

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AKRON DIVISION

**IN RE:**

CEP HOLDINGS, LLC, et al.,<sup>1</sup>  
Debtors.

Case No. 06-51848  
(Jointly Administered)

Chapter 11

/ Hon. Marilyn Shea-Stonum

**MOTION OF GENERAL MOTORS CORPORATION TO COMPEL PAYMENT OF  
SUBORDINATED PARTICIPATION**

General Motors Corporation (“GM”) through its attorneys Honigman Miller Schwartz and Cohn LLP, for its Motion to Compel Payment of Subordinated Participation (the “Motion”), states as follows.

1. CEP Holdings, LLC (“Holdings”), Creative Engineered Polymer Products, LLC (“CEP”) and Thermoplastics Acquisition, LLC (“Thermoplastics” and together with Holdings and CEP, “Debtors”) filed their Chapter 11 bankruptcy petitions on September 20, 2006 (the “Petition Date”).

2. Prior to the Petition Date, the Debtors received their working capital and term funding from Wachovia Capital Finance Corporation (Central) (“Lender”).

3. Prior to and for certain periods after the Petition Date, GM, Visteon Corporation (“Visteon”) and Delphi Automotive Systems, LLC (“Delphi” and together with Visteon and GM, the “Customers”) were the Debtors’ largest customers.

4. The Official Committee of Unsecured Creditors (the “Committee”), the Customers and Lender are signing parties to the Final Order Authorizing Debtors to: (A) Use

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

Cash Collateral; (B) Incur Postpetition Debt; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central) and (D) Grant Certain Related Relief (the “Final Order”), which was signed by the Court on October 27, 2006.

*The Participations*

5. Pursuant to the Subordinated Participation Agreement dated June 30, 2006, as amended (the “Participation Agreement”), which the Court approved as part of the Final Order, the Customers purchased last-out subordinated participations (the “Participations”) in Lender’s loans to Debtors. A copy of the Subordinated Participation Agreement and the amendments thereto are attached to this Motion as **Exhibit A**.

6. The Participation Agreement entitles the Customers to repayment of their Participations from Lender after all sums owing to Lender by the Debtors have been repaid in full.

7. Upon information and belief, and based on the representations made by the Debtors, the Committee and Lender in the Stipulation and Order Authorizing Debtors’ Use of Certain Cash Collateral dated April 24, 2007, Lender is currently holding approximately \$3 million in excess of the Aggregate Debt (as defined in the Final Order and which includes the Participations).

8. Interest continues to accrue on the Participations, as provided in the Participation Agreement.

9. As of April 30, 2007, the total principal and interest due on GM’s share of the Participation (the “GM Participation”) was \$1,187,217.00, consisting of principal of \$1,103,755.00 and accrued interest of \$83,462.00. Interest continues to accrue at a per diem rate of \$298.43.

10. GM is entitled to repayment of the GM Participation pursuant to the terms of the Participation Agreement.

***Discussions Relating to Payment of GM Participation***

11. GM, through its counsel, has made repeated requests to the Committee and the Debtors to release the GM Participation.

12. Over the course of several weeks, counsel for GM negotiated with counsel for the Committee, the Debtors and Lender to effect the release of the GM Participation. During these negotiations, it was anticipated that the GM Participation would be released to GM in conjunction with the extension of the Debtors' use of cash collateral. The Debtors and the Committee wanted to facilitate the payment of the GM Participation so that interest would stop accruing.

13. As part of these negotiations, the Debtors and GM, through diligent cooperation, agreed on the dollar amount that GM owed the Debtors for Debtors' shipment of parts and tooling to GM or its designees through the present (the "Agreed GM Account"). It was anticipated that Lender would transfer the GM Participation, minus the Agreed GM Account, to GM, and would transfer the Agreed GM Account to the Debtors. When compared to the amount owed to GM on account of the Subordinated Participation, the amount of the Agreed GM Account is insignificant.

14. GM believed a consensual resolution was imminent when, on or about April 20, 2007, counsel for GM received via ECF the Debtors' Motion for Approval of Stipulation and Order Authorizing Debtors' Use of Cash Collateral, which sought approval of a stipulation among Lender, the Committee and the Debtors, and, notably, *not* the Customers. The stipulation made no reference to the GM Participation.

15. The Court granted the Debtors' Motion and signed the Stipulation and Order Authorizing Debtors' Use of Certain Cash Collateral on April 24, 2007.

***GM's Motion***

16. GM is entitled to immediate payment on account of the GM Participation.

17. GM has complied in all respects with the DIP Order and the Participation Agreement, and all conditions precedent to GM's right to payment have been satisfied.

18. GM is ready and willing to comply with §502(d) by having Lender withhold the Agreed GM Account from the GM Participation and pay it to the Debtors. However, the Committee has informed GM that it is unwilling to provide GM a simple release stating that payment of the Agreed GM Account discharges GM from liability arising from the Debtors' shipment of goods or tooling. Therefore, a consensual arrangement for payment of the GM Participation to GM and payment of the Agreed GM Account to the Debtors might not be possible.

19. GM should not be expected to pay the Agreed GM Account to the Debtors if the Debtors and Committee refuse to agree that the Agreed GM Account is in fact an "agreed" amount.

20. Through this Motion, GM asks the Court to order Lender to pay GM the amount of the GM Participation.

21. In the event that the Court first requires GM to pay the Agreed GM Account to the Debtors pursuant to 11 U.S.C. § 502(d), GM asks that the Court order that such payment would be in full and final settlement of all claims against GM relating to the Debtors' shipment of goods and tooling to GM and its designees. In other words, GM asks that, if it is required to pay the Agreed GM Account now, the Debtors or Committee cannot: (a) sue GM later for

amounts that the Agreed GM Account is intended to pay, or (b) raise unpaid payables as a defense to GM's proof of claim.

22. Lender has expressed willingness to release the GM Participation to GM, subject to a simple assurance from the Debtors and Committee that it faces no liability for doing so. The Debtors and Committee have refused this basic request as well.

23. Therefore, GM also requests that this Court order that, to the extent that Lender pays GM the amount of the GM Participation, Debtors and the Committee are prohibited from asserting any claim against Lender arising from that payment.

24. The Debtors and Committee have already released Lender and the Customers for liability relating to acts that took place prior to the date of the Final Order. The additional releases sought would only apply to acts occurring after the date of the Final Order and therefore would have a considerably narrow scope. See Final Order, paragraph 8(b).

25. The relief sought herein benefits the estate; interest continues to accrue on the GM Participation in the amount of approximately \$9,000.00 per month. Once Lender pays the GM Participation to GM, interest will stop accruing.

GM REQUESTS<sup>2</sup> that this Court enter an order (a) EITHER (i) permitting and directing Lender to pay GM the GM Participation in full or (ii) permitting and directing Lender to pay the GM Participation minus the Agreed GM Account and transfer the Agreed GM Account to the Debtors; (b) stating that payment of the GM Participation to GM discharges Lender and GM from any liability arising from the GM Participation, including any liability to the Committee and the Debtors; (c) stating that payment of the Agreed GM Account, if any, to the Debtors

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<sup>2</sup> With this Motion, GM submits a proposed Order anticipating payment to GM of the entire GM Participation. In the event that the Court orders Lender to pay GM the GM Participation minus the Agreed GM Account, GM will submit a revised proposed order.

discharges GM from any liability arising from the Debtors' shipment of goods or tooling to the Debtors, including liability to the Debtors or Committee; and (d) granting such other relief as the Court deems warranted.

Respectfully submitted,

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DETROIT.2625004.1

UNITED STATES BANKRUPTCY COURT  
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AKRON DIVISION

**IN RE:**

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Chapter 11

\_\_\_\_\_/ Hon. Marilyn Shea-Stonum

**ORDER COMPELLING PAYMENT OF SUBORDINATED PARTICIPATION TO  
GENERAL MOTORS CORPORATION**

This matter having been brought to the Court by the Motion to Compel Payment of Subordinated Participation (the “Motion”) filed by General Motors Corporation (“GM”), the Court having considered the Motion, exhibits, brief, and any documents filed in response thereto, service of the Motion and notice relating thereto being adequate, any arguments having been

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

heard, capitalized terms not defined herein having the meanings given them in the Motion and the Court being otherwise duly advised in the Premises:

THE COURT FINDS THAT:

A. GM has complied in all respects with the DIP Order and the Participation Agreement, and all conditions precedent to GM's right to payment have been satisfied.

B. GM is entitled to repayment of the GM Participation from Lender pursuant to the terms of the Participation Agreement.

C. As of April 30, 2007, the total principal and interest due on the GM Participation was \$1,187,217.00, consisting of principal of \$1,103,755.00 and accrued interest of \$83,462.00. Interest accrues at a per diem rate of \$298.43.

IT IS ORDERED THAT:

1. Lender is authorized and directed to pay GM the amount of the GM Participation, plus all interest accrued through the date of payment, calculated at the rate of \$298.43 per day, promptly after entry of this Order.

2. Upon payment of the GM Participation to GM, Debtors and the Committee are prohibited from asserting any claim against Lender arising from such payment.

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