

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

-----	x	Case Nos. 06-61794, 06-61796
In re	:	and 06-61797
	:	
CEP HOLDINGS, LLC, <i>et al.</i> ,	:	Chapter 11
	:	Honorable Marilyn Shea-Stonum
Debtors.	:	
	:	Related to Docket Entry Nos. 8, 9, 13
-----	x	

**OMNIBUS RESPONSE OF THE UNOFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF CEP HOLDINGS, LLC, ET AL. TO CERTAIN FIRST DAY MOTIONS**

The Unofficial Committee of Unsecured Creditors (“Trade Committee”) of CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC (collectively, the “Debtors”), by and through their undersigned counsel, file the within Omnibus Response to the first day motions<sup>1</sup> of the Debtors and state as follows:

**Introduction**

1. On September 20, 2006, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101-1330 (as amended, the “Bankruptcy Code”).
2. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. No official committee of unsecured creditors has been appointed in these cases; however, in June 2006, the Debtors encouraged their trade vendors, with pre-petition claims in the aggregate amount of approximately \$26.5 million, to organize an unofficial committee for

---

<sup>1</sup> This Omnibus Response does not include the Trade Committee’s objections (“DIP Objections”) to the Motion (“DIP Motion”) of the Debtors and Debtors in Possession for Emergency Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief. The Trade Committee incorporates herein by reference the DIP Objection [Docket No. 36] and the Trade Committee’s Motion to Convert (“Motion to Convert”) the Debtors’ Chapter 11 Case to Chapter 7 Cases Pursuant to 11 U.S.C. § 1112(b) [Docket No. 40].

purposes of representing the interests of trade creditors in an out-of-court restructuring effort by the Debtors. Trade creditors did organize in July 2006, and formed the Trade Committee, which is comprised of six (6) members – Lanxess Corporation, DuPont, Rhodia Inc., BASF Corporation, Gold Key Processing, LTD. and Excel Polymers LLC – aggregating approximately \$6.5 million of the approximately \$26.5 million in total trade debt, or approximately 25% of the aggregate pre-petition trade debt of the Debtors (and their Mexican affiliates).

### **Jurisdiction and Venue**

4. This Court has jurisdiction over these bankruptcy cases under 28 U.S.C. §§ 157(b) and 1334 because they arise under the Bankruptcy Code. This matter is a core proceeding 28 U.S.C. § 157(b)(2).

5. Venue for the Debtors' bankruptcy cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

### **Background**

6. In August 2005, The Reserve Group and certain individual insiders thereof acquired substantially all of the assets (other than accounts receivable) of CEP from the CRT Capital Group through Holdings, a wholly owned affiliate of The Reserve Group. The acquisition price for CEP was approximately \$13.5 million, of which \$12.5 million was funded through secured term debt by Wachovia Capital Finance Corporation ("Wachovia"), and a \$1.0 million cash investment, or an equity contribution, from The Reserve Group.

7. In December 2005, The Reserve Group, through Thermoplastics, a wholly owned subsidiary of CEP, acquired substantially all of the assets of the Thermoplastics division from Parker-Hannifin Corporation for purchase price consideration of approximately \$7.1 million; the entire purchase price of which was funded from the proceeds of loans by Wachovia as well as a \$4.2 million seller-retained secured note.

8. The Debtors prepetition debt that is allegedly secured is primarily comprised of (i) two working capital-based revolving credit loans from Wachovia, (ii) multiple term loans from

Wachovia and (iii) seller retained debt relating to the Parker-Hannifin sale of Thermoplastics. In addition, Wachovia has been selling the Customers, who are General Motors Corporation, Visteon Corporation and Delphi Corporation (the Debtors' three largest customers), subordinated participation interests in the Wachovia loan facilities. As of the Petition Date, the Customers have purchased at least \$2.9 million of subordinated participation interests.

9. Collectively, CEP and Thermoplastics (as well as a non-debtor Mexican affiliate, Composite Parts Mexico S.A. de C.V. ("CEP Mexico"), comprise a ten (10) facility operation with approximately \$190 Million in gross annual revenue.

10. By March 2006, CEP had overdrawn its revolving credit availability with Wachovia by over \$2.0 million. By April 2006, the Debtors were subject to an initial forbearance agreement with Wachovia due to a multitude of alleged defaults under their various loan agreements with Wachovia. Likewise, the Debtors requested and obtained a variety of financial accommodations from the Customers necessary to sustain operations in order to satisfy the purchase orders of the Customers.

11. During the period from January 2006 to April 2006, the trade obligations of the pre-petition Debtors ballooned from approximately \$18.9 million to \$27.9 million, after the Debtors, already significantly overleveraged, used practically every dollar of secured financing available to them. It is the position of the Trade Committee that the officers and directors of the Debtors caused the Debtors to finance their operations with trade debt that they knew or should have known the Debtors would be unable to repay.

12. As mentioned previously, in June 2006, the Debtors encouraged their trade vendors to organize and the Trade Committee was formed in July 2006.

13. Without taking into account certain subordinated participation loans from the Customers, by July 31, 2006 the Debtors had approximately \$32.4 million of allegedly secured debt.

14. During the few months immediately preceding the Petition Date, the Debtors,

Wachovia and the Customers have worked together to formulate a bankruptcy strategy that benefits no one but the Debtors, Wachovia and the Customers, as evidenced by the Proposed Interim DIP Order.

15. As part of their first day filings, the Debtors filed a number of motions seeking authority to, *inter alia*, pay prepetition wages, salaries and related items; continue existing workers' compensation programs; and maintain their existing cash management system.

16. As set forth more fully herein, the Trade Committee objects to certain of the relief requested in the first day motions. The Trade Committee reserves its rights, and the rights of the Official Committee of Unsecured Creditors, if one is appointed in these cases, to supplement this Omnibus Response and/or otherwise object or respond to the first day filings.

**Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b), 507(a)(4), 507(a)(5) 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 Employee and Independent Contractor 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 Other Related Relief ("Wage Motion")**

17. In the Wage Motion, the Debtors seek authority to pay over \$2 million in alleged prepetition wages as follows:

<b>Payment on Account of</b>	<b>Amount</b>
Wages, Salaries and Contractual Compensation	\$373,975.09
Earned and Accrued Vacation (Non-Union)	\$438,390.25
Earned and Accrued Vacation (Union)	\$34,133.25
Deductions	\$128,473.27
Withholdings	\$156,265.09
Prepetition Business Expenses	\$2,099.51
Independent Contractors	\$452,500.06
Additional Workforce Costs	\$559,056.97
<b>Total</b>	<b>\$2,144,893.49</b>

18. With respect to the payments that the Debtors propose to pay to its employees on account of "wages, salaries, or commissions, including vacation, severance, and sick pay," it appears likely that the proposed payments exceed the \$10,000 cap per employee set forth

under section 507(a)(4) of the Bankruptcy Code. The Trade Committee submits that the Debtors should not be permitted to make payments in excess of this cap.

19. Further, the Trade Committee is unable to determine whether any such employee benefits that the Debtors propose to pay were earned beyond the 180 days immediately preceding the Petition Date. Unless the Debtors can show that such benefits were earned during the timeframe required under section 507(a)(4), the Trade Committee opposes any payments related to such benefits to the employees.

20. The Trade Committee submits that, to the extent that the Debtors allege that they must make the payments described in the Wage Motion to prevent employee attrition, given the Debtors' current proposed wind-down and liquidation strategy, this assertion is overstated. Also, the proposed DIP Financing Order references an employee incentive plan that will allegedly pay \$1,273,000; however, no motion was filed with respect thereto nor was a budget attached to the proposed DIP Financing Order concerning such plan. Presumably, the Debtors will allege that the incentive program is needed for the same purpose.<sup>2</sup>

21. It is also clear that the Debtors propose to make approximately \$1.1 in payments to independent contractors that provide labor on a temporary basis to the Debtors. These alleged payments constitute general unsecured claims that are not entitled to priority and the Trade Committee objects to the payment of these claims at this time. To the extent that the Debtors assert that their operations will be negatively impacted by the failure to pay such claims, the Trade Committee submits that the Customers may pay the claims of Independent Contractors and Additional Workforce Costs to these entities directly; provided, however, that to the extent the Customer make such payments the Customers do not receive the benefits of section 364 of the Bankruptcy Code or any debtor-in-possession financing order entered in

---

<sup>2</sup> To the extent that any motion seeking approval of an incentive plan is filed, the Trade Committee, or any Official Committee of Unsecured Creditors, to the extent any is appointed in these cases, reserve their rights with respect thereto.

these cases for or on account of such payments. Based on the content of the first day pleadings it is clear that these bankruptcy cases are for the sole benefit of the Customers, therefore, the Trade Committee submits that the Customers should bear the burdens associated with these proceedings. The large payments that the Debtors propose to make disproportionately place the burden of these cases on the shoulders of the unsecured claimants.

22. Finally, given the assertion by the Debtors that CEP Mexico will operate as a stand alone entity on a postpetition basis, the Debtors should not be authorized to make any payments under the terms of the Wage Motion on account of the operations of CEP Mexico.

**Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a) and 363(b), of the Bankruptcy Code, for Entry of an Order (I) Authorizing the Debtors to: (A) Continue Their Existing Workers' Compensation Programs and (B) Pay Certain Prepetition Worker's Compensation Premiums, Claims and Related Expenses; and (II) Granting Certain Other Related Relief ("Workers' Compensation Motion")**

23. Claims for unpaid premiums due to workers' compensation insurance carriers are not contributions to an employee benefit plan such that they are entitled to priority under section 507(a)(5) of the Bankruptcy Code. See generally Howard Delivery Service, Inc. v. Zurich American Insurance Co., 126 S.Ct. 2105 (2006). To the extent that by the Workers' Compensation Motion the Debtors are requesting authority on behalf of their workers' compensation insurers to elevate their claims to a higher priority than that to which they are entitled, the Trade Committee objects.

24. The claims of the Debtors workers' compensation insurers and the related alleged Prepetition Processing Costs are general unsecured claims and can only be paid in accordance with the treatment afforded other general unsecured claimants in these cases and in accordance with the priority provisions of the Bankruptcy Code. Moreover, the bankruptcy of a policyholder cannot relieve the insurance companies of their obligations under the terms of their insurance policies; therefore, the Debtors representations that the failure to pay approximately \$400,000 in unpaid premiums and related processing costs or they risk interruption in their workers' compensation programs are unfounded.

**Motion of Debtors and Debtors in Possession for Entry of an Order Authorizing the Maintenance of Bank Accounts, Continued Use of Existing Cash Management System and Business Forms, and Waiving Investment and Deposit Guidelines of Section 345(b) of the Bankruptcy Code (“Cash Management Motion”)**

25. In the Cash Management Motion, the Debtors seek authority to maintain their current Cash Management System. In this regard, the Debtors allege that:

- a. The Cash Management System “was intertwined with the operations of non-debtor affiliate, CEP Mexico.” See Cash Management Motion, ¶ 29.
- b. Under the proposed DIP Financing Order, the Debtors must “separate the business operations of CEP Mexico.” Id.
- c. To accomplish this, the Debtors propose “to establish a separate bank account for CEP Mexico at Wachovia which will serve to segregate CEP Mexico’s receivables and payables from the Debtors.” Id.
- d. “As provided in the DIP Financing Motion, CEP Mexico shall operate a stand alone entity postpetition and will be supported by the Debtors’ customers at such facilities.” Id.

26. There is no support in the record that these representations with respect to CEP Mexico are true. As set forth in more detail in the DIP Objections, the proposed DIP Financing Order directly affects and controls CEP Mexico, a non-debtor entity that has not submitted to the jurisdiction of this Court.

27. For example, the proposed DIP Financing Order prohibits the Debtors’ use of Postpetition Debt to fund its Mexican operations; however, it does not prohibit the Debtors from providing goods or services to CEP Mexico, which is simply another way of funding CEP Mexico through the incurrence of Postpetition Debt. Significantly, an earlier version of the proposed DIP Financing Order also prohibited the provision of services to CEP Mexico unless the Debtors were reimbursed, however, this provision was removed from the current proposed DIP Financing Order.

28. The proposed DIP Financing Order also governs the terms of any sales of the assets of CEP Mexico, the use of proceeds from such sales and the use and return of Customer Tooling at CEP Mexico.

29. Neither Wachovia, nor the Customers are secured in the assets of CEP Mexico and CEP Mexico is not a debtor. Yet, the Postpetition Liens under the proposed DIP Order are so extensive that they improperly create liens on a postpetition basis on the assets of CEP Mexico, which were not subject to any prepetition liens of either Wachovia or the Customers.

30. The Trade Committee submits that the maintenance of the current Cash Management System and the opening of an account at Wachovia for the CEP Mexico payables and receivables are simply insufficient to adequately track and protect the assets of CEP Mexico. The Trade Committee also submits that because CEP Mexico is not a debtor and has not submitted to the jurisdiction of this Court, the relief requested by the Debtors in the Cash Management Motion is improper and should not and cannot be granted until the relationship between the Debtors and CEP Mexico can be determined.

WHEREFORE, the Trade Committee respectfully requests that this Court restrict and/or deny any relief requested in the first day motions as set forth more fully in this Omnibus Response.

Dated: September 21, 2006

**McGuireWoods LLP**

By: /s/ Mark E. Freedlander  
Mark E. Freedlander (PA I.D. #70593)  
Sally E. Edison (PA I.D. #78678)  
Michael J. Roeschenthaler (PA I.D. #87647)  
625 Liberty Avenue  
23<sup>rd</sup> Floor Dominion Tower  
Pittsburgh, PA 15222  
Telephone: 412-667-6000  
Fax: 412-667-6050

Counsel to the Unofficial Committee of  
Pre-Petition Trade Vendors