

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

----- X  
In re: : Case No. 06-51848  
: (Jointly Administered)  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> :  
: Chapter 11  
Debtors. :  
: Honorable Marilyn Shea-Stonum  
: :  
----- X

**OBJECTION OF DEBTORS AND DEBTORS IN POSSESSION  
TO AMENDED MOTION OF THE INDEPENDENT CONTRACTORS  
PURSUANT TO 11 U.S.C. §§ 503(b), 105(a) AND 363 FOR ALLOWANCE  
OF ADMINISTRATIVE EXPENSE AND DIRECTING PAYMENT OF SAME**

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 object (the “**Objection**”) to the *Amended Motion of the Independent Contractors Pursuant to 11 U.S.C. §§ 503(b), 105(a) and 363 for Allowance of Administrative Expense and Directing Payment of Same* (Docket No. 422) (the “**Motion**”), which was filed by Fabnet Associates, Inc. (“**Fabnet**”), Norris Sales Associates, Inc. (“**Norris**”) and C.H. Raches, Inc. (“**Raches**” and, together with Fabnet and Norris, the “**Independent Contractors**”) on or about March 6, 2007. In support of this Objection, the Debtors respectfully represent as follows:

**PRELIMINARY STATEMENT**

The Independent Contractors provided *prepetition* services to the Debtors and/or Carlisle Engineered Products, Inc. (“**Carlisle**”) for which they now seek an administrative expense priority claim pursuant to section 503(b)(1)(A) of title 11 of the United States Code (the

---

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

“**Bankruptcy Code**”) in contravention of Sixth Circuit precedent and well established case law. Prior to September 20, 2006 (the “**Petition Date**”), the Independent Contractors established relationships with certain of the Debtors’ customers, typically six months to three years prior the date when such customers would begin placing orders with the Debtors for parts. Thus, for example, orders placed by customers through the Independent Contractors in the fall of 2006 were the result of services provided by the Independent Contractors to Carlisle in 2004, to Carlisle and the Debtors in 2005 and, in a few cases, to the Debtors in the spring of 2006. None of the orders placed postpetition were the result of postpetition services rendered to the Debtors’ estates.

Notwithstanding this fact, by their Motion, the Independent Contractors seek the immediate payment of commissions for postpetition orders pursuant to section 503(b)(1)(A) of the Bankruptcy Code. The Independent Contractors’ claims, however, are not based on postpetition services rendered to the Debtors’ estates, but on prepetition services that resulted in postpetition sales and commissions related thereto. The Independent Contractors have failed to offer any evidence to the contrary and, thus, have failed to establish a *prima facie* case under section 503(b)(1)(A) of the Bankruptcy Code and applicable case law. Additionally, even if the Independent Contractors asserted a valid administrative expense priority claim, the Independent Contractors have failed to establish any basis for the immediate payment of such claim under section 503(b)(1)(A) of the Bankruptcy Code. Accordingly, for the reasons set forth herein, the Motion should be denied in its entirety.

## BACKGROUND

### General Background

1. On September 20, 2006, 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.

2. 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 (the “**Committee**”). No trustee or examiner has been appointed.

3. 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* (Docket No. 330) (the “**Plan**”).

### The Employee Motion

4. 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), 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 Related Relief* (Docket No. 8) (the “**Employee Motion**”). By the Employee Motion, the Debtors requested authority to pay the prepetition claims of the Independent Contractors. See Employee Motion at ¶¶ 22, 24 & 28.

5. On September 21, 2006, the Committee filed the *Omnibus Response to the Unofficial Committee of Unsecured Creditors of CEP Holdings, LLC, ET AL. to Certain First Day Motions* (Docket No. 46) (the “**Committee Objection**”), objecting to, among other things, the Debtors’ request for authority to pay the prepetition claims of the Independent Contractors. See Committee Objection at ¶ 21.

6. In response to the Committee Objection, the Debtors submitted and 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 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 Related Relief* (Docket No. 50) (the “**Employee Order**”). Under the Employee Order, the Debtors were authorized, but not directed, to pay the prepetition claims of the Independent Contractors “in an amount not to exceed \$140,000.00 in the aggregate.” Employee Order at ¶ 5. In order to maintain relations with the Independent Contractors given the possibility of additional going concern sales that ultimately did not materialize, the Debtors paid the Independent Contractors \$140,000.00 on account of their prepetition claims against the Debtors’ estates pursuant to the authority granted by the Employee Order.

7. In response to the *Objection of Independent Contractors to Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b) of the Bankruptcy Code, for Entry of an Order Authorizing Them to Adopt a Performance Bonus Plan and Make Payments*

*Thereunder* (Docket No. 170), the Debtors withdrew the Employee Motion to the extent that it sought the payment of prepetition claims to the Independent Contractors beyond the relief granted by the Employee Order. *See* Docket No. 178 at ¶ 27 n.4.

**The Independent Contractor Agreements**

8. Prior to the Petition Date, the Independent Contractors entered into representation agreements (individually, the “**Fabnet Agreement**”, the “**Norris Agreement**”, and the “**Raches Agreement**” and, collectively, the “**Independent Contractor Agreements**”) with Carlisle. Copies of the Independent Contractor Agreements are attached to the Motion as Exhibits A, B & C respectively, and are fully incorporated herein by reference. The Independent Contractor Agreements were assigned to Creative Engineered Polymer Products LLC (“**CEPP**”) by Carlisle under the Asset Purchase Agreement by and between CEPP, as seller, and Carlisle, as buyer, dated as of August 17, 2005.

9. Pursuant to the terms and conditions of the Independent Contractor Agreements, prior to the Petition Date and for a brief period of time after the Petition Date, the Independent Contractors functioned as the Debtors’ exclusive sales agents for goods and equipment within the respective territories assigned to each of the Independent Contractors, as more fully described on Addendum B to each of the Independent Contractor Agreements (each a “**Territory**” and, collectively, the “**Territories**”). As the Debtors acknowledged in the Employee Motion, the Independent Contractors provided critical sales services to the Debtors prepetition. *See* Employee Motion at ¶ 24.

10. Under the Independent Contractor Agreements, each Independent Contractor was paid a commission based upon orders solicited within and products shipped to customers in each

Independent Contractor's respective Territory.<sup>2</sup> The commission based upon orders placed by the Independent Contractors' customers each month became due and payable on the 25th day of either (a) the month following that in which the customers were invoiced for the sales or (b) the month following that in which the customers were shipped the goods.<sup>3</sup> For example, depending on the applicable agreement, the Independent Contractors' commissions for orders invoiced or goods shipped to customers in their respective Territories in September of 2005 had to be paid on or before October 25, 2005, and orders invoiced or goods shipped to customers in their respective Territories in October of 2005 had to be paid on or before November 25, 2005.

11. Orders invoiced and goods shipped to the Independent Contractors' customers each month were not the result of services rendered by the Independent Contractors during such month, but generally constituted orders invoiced and goods shipped to established customers of the Independent Contractors. Accordingly, that an order was invoiced or a good was shipped to a customer of an Independent Contractor in any given month does not mean that such order or shipment was the product of an Independent Contractor having rendered services to the Debtors in such month. Based on the Debtors' records, all of the orders invoiced and goods shipped to

---

<sup>2</sup> See Fabnet Agreement at § 5 (“[Fabnet] shall be entitled to commissions on all orders for the Products solicited within or delivered into the [Fabnet] Territory”); Fabnet Agreement at Addendum C (“[Fabnet] shall be entitled to commissions from Company on all orders by Customers (or their successors) or orders placed by a Customer’s supplier on behalf of that Customer for Products to the extent that such orders have been solicited by [Fabnet].”); Norris Agreement at § 5 (“[Norris] shall be entitled to commissions on all orders for the Products solicited within or delivered into the Territory”); Norris Agreement at Addendum C (“[Norris] shall be entitled to commissions from Company on all orders for Products by Customers within the Territory to the extent that such orders have been solicited by Representative and accepted by the Company.”); Raches Agreement at ¶ D (“The Company shall pay [Raches] a commission as specified in Exhibit C attached hereto, and made a part hereof, on the net invoice price of all sales of Products to the Territory pursuant to orders placed by [Raches] and accepted by the Company pursuant to this Agreement.”).

<sup>3</sup> See Fabnet Agreement at § 5 (“Such commissions shall be paid on or before the 25th day of the month following that in which customers are invoiced for sales of Products solicited by Representative.”); Norris Agreement at § 5 (“Such commissions shall be paid on or before the 25th day of the month following that in which customers are invoiced for sales of Products solicited by Representative.”); Raches Agreement at Exhibit C, § 1(d) (“Payment of commissions shall be monthly on or about the 25th day of the month following the month in which shipment has been made by the Company.”).

customers in the Independent Contractors' Territories in September, October, November and December of 2006, and the corresponding commissions that became due under the Independent Contractor Agreements, were the result of solicitations and services rendered to the Debtors prepetition and, in some instances, to Carlisle prior to August of 2005. Under each of the Independent Contractor Agreements, each Independent Contractor generally is entitled to commissions on existing orders for a period of up to 12 months following the termination of the applicable Independent Contractor Agreement.<sup>4</sup>

**The Independent Contractors' Motion for Immediate Payment**

12. On or about March 6, 2007, the Independent Contractors filed the Motion. By the Motion, the Independent Contractors seek the immediate payment of commissions for postpetition sales pursuant to section 503(b)(1)(A) of the Bankruptcy Code. *See* Motion at ¶ 21 (“The Independent Contractors seek the . . . [a]llowance of their claims for administrative expenses for commissions due on post-petition sales pursuant to the terms of their written agreements.”). The principal justification offered in support of the Independent Contractors’ claim is that such postpetition sales “generated considerable income for the Debtor.” *Id.*

13. The Independent Contractors, however, have provided no evidence that such commissions are attributable to services rendered to the Debtors’ estates postpetition. The

---

<sup>4</sup> *See* Fabnet Agreement at § 5 (“Upon termination of this Agreement, for new Product orders secured prior to termination date, commissions will be paid for the first twelve months of production shipments. In addition, upon termination of this agreement, except as outlined in Section 15, commissions will continue to be paid on all orders secured prior to termination date to the extent that such orders have been solicited by Representative as set forth in Addendum C for a period of twelve (12) months beyond the termination date.”); Norris Agreement at § 2 (“In the event of termination by the Company after December 31, 2000, full commission will be payable by Company to Representative for a period of 12 months after the effective date of the termination.”); Raches Agreement at ¶ H, § 4(a) (“Upon termination of this Agreement, for new Product orders secured prior to termination date, commissions will be paid for the first twelve months of production shipments. In addition, upon termination of this agreement, except as outlined in Paragraph H, Section 2, commissions will continue to be paid on all orders secured prior to termination date to the extent that such orders have been solicited by [Raches] as set forth in Addendum C for a period of twelve (12) months beyond the termination date.”).

Debtors believe that all of the Independent Contractors' postpetition sales to customers in the Territories were not the product of postpetition services rendered by the Independent Contractors to the Debtors' estates, but the product of relationships and accounts established prepetition by the Independent Contractors. In sum, by the Motion, the Independent Contractors seek an administrative expense priority claim in the amount of \$336,916.64 for services rendered to the Debtors and/or Carlisle prepetition that resulted in postpetition sales and commissions related thereto.

### **OBJECTION**

**A. The Independent Contractors Are Not Entitled to an Administrative Expense Priority Claim Under Section 503(b)(1)(A) of the Bankruptcy Code**

14. The Independent Contractors are not entitled to an administrative expense priority claim under section 503(b)(1)(A) of the Bankruptcy Code for their *prepetition* services to the Debtors. Section 503(b)(1)(A) of the Bankruptcy Code provides in relevant part: "After notice and a hearing, there shall be allowed administrative expenses . . . including — (1)(A) the actual, necessary costs and expenses of preserving the estate, including — (i) wages, salaries, and commissions for services rendered after the commencement of the case[.]" 11 U.S.C. § 503(b)(1)(A)(i). "Section 503 priorities should be narrowly construed in order to maximize the value of the estate preserved for the benefit of all creditors." *United Trucking Serv., Inc. v. Trailer Rental Co. (In re United Trucking Serv., Inc.)*, 851 F.2d 159, 164 (6th Cir. 1988).

15. The purpose of section 503(b)(1)(A) of the Bankruptcy Code "is to encourage third parties to provide the debtor in possession with goods and services essential to rehabilitation of the business." *The Beneke Co. v. Economy Lodging Sys., Inc. (In re Economy Lodging Sys., Inc.)*, 234 B.R. 691, 697 (B.A.P. 6th Cir. 1999); *see United Trucking Serv., Inc.*, 851 F.2d at 161 ("The purpose of [section 503(b)(1)] of the Bankruptcy Code is to facilitate the



rehabilitation of insolvent businesses by encouraging third parties to provide those businesses with necessary goods and services.”).

16. In order for a claim to qualify as an administrative expense priority under section 503(b)(1)(A) of the Bankruptcy Code, the claimant must prove, by a preponderance of the evidence, that the claim (a) arose out of a transaction between the creditor and the debtor-in-possession and (b) directly and substantially benefited the estate. *See Eagle-Picher Indus., Inc. v. Caradon Doors & Windows, Inc. (In re Eagle-Picher Indus., Inc.)*, 447 F.3d 461, 464 (6th Cir. 2006) (“[A] debt qualifies as an ‘actual, necessary’ administrative expense only if (1) it arose from a transaction with the bankruptcy estate and (2) directly and substantially benefited the estate.”) (quoting *Pension Benefit Guar. Corp. v. Sunarhauserman (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 816 (6th Cir. 1997)); *United Trucking Serv., Inc.*, 851 F.2d at 161-62 (“In order to qualify a claim for payment as an administrative expense a claimant must prove that the debt (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession); and (2) directly and substantially benefited the estate.”); *see also In re Visi-Track, Inc.*, 266 B.R. 372, 374 (Bankr. N.D. Ohio 2001) (“The party asserting administrative expense status bears the burden of proving the applicability of § 503(b) by a preponderance of the evidence.”).

17. In applying this standard, the focus is *not* on when an obligation or claim accrued but on when the acts giving rise to the liability occurred, *i.e.*, the time when the services were rendered to the debtor. *See Sunarhauserman, Inc.*, 126 F.3d at 818 (“[R]egardless of the substantive law on which the claim is based, the proper standard for determining that claim’s administrative priority looks to when the acts giving rise to a liability took place, not when they accrued.”); *In re The Highland Group, Inc.*, 136 B.R. 475, 481 (Bankr. N.D. Ohio 1992) (“A

debt is not entitled to an administrative priority simply because the right to payment arises after the debtor-in-possession has begun managing the estate.”); accord *Former Employees of Builders Square Retail Stores v. Hechinger Inv. Co. of Del. (In re Hechinger Inv. Co. of Del.)*, 298 F.3d 219, 225 (3d Cir. 2002) (“[Section 503(b)(1)(A) of the Bankruptcy Code] looks to the time when the services were ‘rendered’ not when they were scheduled for payment.”); *In re Dynacircuits, L.P.*, 143 B.R. 174, 176 (N.D. Ill. 1992) (“[I]t is the time at which the services are rendered that is dispositive of the issue of whether an administrative expense is allowed.”); see also *Denton & Anderson Co. v. Induction Heating Corp.*, 178 F.2d 841, 844 (2d Cir. 1949) (holding that a creditor is not entitled to a priority claim for commissions on orders paid postpetition for services performed prepetition because there is no benefit conferred on the estate).

18. For example, in *Dynacircuits, L.P.*, 143 B.R. 174 (N.D. Ill. 1992), an independent contractor that provided sales services to the Debtor within a defined territory sought the payment of commissions earned on sales placed prepetition but not paid for until after the petition date as an administrative expense priority under section 503(b)(1)(A) of the Bankruptcy Code. Pursuant to the independent contractor’s agreement with the Debtor, the commissions were not deemed earned or accrued until the customers actually paid for their orders. The independent contractor’s commission was payable on the 15th day of the month following payment. *Id.* at 175. The independent contractor argued that his claim for commissions on orders placed prepetition but for which the customers did not pay until postpetition was for “commissions for services rendered after the commencement of the case” and, thus, entitled to administrative expense priority status under section 503(b)(1)(A) of the Bankruptcy Code. *Id.* at 176.

19. The court rejected the independent contractor’s argument and denied his motion. According to the court, “The determination of whether an administrative expense will be allowed turns on the timing of the services rendered for which the allowance is sought. . . . [I]t is the time at which the services are rendered that is dispositive of the issue of whether an administrative expense is allowed.” *Id.* (applying the *Mammoth Mart* standard adopted and applied by the Sixth Circuit in *Eagle-Picher Indus., Inc.*, *Sunarhauserman, Inc.* and *United Trucking Serv., Inc.*). Thus, because the services giving rise to the commission were rendered prepetition, the independent contractor was not entitled to an administrative expense priority claim under section 503(b)(1)(A) of the Bankruptcy Code. *Id.* at 177 (“[T]he relevant time frame is when the acts occurred that gave rise to [the independent contractor’s] contingent right to payment. Here, those acts occurred pre-petition when [the independent contractor] performed his duties under the Agreement that led to customer orders.”).

20. In contrast, the commissions found to constitute administrative expense priority claims in *In re Ingram*, No. 94-165, 1994 U.S. Dist. LEXIS 4359 (E.D. La. Apr. 6, 1994) and *In re Pre-Press Graphics Co.*, 300 B.R. 902 (Bankr. N.D. Ill. 2003) — the two decision upon which the Independent Contractors principally rely — were based primarily upon services rendered to the debtors postpetition and, therefore, do not support the relief sought in the Motion. *See Ingram*, No. 94-165, 1994 U.S. Dist. LEXIS 4359 at \*6-7 (finding that a sales commission earned by a broker in connection with the debtor’s postpetition sale of a building to a tenant was an administrative expense priority claim where the broker had an “ongoing participation in [the] relationship . . . when the sales negotiations were taking place” between the buyer and the debtor postpetition); *Pre-Press Graphics Co.*, 300 B.R. at 913 (“In the instant matter, Nolte [the debtor’s former vice president of sales] claims that he has not been compensated *for a number of*

*the jobs he worked on for the benefit of the Debtor post-petition.* Specifically, Nolte claims he is entitled to \$16,492.84 in sales commissions.”) (emphasis added).

21. Here, the claims for unpaid commissions asserted by the Independent Contractors are nearly identical to the claim in *Dynacircuits, L.P.* found not to qualify as an administrative expense priority claim under the *Mammoth Mart* standard adopted by the Sixth Circuit. The acts that led to the orders and the sales to the customers in the Independent Contractors’ respective Territories occurred prepetition when the Independent Contractors provided sales services under the Independent Contractor Agreements and established relationships with the customers. The Independent Contractors’ claims for commissions based upon such prepetition services are not entitled to priority under section 503(b)(1)(A) of the Bankruptcy Code as a matter of law.

22. As explained above, the fact that orders were invoiced and goods were shipped to the Independent Contractors’ customers postpetition, and commissions accrued thereon under the terms of the Independent Contractor Agreements postpetition, is irrelevant under section 503(b)(1)(A) of the Bankruptcy Code. *See Sunarhauserman, Inc.*, 126 F.3d at 818; *The Highland Group, Inc.*, 136 B.R. at 481; *accord Hechinger Inv. Co. of Del.*, 298 F.3d at 225; *Dynacircuits, L.P.*, 143 B.R. at 176; *see also Denton & Anderson Co.*, 178 F.2d at 844.

23. The fact that the Debtors may have derived some postpetition benefit from the Independent Contractors’ prepetition services — the principal justification offered by the Independent Contractors — also is irrelevant under section 503(b)(1)(A) of the Bankruptcy Code. *See Hechinger Inv. Co. of Del.*, 298 F.3d at 226 (“It is similarly irrelevant whether the services that the employees performed prior to the filing of the petition continued to benefit the debtor after the case was commenced. Section 503(b)(1)(A) does not provide that services that have the effect of benefiting the estate are entitled to treatment as administrative expenses.”); *In*

*re Precision Carwash Corp.*, 90 B.R. 34, 38 (Bankr. E.D.N.Y. 1988) (“If the creditor’s services have been fully performed pre-petition and all that remains is the payment of money, the debtor cannot give the debt administrative status by . . . accepting the benefits of the creditor’s services”).

24. Finally, the Debtors have not assumed and have no intention of assuming the Independent Contractor Agreements, thus, making the Independent Contractor Agreements unenforceable against the Debtors. *See In re Pittsburgh Canfield Corp.*, 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) (“During the post-petition and pre-acceptance period, an executory contract remains in existence and is enforceable by, but not against the debtor in possession.”); *accord FBC Distrib. Corp. v. Official Comm. of Unsecured Creditors (In re FBI Distrib. Corp.)*, 330 F.3d 36, 43 (1st Cir. 2003) (“Although during the Chapter 11 proceeding a prepetition executory contract remains in effect and enforceable against the nondebtor party to the contract, the contract is *unenforceable* against the debtor in possession unless and until the contract is assumed.”); *United States on Behalf of U.S. Postal Serv. v. Dewey Freight Sys., Inc.*, 31 F.3d 620, 624 (8th Cir. 1994) (“After a debtor commences a Chapter 11 proceeding, but before executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, *enforceable by the debtor but not against the debtor.*”).

25. In sum, the Independent Contractors’ expansive view of section 503(b)(1)(A) of the Bankruptcy Code is contrary to Sixth Circuit precedent and related case law. *See United Trucking Serv., Inc.*, 851 F.2d at 164. The Independent Contractors’ claims for unpaid commissions do not arise out of a transaction with the Debtors and otherwise fail to satisfy the requirements of section 503(b)(1)(A) of the Bankruptcy Code, which plainly require that administrative expense priority claims be for “services rendered *after* the commencement of the

case” and not services rendered *prior* to the commencement of the case. *See* 11 U.S.C. § 503(b)(1)(A)(i) (emphasis added). Accordingly, on this basis alone, the Motion should be denied in its entirety.

**B. Section 503(b)(1)(A) of the Bankruptcy Code Does Not Give Administrative Claimants the Right to Immediate Payment**

26. Section 503(b)(1)(A) of the Bankruptcy Code does not give administrative claimants the right to immediate payment. As a general rule, a debtor in possession is not required to pay postpetition administrative expense claims until the effective date of a plan of reorganization. *In re Cardinal Indus., Inc.*, 109 B.R. 738, 743 (Bankr. S.D. Ohio 1989) (payment of post-rejection rent claims “shall be finally determined and paid along with all other administrative expense claims upon confirmation of a plan”); *In re Budget Uniform, Inc.*, 71 B.R. 652, 654 (Bankr. E.D. Pa. 1987) (“As with any administrative claim, the respondent must wait for confirmation of a plan before becoming entitled to payment.”); *see* 11 U.S.C. § 1129(a)(9).<sup>5</sup> The proposed Plan complies with this requirement. *See* Plan at § 2.1.

27. As set forth above, the Debtors do not believe that the Independent Contractors hold valid administrative expense claims for postpetition services rendered to the Debtors’ estates. To the extent that the Court finds otherwise, however, the Debtors further submit that the Independent Contractors have offered no justification as to why their claims should be paid ahead of other administrative expense claims in these Cases. Accordingly, on this basis, the Motion should be denied.

---

<sup>5</sup> Section 1129(a)(9) of the Bankruptcy Code provides:

Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that — (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, *on the effective date of the plan*, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

11 U.S.C. § 1129(a)(9) (emphasis added).

## **CONCLUSION**

The Independent Contractors are not entitled to an administrative expense priority claim under section 503(b)(1)(A) of the Bankruptcy Code for their prepetition services to the Debtors. For this reason, and for the reasons set forth above, the relief requested in the Motion should be denied in its entirety.

## **RESERVATION OF RIGHTS**

The Debtors hereby reserve their right to further object to any claim asserted by the Independent Contractors in these Cases, including the claims improperly asserted in the Motion as administrative expense priority claims under section 503(b)(1)(A) of the Bankruptcy Code, on any and all additional factual and/or legal grounds.

Dated: March 23, 2007  
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*