assist with the wind-down activities at such plants. The Debtors closed its plant in Middlefield, Ohio on December 20, 2006 and terminated the employment of all except for a few employees needed to assist with the wind-down activities at such plant. As of the effective date of the sale of the plant in Tuscaloosa, Alabama, the Debtors have no employees in Tuscaloosa, Alabama. Accordingly, because of the Debtors’ liquidation, a substantial number of the Debtors’ employees have been terminated or have resigned.

16. Notwithstanding the termination of the vast majority of the Debtors’ employees, the Debtors continue to have certain obligations with respect to the Health and Welfare Plan for both former and current employees. The Debtors’ obligations with respect to the Health and Welfare Plan for former employees currently include: (a) processing enrollments under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”); (b) collecting COBRA payments from former union and non-unionized employees and other COBRA beneficiaries; (c) maintaining separate accounts for the collection of COBRA payments and the payment of

COBRA claims; and (d) the termination of COBRA coverage in the event of nonpayment of COBRA payments by former union and non-unionized employees and other COBRA beneficiaries (collectively, the “**COBRA Obligations**”).

17. The Debtors’ obligations with respect to the Health and Welfare Plan for current employees² (all of which are non-unionized) include: (a) the payment of health and dental claims; (b) the collection of health and dental premiums and the maintenance of a separate account related thereto; and (c) the payment of administration costs to Anthem and Delta Dental (the “**Current Employee Health and Welfare Obligations**” and, together with the COBRA Obligations, the “**Health and Welfare Obligations**”).

18. In order to extinguish the Health and Welfare Obligations and further the liquidation of the Debtors’ businesses, the Debtors believe that it is in the best interest of the Debtors’ estates and an exercise of sound business judgment for the Debtors to formally terminate the Health and Welfare Plan. Upon the termination of the Health and Welfare Plan, the Debtors’ COBRA Obligations will cease and the Debtors’ current employees will make their own arrangements to obtain health and dental insurance and related benefits through third party carriers or otherwise. The Debtors believe that the termination of the Current Employee Health and Welfare Obligations is in the best interest of the Debtors’ estates and all parties in interest given that the Debtors’ operations have ceased.

19. As explained below, the Debtors do not believe that the proposed termination of the Health and Welfare Plan violates any of the Collective Bargaining Agreements (defined

² The Debtors’ current employees are Doug Kornak (accounting), Terrence Zagar (IT), Dave Herron (IT), Susan Cook (A/R coordinator), Robert Mills (records), Richard Newsome (maintenance supervisor at Middlefield) and Steven Palmer (plant manager at Bishopville). Doug Kornak, Terrence Zagar, Dave Herron, Susan Cook and Robert Mills presently are not covered under the Health and Welfare Plan. The two employees that currently are covered under the Health and Welfare Plan — Richard Newsome and Steven Palmer — will be covered until the termination date or no later than March 31, 2007.

below) to which the Debtors are a party. In the event that any of the Unions (defined below) oppose the relief sought by this Motion pursuant to section 1113(f) of the Bankruptcy Code, the Debtors hereby seek relief, in the alternative, pursuant to section 1113(e) of the Bankruptcy Code to implement interim changes to the Collective Bargaining Agreements to terminate the Health and Welfare Plan and cease the accrual of COBRA Obligations for union employees and any outstanding obligations arising under the Collective Bargaining Agreements related to the Health and Welfare Plan.

RELIEF REQUESTED

20. By this Motion, the Debtors seek the entry of an order, pursuant to sections 105(a), 363(b) and/or 1113(e) of the Bankruptcy Code, authorizing the Debtors to terminate the Health and Welfare Plan.

BASIS FOR RELIEF REQUESTED

The Termination of the Health and Welfare Plan Is Warranted Under Section 363(b) of the Bankruptcy Code

21. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, “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)(1). In general, the debtor may use property of the estate outside of the ordinary course of business where the use 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, 390 (6th Cir. 1986) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) and adopting the “sound business purpose” standard for sales proposed pursuant to section 363(b) of the Bankruptcy Code); *In re N. Am. Royalties, Inc.*, 276 B.R. 587, 593 (Bankr. E.D. Tenn. 2002) (applying the “sound business

purpose” standard to the approval of the termination of a collective bargaining agreement where the proposed termination was not subject to section 1113 of the Bankruptcy Code).

22. The termination and replacement of health and welfare plans are commonplace in the business world and consequently are not necessarily outside of the ordinary course of business. *See generally In re Glosser Bros., Inc.*, 100 B.R. 268, 270 (Bankr. W.D. Pa. 1989) (holding that the debtor’s closing of one of its stores was in the ordinary course of business and did not require prior court approval); *In re DeLuca Distrib. Co.*, 38 B.R. 588, 594 (Bankr. N.D. Ohio 1984) (holding that a debtor may enter into a new collective bargaining agreement in the ordinary course of business without bankruptcy court approval when the subject employees are covered by an agreement prior to bankruptcy). The Debtors’ Health and Welfare Plan, however, is not being terminated with the adoption of replacement health and welfare plan in mind, but to end the Health and Welfare Obligations. Accordingly, out of an abundance of caution, the Debtors seek authority from the Court to formally terminate the Health and Welfare Plan and provide notice to affected former and current employees.

23. Under section 363(b) of the Bankruptcy Code, a debtor has the burden to establish it has a valid business purpose for using estate property outside the ordinary course of business. *See Lionel Corp.*, 722 F.2d at 1070-71. Once the debtor has articulated such a valid business purpose, however, a presumption arises that the debtor’s decision was made on an informed basis, in good faith, and in the honest belief that the action was in the debtor’s best interest. *See In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992). A party in interest seeking to challenge the debtor’s valid business purpose must “produce some evidence supporting its objection.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 155 (Bankr. D. Del. 1999).

24. Terminating the Health and Welfare Plan has a sound business purpose. Pursuant to the Liquidation Sales Order and the Tuscaloosa Sale Order, the Debtors have either sold or are in the process of liquidating all of the assets once used at the Debtors' domestic manufacturing facilities. The vast majority of the employees that were once employed at such facilities have either been terminated or no longer are employed by the Debtors. The Debtors currently maintain only a small staff of employees to assist with the wind-down of their affairs and no longer can provide a full array of health care and dental benefits to its remaining employees. The Debtors' current employees will make their own arrangements to obtain health and dental insurance and related benefits through third party carriers or otherwise. Accordingly, the termination of the Health and Welfare Plan and the elimination of the Health and Welfare Obligations is supported by a sound business purpose.

***The Termination of the Health and Welfare Plan
Does Not Violate Section 1113 of the Bankruptcy Code***

25. The Debtors do not believe that the termination of the Health and Welfare Plan implicates section 1113 of the Bankruptcy Code. Pursuant to section 1113 of the Bankruptcy Code, a debtor is required to comply with the provisions of a collective bargaining agreement until rejection is approved by the Court. *See* 11 U.S.C. § 1113(f) (“No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.”); *United Steelworkers of Am. v. Unimet Corp. (In re Unimet Corp.)*, 842 F.2d 879 (6th Cir. 1988); *In re WCI Steel, Inc.*, 313 B.R. 414, 418 (Bankr. N.D. Ohio 2004).

26. On the Petition Date, the Debtors, as successors in interest to Carlisle Engineered Products, were a party to the following collective bargaining agreements:

- Agreement Between Carlisle Engineered Products Canton, Ohio and United Steelworkers of America, AFL-CIO, CLC Local 3610-04 (the “**Canton Union**”), Effective January 01, 2005 Through March 31, 2009 (the “**Canton CBA**”);
- Agreement Between Carlisle Engineered Products, Crestline Division and Local Union No. 563-L, United Steelworkers of America (AFL-CIO-CLC) Crestline, Ohio (the “**Crestline Union**”), Effective 2-25-2002 Through 3-31-2006 (as amended, the “**Crestline CBA**”); and
- Agreement Between Carlisle Engineered Products and United AFL-CIO, CLC and Local 1902 (the “**Middlefield Union**” and, together with the Canton Union and the Crestline Union, the “**Unions**”), Effective December 1, 2003 Through November 30, 2006 (as amended, the “**Middlefield CBA**” and, together with the Canton CBA and the Crestline CBA, the “**Collective Bargaining Agreements**”).

27. The Crestline CBA was extended by mutual agreement and does not expire until March 31, 2009 — the same date that the Canton CBA expires. The Debtors and the Middlefield Union negotiated an extension of the Middlefield CBA from November 30, 2006 through December 19, 2006 or at such time as production at the Debtors’ facility in Middlefield, Ohio ceased. Production at the Debtors’ facility in Middlefield, Ohio ceased on December 20, 2006. Accordingly, the Middlefield CBA has expired according to its own terms.

28. Under the Collective Bargain Agreements that are still in effect (the Canton CBA and the Crestline CBA), the Debtors do not believe that they have an obligation to provide Health and Welfare Benefits to union employees beyond such employees’ termination of employment. As of the date of this Motion, all of the Debtors’ union employees have been terminated. Accordingly, the proposed termination of the Health and Welfare Plan does not implicate section 1113 of the Bankruptcy Code and the procedures set forth therein pertaining to the modification of collective bargaining agreements in a bankruptcy proceeding.

Interim Relief Under Section 1113(e) of the Bankruptcy Code Is Appropriate In the Event that the Unions Oppose the Relief Sought by this Motion

29. In the event that any of the Unions oppose the relief sought by this Motion pursuant to section 1113(f) of the Bankruptcy Code and applicable case law, the Debtors hereby seek interim relief under section 1113(e) of the Bankruptcy Code from the Collective Bargaining Agreements to avoid the irreparable damage to their estates by the continued accrual of liabilities under the Collective Bargaining Agreements related to the Health and Welfare Plan, including, but not limited to, the continuation of COBRA benefits for union employees.³

30. Section 1113(e) of the Bankruptcy Code empowers a court, after notice and hearing, to “authorize the trustee to implement interim changes in the terms, conditions, wages, benefits or work rules provided by a collective bargaining agreement” if such changes are “essential to the continuation of the debtor’s business, or in order to avoid irreparable damage to the estate.” 11 U.S.C. § 1113(e). This standard for interim relief is disjunctive; a debtor need only show one of the two conditions in order to be entitled to relief under section 1113(e) of the Bankruptcy Code. *See In re United Press Int’l, Inc.*, 134 B.R. 507, 514 (Bankr. S.D.N.Y. 1991).

31. Additionally, there is no requirement that a motion under section 1113(c) of the Bankruptcy Code be pending in order for a debtor to request relief under section 1113(e) of the Bankruptcy Code. *See Beckley Coal Mining Co. v. United Mine Workers*, 98 B.R. 690, 694 (D. Del. 1988) (holding that a debtor is not required to apply for rejection of a CBA before filing an application for interim relief from its obligations under the CBA); 7 COLLIER ON BANKRUPTCY § 1113.04[1] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2006) (“While interim relief is often sought while an applicable motion for modification or rejection under section

³ The Debtors and the Unions are still in the process of effects bargaining and hope to reach a consensual resolution of the issues raised by this Motion. Accordingly, the Debtors may seek to modify the relief requested in this Motion pending the outcome of such negotiations.

1113(c) is pending, there is no requirement that a request for interim relief be preceded by a motion under section 1113(c).”⁴

32. As set forth above, the Debtors do not believe that the termination of the Health and Welfare Plan implicates section 1113 of the Bankruptcy Code because the Debtors have no obligation under the Collective Bargaining Agreements to provide Health and Welfare Benefits to union employees beyond such employees’ termination of employment. In the event that any of the Unions assert otherwise, the Debtors hereby seek interim relief under section 1113(e) of the Bankruptcy Code to implement interim changes to the Collective Bargaining Agreements to terminate the Health and Welfare Plan and cease the accrual of COBRA Obligations for union employees and any outstanding obligations arising under the Collective Bargaining Agreements related to the Health and Welfare Plan.

33. The Debtors no longer employ any union employees and the Debtors’ estates no longer derive any benefit from the services of such employees. Additionally, the Debtors’ manufacturing operations have ceased entirely. To the extent that there is any ongoing accrual of health care and dental obligations under the Collective Bargaining Agreements, related to COBRA or otherwise, such continued accrual represents irreparable damage to the Debtors’ estates and must be stopped immediately.

34. Accordingly, the Debtors are entitled to interim relief from the Collective Bargaining Agreements as a matter of law in the event that the Unions oppose the termination of the Health and Welfare Plans pursuant to section 1113(f) of the Bankruptcy Code. *See Beckley Coal Mining Co.*, 98 B.R. at 694 (recognizing the possibility that irreparable harm might result if

⁴ Section 9.1 of the Plan calls for the rejection of all executory contracts and unexpired leases, including, without limitation, “collective bargaining agreements subject to section 1113 of the Bankruptcy Code” as of the effective date of the Plan. Plan at § 9.1.

a debtor depleted all of its cash) (citing *Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of America*, 791 F.2d 1074, 1085 (3d Cir. 1986)); see also *In re Almac's, Inc.*, 169 B.R. 279, 281 (Bankr. D.R.I. 1994) (finding modifications of the collective bargaining agreement necessary to avoid irreparable damage).

NOTICE

35. 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, including the Unions.

36. 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.

37. 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: March 7, 2007
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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