

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

<b>In re:</b>	)	<b>Case No. 06-51848</b>
	)	<b>(Jointly Administered)</b>
	)	
<b>CEP HOLDINGS, LLC, et al.,</b>	)	<b>Judge Shea-Stonum</b>
	)	
	)	<b>Chapter 11</b>
<b>Debtors.</b>	)	

**EMERGENCY MOTION OF PARKER HANNIFIN CORPORATION FOR RELIEF  
FROM AUTOMATIC STAY AND ABANDONMENT**

Parker Hannifin Corporation ("Parker Hannifin"), creditor and party in interest, by and through its undersigned counsel, hereby files this motion (the "Motion") seeking the entry of an Order pursuant to 11 U.S.C. §§ 361, 362, 365 and 554 (i) lifting the automatic stay in order to allow Parker Hannifin to enforce its ownership rights in the Bishopville Premises (defined herein) and the Vandalia Premises (defined herein) and (ii) directing Thermoplastics Acquisition, LLC ("Thermoplastics"), one of the above-captioned debtors ("Debtors"), to abandon the Bishopville Premises and the Vandalia Premises. In support of the Motion, Parker Hannifin respectfully states as follows:

**MEMORANDUM IN SUPPORT**

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 361, 362(d), 365(d)(3) and 554 and Rules 4001 and 6007 of the Federal Rules of Bankruptcy Procedure.

2. On September 20, 2006 (the "Petition Date"), the Debtors, including Thermoplastics, filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code.

3. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. An official committee of unsecured creditors was appointed in these cases on September 28, 2006.

4. On November 21, 2006, 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* ("Sale Order"). The Sale Order authorized the Debtors to sell substantially all of the assets located at certain of its liquidating facilities, including its Bishopville, South Carolina and Vandalia, Ohio locations which are the subject of this Motion. Following entry of the Sale Order, the Debtor has been engaged in the process of auctioning off various equipment at these locations.

#### **BISHOPVILLE LEASE**

5. On December 21, 2005, Thermoplastics and Parker Hannifin entered into a Agreement of Lease (the "Bishopville Lease"), attached hereto as Exhibit A. Under the Bishopville Lease, Thermoplastics agreed to lease from Parker Hannifin certain nonresidential real property ("Bishopville Premises") located in Bishopville, South Carolina and more fully described in Exhibit A to the Bishopville Lease.

6. Parker Hannifin is the fee title owner of the Bishopville Premises.

7. Pursuant to the terms of the Bishopville Lease, Thermoplastics was to make quarterly payments to Parker Hannifin in the amount of \$68,222.00 per quarter beginning on April 1, 2006 (with an initial partial pro-rated payment of \$2,916.67 for the partial month of December, 2005), plus applicable taxes, assessments, and other charges. The term of the Bishopville Lease commences from December 21, 2005 and extends for a seven years. *See Exhibit A*, Bishopville Lease at ¶¶ 3, 5.

8. Thermoplastics made the first two (2) payments under the Bishopville Lease, up to and including July 1, 2006, but has been in default since October 1, 2006.

9. As the date of this Motion, the total aggregate amount owed to Parker Hannifin by Thermoplastics under the Bishopville Lease is approximately \$1,415,321.00.

10. Thermoplastics has not made any post-petition lease payments and has not assumed or rejected the Bishopville Lease.

11. Parker Hannifin has no knowledge of any other parties who claim an interest in the Bishopville Lease.

12. On January 26, 2007, an appraisal ("Bishopville Appraisal") of the Bishopville Premises was completed by Leland M. Coe & Associates, who was retained by Parker Hannifin in connection with this Motion. According to the Affidavit of Leland Coe (the "Coe Affidavit"), attached hereto as Exhibit B, the fair market value of the Bishopville Premises is approximately \$495,000.00. See Coe Aff. at ¶ 7.

13. Early on in the Debtors' Chapter 11 proceeding, the Debtor asserted that the Bishopville Lease is a disguised security arrangement as opposed to a true lease. Although Parker does not dispute the Debtor's characterization of the Bishopville Lease at this time, even if the Bishopville Lease is a disguised security arrangement, Thermoplastics has no equity in the

Bishopville Premises considering the appraised value of the property and the amounts owed to Parker Hannifin under the Bishopville Lease.

### VANDALIA LEASE

14. On December 21, 2005, Thermoplastics and Parker Hannifin entered into a Agreement of Lease (the "Vandalia Lease"), attached hereto as Exhibit C. Under the Vandalia Lease, Thermoplastics agreed to lease from Parker Hannifin certain nonresidential real property ("Vandalia Premises") located in Vandalia, Ohio and more fully described in Exhibit A to the Vandalia Lease.

15. Parker Hannifin is the fee title owner of the Vandalia Premises.

16. Pursuant to the terms of the Vandalia Lease, Thermoplastics was to make quarterly payments to Parker Hannifin in the amount of \$122,800.00 per quarter beginning on April 1, 2006 (with an initial partial pro-rated payment of \$5,250.00 for the partial month of December, 2005), plus applicable taxes, assessments, and other charges. The term of the Vandalia Lease commences from December 21, 2005 and extends for seven years. See Exhibit A, Vandalia Lease at ¶¶ 3, 5.

17. Thermoplastics made the first two (2) payments under the Vandalia Lease, up to and including July 1, 2006, but has been in default since October 1, of 2006.

18. As of the date of this Motion, the total aggregate amount owed to Parker Hannifin by Thermoplastics under the Vandalia Lease is approximately \$2,547,578.00.

19. Thermoplastics has not made any post-petition lease payments and has not assumed or rejected the Vandalia Lease.

20. Parker Hannifin has no knowledge of any other parties who claim an interest in the Vandalia Lease.

21. On January 9, 2007, an appraisal ("Vandalia Appraisal") of the Vandalia Premises was completed by Leland M. Coe & Associates, who was retained by Parker Hannifin in connection with this Motion. According to the Coe Affidavit, the fair market value of the Vandalia Premises is approximately \$2,040,000.00. See Coe Aff. at ¶ 8.

22. Similar to the Bishopville Lease, early on in the Debtors' Chapter 11 proceeding, the Debtor asserted that the Vandalia Lease is a disguised security arrangement as opposed to a true lease. Although Parker Hannifin does not dispute the Debtor's characterization of the Vandalia Lease at this time, even if the Vandalia Lease is a disguised security arrangement, Thermoplastics has no equity in the Vandalia Premises considering the market value of the property and the amounts owed to Parker Hannifin under the Vandalia Lease.

23. As noted in Parker Hannifin's Motion for an Expedited hearing with regard to this stay relief Motion, filed simultaneously herewith, Parker recently received a time sensitive cash offer for the sale of the Vandalia Premises. Although the amount of the offer Parker received is higher than the appraised value of the Vandalia Premises, it does not exceed the amount owed to Parker under the Vandalia Lease.

#### **RELIEF REQUESTED AND REASONS THEREFOR**

24. Parker Hannifin seeks relief from the automatic stay to acquire possession of the Bishopville Premises and the Vandalia Premises, and so that it may exercise its rights under the Bishopville and Vandalia Leases. Thermoplastics has not made adequate protection lease payments as required under 11 U.S.C. § 365(d)(3).

25. Notwithstanding Thermoplastics' informal assertion that the Bishopville and Vandalia Leases are disguised security arrangements, which Parker does not dispute at this time, Parker Hannifin is entitled to relief from stay and abandonment. Pursuant to 11 U.S.C. §

554, Thermoplastics is required to abandon property that is of inconsequential value and benefit to the estate, and Parker Hannifin is entitled to relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

**I. Thermoplastics, Or Any Other Party Opposing Relief, Has The Ultimate Burden To Establish That Parker Hannifin Is Not Entitled To Relief From Stay.**

26. The appropriate burden of proof standard in a relief from stay hearing, which ultimately rests with Thermoplastics or any other party opposing relief, is set forth in 11 U.S.C. § 362(g): "(1) the party requesting such relief has the burden of proof on the debtor's equity in property; and (2) the party opposing the relief has the burden of proof on all other issues." 11 U.S.C. § 362(g). As described by one court, there is a distinction between the initial burden of going forward and the ultimate burden of persuasion. *See In re Elmira Litho, Inc.*, 174 B.R. 892, 900 (Bankr. S.D.N.Y. 1994). For example, a party seeking relief for "cause" under section 362(d)(1) of the Bankruptcy Code "has the initial burden of proving a *prima facie* case: cause must be shown to exist." *In re Brown*, 78 B.R. 499, 502 (Bankr. S.D. Ohio 1987); *see also Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 142 (2d Cir. 1999) (stating that the party seeking relief must "make an initial showing of cause for relief from the stay"). The burden then shifts to the debtor for establishing all other issues, including adequate protection of the creditor, with the exception of its equity in the property at issue. *See In re Walton*, 77 B.R. 617, 621 (Bankr. N.D. Ohio 1987); *see also In re Planned Systems, Inc.*, 78 B.R. 852, 859 (Bankr. S.D. Ohio 1987) ("After moving party establishes a *prima facie* case, the burden of producing evidence, as well as the ultimate burden of proof, *i.e.*, risk on non-persuasion, shifts to the debtor.").

**II. Relief From Stay Is Appropriate Because Thermoplastics Has Not Adequately Protected Parker Hannifin's Interest.**

27. As expressly stated in 11 U.S.C. § 362(d)(1), relief from the automatic stay shall be granted "for cause, *including the lack of adequate protection of an interest in property of such party in interest.*" 11 U.S.C. § 362(d)(1) (emphasis added). By seeking relief from stay for lack of adequate protection, "the nature of the movant's interest defines the need for adequate protection, and the scope of the prima facie case." *Elmira Litho, Inc.*, 174 B.R. at 902.

28. Under 11 U.S.C. § 365(d)(3), a debtor in possession "shall timely perform all the obligations . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected . . ." 11 U.S.C. § 365(d)(3). "Courts have generally held . . . that a lessor's adequate protection rights are defined by . . . section 365(d)(3) . . . [T]he lessor's adequate protection is defined by the payments specified under the lease." 3 Collier on Bankruptcy ¶ 361.02[1] (15th ed. Rev.) (citing *In re P.J. Clarke's Restaurant Corp.*, 265 B.R. 393 (Bankr. S.D.N.Y. 2001).

29. Parker Hannifin's interest in the Bishopville Lease and the Vandalia Lease are not adequately protected, nor can Thermoplastics provide adequate protection based on its current situation. As of the date of this Motion, Thermoplastics is a number of payments behind, and has made no effort to become current. Parker Hannifin lost the opportunity continue its income stream from the two properties throughout the bankruptcy proceeding, and with the continued passage of time, will continue to lose this income opportunity.

30. Additionally, assuming the Bishopville and Vandalia Leases are disguised security agreements, Thermoplastics has not adequately protected Parker Hannifin's interests. "Section 361 describes three means by which adequate protection may be provided: (1) periodic payments; (2) additional or replacements liens; and (3) such other relief as will result in the realization of the 'indubitable equivalent' of the entity's interest." 3 Collier on Bankruptcy

¶ 361.02 (15th ed. Rev.). Thermoplastics has not provided any post-petition periodic payments, additional or replacement liens, or such other equal relief.

31. Moreover, with regard to the Vandalia Premises, relief from stay on a cause basis pursuant to Section 362(d)(1) is warranted given that Parker has received a time sensitive cash offer. To the extent Parker misses this brief window of opportunity to sell the Vandalia Premises, its ownership interest in the Vandalia Premises is at risk of being diminished. Therefore, Parker Hannifin is not adequately protected and is entitled to relief from automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1).

**III. Relief From Stay Is Also Appropriate Because Thermoplastics Has No Equity In The Bishopville Premises Or The Vandalia Premises.**

32. 11 U.S.C. §362(d)(2) authorizes relief from stay when a debtor has no equity in the property and the property is not necessary for an effective reorganization. 11 U.S.C. § 362(d)(2).

33. Under 11 U.S.C. § 362(d)(2), sufficient grounds exist for relief from stay. As evidenced by the appraisals referenced in the Coe Affidavit attached hereto as Exhibit B, Thermoplastics has no equity in the Bishopville Premises or the Vandalia Premises, considering the amounts owed to Parker Hannifin. Therefore, the Bishopville and Vandalia Premises are of inconsequential value to Thermoplastics' bankruptcy estate and Parker Hannifin is entitled to relief from the automatic stay accordingly.

**IV. Abandonment Is Appropriate Because The Bishopville Premises And The Vandalia Premises Are Of Inconsequential Value To Thermoplastic's Estate.**

34. In accordance with 11 U.S.C. § 554(b), the bankruptcy court possesses discretionary authority to order Thermoplastics to abandon property where the property in question is of no value or benefit to the estate. *In re K.C. Machine & Tool Co.*, 816 F.2d 238,



244 (6th Cir. 1987). As noted by the Sixth Circuit, the purpose served by this rule is to avoid unnecessary costs which would be incurred by Thermoplastics for which no benefit would result for unsecured creditors. *Id.* at 246. This statutory authority's genesis was a common law rule developed by the courts that permitted debtors "to abandon property that was worthless *or not expected to sell for a price sufficiently in excess of encumbrances to offset costs of administration . . .*" *Id.* (quoting *Midlantic National Bank v. New Jersey Dep't. of Environmental Protection*, 474 U.S. 494 (1986)).

35. Applying the legal principles set forth above, Parker Hannifin is entitled to an order directing abandonment of the Bishopville and Vandalia Premises due to the fact that Thermoplastics possesses no equity in these properties. Moreover, as discussed above, Thermoplastics' monetary obligations under the Bishopville and Vandalia Leases increase monthly and Thermoplastics has failed to provide adequate protection payments. For these reasons, the Court should order Thermoplastics to abandon the Bishopville Lease and the Vandalia Lease accordingly.

WHEREFORE, Parker Hannifin respectfully requests this Court enter an order (i) granting Parker Hannifin relief from stay so it may take all actions necessary to obtain possession of the Bishopville Premises and the Vandalia Premises, (ii) directing Thermoplastics to abandon the Bishopville Premises and the Vandalia Premises, and (iii) providing such other and further relief as the Court deems just and proper.

[remainder of page intentionally left blank]

Respectfully submitted,

/s/ Robert C. Folland

Robert C. Folland (0065728)

Sean A. Gordon (0074243)

**THOMPSON HINE LLP**

3900 Key Center, 127 Public Square

Cleveland, Ohio 44114-1291

(216) 566-5629 (Direct)

(216) 566-5800 (Facsimile)

*Counsel for Parker Hannifin Corporation*

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on May 1, 2007 by email via the Court's ECF system on those parties registered to receive notice thereby, as well as by overnight mail upon those parties named on the attached Service List. A copy of the foregoing was additionally served on said date by email upon: (i) Joesph Hutchinson at Baker & Hostetler, counsel for the Debtor, at [jhutchinson@bakerlaw.com](mailto:jhutchinson@bakerlaw.com); (ii) Mark E. Freedlander at McGuire Woods LLP, counsel for the Official Committee of Unsecured Creditors, at [mfreedlander@mcguirewoods.com](mailto:mfreedlander@mcguirewoods.com); and (iii) Maria D. Giannirakis of the Office of the United States Trustee, at [maria.d.giannirakis@usdoj.gov](mailto:maria.d.giannirakis@usdoj.gov).

/s/ Robert C. Folland  
\_\_\_\_\_  
*Counsel for Parker Hannifin Corporation*

## SERVICE LIST

AT&T Corp  
Corporate Bankruptcy Office  
1355 W. University Dr.  
Mesa, AZ 85021

Biditup Auctions Worldwide Inc  
Attn: Steven Mattes, President  
11426 Ventura Boulevard  
Studio City, CA 91604

By-Lo Oil Co Inc  
PO Box 611371  
Port Huron, MI 48061-1371

Chase Equipment Leasing, Inc.  
c/o Jeffrey C. Toole  
Buckley King, LPA  
600 Superior Ave., E.  
Suite 1400  
Cleveland, OH 44114

Peyton C. Cochrane  
714 Greensboro Ave.  
#124  
Tuscaloosa, AL 35401

Dupont  
c/o Bruce D. Tobiansky  
Barley Mill Plaza, BMP26-2174  
4417 Lancaster Pike  
Wilmington, DE 19805

Excel Polymers LLC  
c/o Kathy McDaniel  
6521 Davis Industrial Parkway  
Solon, OH 44139

Victor M. Firth  
Firth Johnston Martinez  
415 N. Mesa  
Third Floor  
El Paso, TX 79901

Gold Key Processing Ltd.  
c/o Robert Toth  
14910 Madison Rd.  
Middlefield, OH 44062

IBM Corporation  
Attn: Beverly H. Shideler, BS8399  
Two Lincoln Centre  
Oakbrook Terrace, IL 60181

IKON Financial Services  
1738 Bass Rd  
PO Box 13708  
Macon, GA 31208-3708

IOS Capital Inc  
Bankruptcy Administration  
PO Box 13708  
1738 Bass Rd  
Macon, GA 31208-3708

International Business Machines Corp.  
Attn: Mrs. Beverly Shideler  
Two Lincoln Centre  
Oakbrook Terrace, IL 60181

Lanxess Corp.  
c/o Alan P. Rugh  
111 RIDC Park West Dr.  
Pittsburgh, PA 15275-1112

McDonald Hopkins Co LPA  
600 Superior Avenue E  
#2100  
Cleveland, OH 44114

McGuireWoods LLP  
625 Liberty Ave  
23rd Floor  
Pittsburgh, PA 15222

Rhodia  
c/o Doreen Wilson-Bailey  
8 Cedar Brook Dr.  
Cranbury, NJ 08512

Shawn M. Riley  
McDonald Hopkins Co LPA  
600 Superior Avenue E  
#2100  
Cleveland, OH 44114

Jean R. Robertson  
McDonald Hopkins Co., LPA  
600 Superior Ave., E  
Suite 2100  
Cleveland, OH 44114

Sharon L Royer  
Harrisburg Bankruptcy and Compliance  
1171 S Cameron St  
#312  
Harrisburg, PA 17104-2513

Robert J Sidman  
PO Box 1008  
52 E Gay St  
Columbus, OH 43216

Aaron M Silver  
Honigman Miller Schwartz & Cohn LLP  
2290 First National Bldg  
Detroit, MI 48226

Alan P. Solow  
Benesch Friedlander Coplan & Aronoff LLP  
2300 BP Tower  
200 Public Square  
Cleveland, OH 44114-2378

Temtron, Inc.  
Ziegler Metzger & Miller LLP  
c/o Jeffrey Koberg  
c/o Stephen M. Darlington  
925 Euclid Ave., #2020  
Cleveland, OH 44115-1441

The Brown Corporation of Greenville  
c/o Mark Ferderber  
1927 N. Theobald St.  
Greenville, MS 38703

Tridon  
c/o David English  
3200 Parker Dr.  
St. Augustine, FL 32084

Tuscaloosa County Tax Collector  
124 Court House  
714 Greensboro Ave.  
Tuscaloosa, AL 35401-1891

Elizabeth Wambsgans  
McDonald Hopkins Co LPA  
600 Superior Avenue E  
#2100  
Cleveland, OH 44114

Washington Penn Plastic Co Inc.  
c/o Bob Stough  
PO Box 236  
450 Racetrack Rd.  
Washington, PA 15301