

**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: 7/24/07 at 1:30 p.m.
: Objection Deadline: 7/20/07 at 4:00 p.m.
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTION 363(b) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 9019, FOR ENTRY OF AN ORDER APPROVING AND
AUTHORIZING THE DEBTORS TO EXECUTE AND PERFORM UNDER A
SETTLEMENT AGREEMENT BY AND BETWEEN THE DEBTORS, THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, THE RESERVE
GROUP MANAGEMENT COMPANY AND SUPERIOR FABRICATION, LLC**

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 section 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order approving the *Settlement Agreement and Mutual Release* (the “**Settlement Agreement**”), by and between the Debtors, the Official Committee of Unsecured Creditors (the “**Committee**”), the Reserve Group Management Company (the “**Reserve Group**”) and Superior Fabrication, LLC (“**Superior**”), a copy of which is attached hereto as **Exhibit A** and is fully incorporated herein by reference. In support of the Motion, the Debtors respectfully represent as follows:

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

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.
3. The statutory predicates for the relief requested herein are section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

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 Committee. No trustee or examiner has been appointed.

6. On May 25, 2007, the Debtors and the Committee filed (a) the *First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated May 25, 2007* (Docket No. 567) (the “**Plan**”), and (b) the *First Amended Disclosure Statement to Accompany First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated May 25, 2007* (Docket No. 568) (the “**Disclosure Statement**”).

7. On June 7, 2007, the Court entered the *Order (A) Approving Proposed Disclosure Statement, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or*

Reject Proposed Joint Plan of Liquidation and (C) Scheduling Certain Dates in Connection Therewith (Docket No. 593) (the “**Disclosure Statement Order**”). Pursuant to the Disclosure Statement Order, a hearing on the confirmation of the Plan has been scheduled for July 24, 2007 at 1:30 p.m., Eastern Time. Disclosure Statement Order at ¶ 9.

8. The Reserve Group is an Ohio corporation, one or more of the principals of which holds a controlling ownership interest in CEP Holdings, LLC (“**Holdings**”). Holdings is a holding company whose sole asset is its membership interests in Creative Engineered Polymer Products LLC (“**CEPP**”). CEPP is an Ohio limited liability company that has three separate subsidiaries that are wholly owned or nearly wholly owned by CEPP: (a) Composite Parts Mexico S.A. de C.V. (“**Composite Parts**”); (b) CEP Latin America, LLC (“**CEP LA**” and, together with Composite Parts, “**CEP Mexico**”); and (c) Thermoplastics Acquisition, LLC. Superior is an Ohio limited liability company in which one or more of the interest holders in Holdings holds an interest. Washington Penn Plastic Company, Inc. (“**Washington Penn**”) is a creditor and a party in interest in the Debtors’ Cases.

The Pension Plans and the PBGC Claims

A. CEPP’s Assumption and Sponsorship of the Pension Plans

9. Prior to the Petition Date, on or about August 17, 2005, CEP Acquisition, LLC n/k/a Creative Engineered Polymer Products LLC, as buyer, entered into an *Asset Purchase Agreement* (the “**Purchase Agreement**”) with Carlisle Engineered Products, Inc. (“**Carlisle**”), as seller, pursuant to which CEPP purchased Carlisle’s facilities in, among other locations, Canton, Ohio and Crestline, Ohio (the “**Facilities**”).

10. Prior to the effective date of the Purchase Agreement, Carlisle maintained two defined benefit pension plans for the benefit of the bargaining unit employees at the Facilities: (a) the *Pension Plan for Bargaining Unit Employees of Canton, Ohio Plant of Geauga* (the

“**Canton Pension Plan**”) and (b) the *Pension Plan for Bargaining Unit Employees of Crestline, Ohio Plant of Geauga* (the “**Crestline Pension Plan**” and, together with the Canton Pension Plan, the “**Pension Plans**”).

11. Pursuant to the Purchase Agreement² and the Pension Plan Transfer Agreement executed in connection therewith, CEPP agreed to adopt and assume sponsorship of the Pension Plans. Accordingly, as of the Petition Date, CEPP was the sponsor of the Pension Plans for the bargaining unit employees at the Facilities.

B. PBGC Claims Related to the Pension Plans

12. On March 1, 2007, the Pension Benefit Guaranty Corporation (the “**PBGC**”) filed the following claims against each of the Debtors related to the Debtors’ obligations under the Pension Plans and Title IV of the Employee Retirement Income Security Act of 1974 (“**ERISA**”):

- a. Priority claims for unfunded benefit liabilities in the amount of \$1,325,313.00 for the Canton Pension Plan and \$1,996,582.00 for the Crestline Pension Plan (Claim Nos. 600, 603, 606, 609, 612 & 615) (the “**Unfunded Benefit Claims**”);
- b. Priority claims and general unsecured claims for minimum funding contributions in the amount of \$20,060.00 (of which \$4,414 is asserted as a priority claim) for the Canton Pension Plan and \$90,958.00 (of which \$25,362.00 is asserted as a priority claim) for

² Section 8.2 of the Purchase Agreement provides:

Transferred Pension Plans. As of the Closing Date, Buyer shall adopt and assume sponsorship of and assume all obligations for the payment of benefits and all other obligations for the provisions of benefits under (a) the Pension Plan for Bargaining Unit Employees of Canton, Ohio Plant of Geauga, and (b) the Pension Plan for Bargaining Unit Employees of Crestline, Ohio Plant of Geauga (together, the “**Transferred Pension Plans**”), in each case as the successor to Seller. Not in limitation of the foregoing, as of the Closing Date, Buyer shall be substituted for the Seller under the related trust agreements and shall succeed to all of Seller’s rights and shall assume all of Seller’s obligations under, and in connection with, the Transferred Pension Plans and the related trust agreements.

Purchase Agreement at § 8.2.

the Crestline Pension Plan (Claim Nos. 599, 602, 605, 608, 611 & 614) (the “**Minimum Funding Claims**”); and

- c. Priority claims and general unsecured claims for unpaid premiums in the amount of \$843,610.15 (of which \$820,672.00 is asserted as a priority claim) for the Canton Pension Plan and \$1,127,496.39 (of which \$1,096,810.00 is asserted as a priority claim) for the Crestline Pension Plan (Claim Nos. 601, 604, 607, 610, 613 & 616) (the “**Premiums Claims**” and together with the Unfunded Benefit Claims and the Minimum Funding Claims, the “**PBGC Claims**”).

13. Certain of the PBGC Claims are contingent upon the termination of the Pension Plan (as described below, the “**Contingent PBGC Claims**”). First, the Unfunded Benefit Claims in the total amount of \$3,321,895.00 (\$1,325,313.00 for the Canton Pension Plan and \$1,996,582.00 for the Crestline Pension Plan) are contingent upon the termination of the Pension Plan. *See* 29 U.S.C. §§ 1341-42. Second, the portion of the Premiums Claims attributable to “termination premiums” also is contingent upon the termination of the Pension Plans. Based upon the amounts asserted in the Premiums Claims filed by the PBGC, approximately (a) \$802,500.00 of the \$843,610.15 asserted for unpaid premiums for the Canton Pension Plan and (b) \$1,072,500.00 of the \$1,096,810.00 asserted for unpaid premiums for the Crestline Pension Plan is a contingent claim for termination premiums that arises only upon the termination of the Pension Plans. Accordingly, approximately \$5,196,895.00 of the \$5,404,019.54 asserted by PBGC Claims is contingent upon the termination of the Pension Plans.

14. The remaining \$207,124.54 asserted by the PBGC Claims is not contingent upon the termination of the Pension Plans (as described below, the “**Non-Contingent PBGC Claims**”). First, the Minimum Funding Claims in the total amount of \$111,018.00, of which approximately \$29,776.00 is attributable to the normal cost portion of contributions attributable to the postpetition period (the “**Postpetition Funding Claims**”) and the remaining \$81,242.00 is attributable to the prepetition period (the “**Prepetition Funding Claims**”), are for contributions

that may be owed to the Pension Plans. Second, the portion of the Premium Claims that is not contingent upon the termination of the Pension Plans, the total amount of which is \$96,106.54, is for flat-rate and variable-rate insurance premiums. Of this amount, approximately \$53,624.54 is for prepetition insurance premiums (the “**Prepetition Premiums Claims**”) and \$42,482.00 is for postpetition insurance premiums (the “**Postpetition Premiums Claims**”). In sum, of the remaining \$207,124.54 asserted by the PBGC Claims that is not contingent upon the termination of the Pension Plans, \$134,866.54 is asserted as a prepetition claim and \$72,258.00 is asserted as a postpetition claim.

15. The PBGC may, at some date, absent the approval of the Settlement Agreement, assert joint and several liability against Superior as an alleged member of the Reserve Group’s “controlled group” under section 4062 of ERISA, in respect of the PBGC Claims.

The Reserve Group Claims

16. On or about August 9, 2005, CEPP and the Reserve Group entered into a Management Services Agreement (the “**Management Agreement**”). Pursuant to the Management Agreement, the Reserve Group provided the services of a financial officer and other management personnel to CEPP. *See* Management Agreement at ¶ 1. In return for these services, CEPP agreed to pay the Reserve Group an annual fee equal to 1.5% of CEPP’s net sales — net sales meaning gross sales less customer discounts and returns. *Id.* at ¶ 4. Further CEPP agreed to indemnify and hold the Reserve Group harmless from and against any and all damages, lawsuits, liabilities and claims relating to the Reserve Group’s performance of its obligations under the Management Agreement. *Id.* at ¶ 6.

17. On February 28, 2007, the Reserve Group filed a proof of claim against CEPP in the amount of \$3,735,039.00 (the “**Prepetition Reserve Group Claim**”) for services rendered to CEPP prior to the Petition Date under the Management Agreement. In addition, the Reserve

Group has asserted entitlement to an administrative claim under the Management Agreement in an amount in excess of \$1 million (the “**Postpetition Reserve Group Claim**” and, together with the Prepetition Reserve Group Claim, the “**Reserve Group Claims**”).

The Debtors’ Potential Claims Against the Reserve Group

18. The Debtors may have claims against the Reserve Group and certain individuals. Prior to the Petition Date, on May 15, 2006, Washington Penn commenced a civil action against CEPP, the Reserve Group and R. Mark Hamlin by filing a complaint (as amended, the “**Complaint**”) with the United States District Court for the Northern District of Ohio (the “**District Court**”) — Civil Action No. 5:06 CV 1224.

19. After the Debtors’ bankruptcy filing, Washington Penn amended the Complaint to assert claims only against the Reserve Group, R. Mark Hamlin and James D. Van Tiem (collectively, the “**Defendants**”). CEPP no longer is a party to this action.

20. In the Complaint, Washington Penn asserts claims against the Defendants for (a) breach of fiduciary duty to creditors while CEPP was insolvent or on the brink of insolvency, *see* Complaint at ¶¶ 35-44, and (b) aiding and abetting breach of fiduciary duty to creditors, *see* Complaint at ¶¶ 45-54.

21. Given the allegations raised in the Complaint, the Debtors and the Committee have investigated whether the Debtors have valid claims against the Reserve Group or the other Defendants for breach of fiduciary duty or aiding and abetting the same (collectively, the “**Breach of Fiduciary Duty Claims**”). Based on this investigation, the Debtors and the Committee do not believe that the Debtors can successfully maintain a cause of action against the Defendants for breach of fiduciary duty or for aiding and abetting the same.

22. In addition, the Committee conducted an extensive and comprehensive investigation of other potential claims against the Reserve Group, its insiders and affiliates. The

investigation extended beyond the allegations made by Washington Penn in its Complaint. The Committee investigated, among other items, potential preference and fraudulent conveyance exposure, claims for negligence and other potential misfeasance as well as controlled group liability issues under ERISA in the event of termination of the Pension Plans by the PBGC. Based on those investigations, the Debtors and the Committee do not believe that the Debtors can successfully maintain a cause of action against the Reserve Group, its insiders or affiliates.

The Proposed Settlement Agreement

23. In an effort to resolve the Breach of Fiduciary Duty Claims, the Reserve Group Claims and the PBGC Claims, the Debtors, the Committee, the Reserve Group and Superior, have engaged in diligent and arms-length negotiations. The product of these negotiations is the Settlement Agreement, the significant portions of which are as follows:³

- a. **Section 2.01. Assumption of Plans by Superior.** On the Effective Date of the Settlement Agreement, CEPP and Superior shall enter into an Assumption Agreement, whereby Superior shall assume and adopt, and therefore become fully responsible for, sponsoring, maintaining and funding the Pension Plans. With the full cooperation and support of CEPP and its agents and affiliates, Superior shall take control of all books and records of and belonging to each of the Pension Plans, adopt and implement any amendments with respect to either or both of the Pension Plans necessary or appropriate to bring the Pension Plans into compliance with the provisions of ERISA and conform the Pension Plans to the requirements imposed on “tax qualified” plans by the Internal Revenue Code, to send any notices to participants or beneficiaries that may be necessary or advisable, and to take such other actions as Superior thereafter considers reasonably necessary or advisable to comply with ERISA, the Internal Revenue Code, and the Assumption Agreement.

³ Capitalized terms used but not otherwise defined in this summary shall have the meanings given to them in the Settlement Agreement. This Motion provides a summary of the Settlement Agreement. To the extent the description of the terms of the Settlement Agreement in this Motion differs from the actual terms of the Settlement Agreement, the Settlement Agreement shall control.

- b. **Section 2.02. Contributions and Payments by CEPP.** On the Effective Date of the Settlement Agreement, and upon the execution of the Assumption Agreement, CEPP shall undertake the following actions and discharge the following liabilities, all without objection from the Committee:
- A. CEPP shall prepare and file with the PBGC those reports and pay those premiums (and any related penalties and/or interest) imposed upon CEPP under ERISA Section 4007(e) with respect to the Pension Plans for 2007 which have accrued through the Effective Date, to a maximum of \$42,482.00. In the event more than \$42,482.00 in premiums and related penalties and interest is due and payable to the PBGC in connection with sponsoring and maintaining the Pension Plans for 2007, Superior shall provide for the discharge of such remaining premiums and related interest and penalties in connection with its assumption of the Pension Plans.
 - B. CEPP shall immediately contribute to the Pension Plans an amount representing the normal costs charged to the funding standard account being maintained in respect of each of the Pension Plans in accordance with ERISA Section 302(b) and Internal Revenue Code Section 412(b), which is applicable to the period commencing with the Petition Date and ending on the Effective Date of the Settlement Agreement, to a maximum of \$29,776.00 and without regard to any contributions made to the Pension Plans prior to the date of the Settlement Agreement. CEPP shall further contribute \$18,000.00 to the Plans for and on account of the accrual of benefits and the change in liabilities under the Plans that will occur in the month of July of 2007. Superior shall assume responsibility for any further contribution liability due and owing to the Pension Plans for the period commencing with the Petition Date and ending with the Effective Date of the Settlement Agreement, in connection with its assumption of the Pension Plans.
 - C. CEPP shall reimburse the Pension Plans for any amounts paid from the Pension Plans prior to the Effective Date to Watson Wyatt & Company, in connection with services provided by said Watson Wyatt & Company after the Petition Date, to a maximum of \$20,000.00. In the event more than \$20,000.00 was paid to Watson Wyatt & Company from the Pension Plans in connection with such provided services, the amount(s) reimbursed to the Pension

Plans by CEPP shall be pro-rated between the Pension Plans.

- c. **Section 3.01. Withdrawal or Compromise of Certain PBGC Claims.** The assumption by Superior of the Plans in accordance with and subject to the terms of the Settlement Agreement and the Assumption Agreement is expressly conditioned upon the withdrawal, compromise or modification by the PBGC of those prepetition and postpetition claims the PBGC has asserted, or has threatened to assert, in the Cases against the Debtors, on terms and conditions reasonably satisfactory to the Debtors, taking into account the payments made, or to be made, by CEPP in accordance with Article 2 of the Settlement Agreement.
- d. **Section 3.02. No Contestation by PBGC of Assumption Agreement.** In the event the PBGC contests the assumption by Superior of the Pension Plans in the manner set forth in the Settlement Agreement and the Assumption Agreement, or imposed or seeks to impose upon Superior terms and conditions which are materially inconsistent with those set forth in the Settlement Agreement and the Assumption Agreement, Superior's assumption of the Pension Plans shall be immediately rescinded and revoked, and shall be considered as null and void, and having no legal effect.
- e. **Section 4.01. Release by Reserve Group Parties of CEPP Parties.** As of the Effective Date of the Settlement Agreement, the Reserve Group, on its own behalf and on behalf of its employees, agents, representatives, officers, directors, stockholders, parents, subsidiaries and assigns, and including, without limitation, R. Mark Hamlin, Jr. and James D. Van Tiem (individually, and collectively, the "**Reserve Group Parties**") will fully release, acquit, discharge CEPP and its employees, agents, representatives, officers, managers, members, parents, subsidiaries, affiliates, attorneys, successors and assigns and all persons, associations and corporations jointly or severally liable with them, including, without limitation, the Committee, in its capacity as a statutory agent but not its constituency or individual members, (individually, and collectively, the "**CEPP Parties**") from all claims and obligations, excluding those arising under the Settlement Agreement or expressly preserved therein.
- f. **Section 4.02. Release by CEPP Parties of Reserve Group Parties.** As of the Effective Date of the Settlement Agreement, the CEPP Parties will fully release, acquit, and discharge the Reserve Group Parties from all claims and obligations, excluding those

arising under the Settlement Agreement or expressly preserved therein.

- g. **Section 4.03. Withdrawal of Proof of Claim.** On the Effective Date of the Settlement Agreement, the Reserve Group will withdraw the Reserve Group Proof of Claim.

24. The Settlement Agreement does not become effective unless and until all of the following requirements have been satisfied: (a) the Settlement Agreement is executed by all parties thereto; (b) this Court has entered a final order approving and authorizing execution and performance of the Settlement Agreement; (c) the unions whose members are participants in the Pension Plans agree to a freeze on the accrual of benefits under the Pension Plans as of a date no later than July 31, 2007; and (d) the PBGC withdraws the plan termination-related claims and the postpetition premiums claims it has asserted in the Cases with respect to the Pension Plans, subject only to the consummation by the parties to the Settlement Agreement of the terms and conditions set forth in the Settlement Agreement.

25. As set forth below, the Debtors and the Committee have determined that the proposed Settlement Agreement is in the best interest of the Debtors' estates and, in reaching this conclusion, have considered, among other things, the cost, expense and delay associated with (a) litigation with (i) the PBGC over the PBGC Claims and the PBGC's assertion of any right to the proceeds of the sale of the assets located in Mexico which are now held by CEP and (ii) the Reserve Group over the Reserve Group Claims and (b) the adverse impact on the confirmation of the Plan if the Settlement Agreement is not approved.

RELIEF REQUESTED

26. By this Motion, the Debtors seek the entry of an order, pursuant to section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement.

BASIS FOR RELIEF

27. Section 363(b) of the Bankruptcy Code provides in relevant part that “the trustee, 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). A court can authorize a debtor to use property of the estate pursuant to section 363(b) of the Bankruptcy Code when such use is an exercise of the debtor’s sound business judgment and when the use of the property is proposed in good faith. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *accord Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Cont’l Airlines, Inc.*, 780 F.2d 1223, 1126 (5th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

28. The debtor has the burden to establish that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See Lionel Corp.*, 722 F.2d at 1070-71. Once the debtor articulates a valid business justification, a presumption arises that the debtor’s decision was made on an informed basis, in good faith, and in the best interest of the debtor’s estate. *See In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992).

29. Further, Bankruptcy Rule 9019(a) provides, in relevant part, that: “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.” Fed. R. Bankr. P. 9019(a). To approve a compromise and settlement under Bankruptcy Rule 9019, a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable and in the best interest of the debtor’s estate. *See, e.g., In re AWF Liquidation Corp.*, 208 B.R. 399, 400 (Bankr. N.D. Ohio 1997). The decision to approve a given compromise lies within the discretion of the bankruptcy court. *In re SIS Corp.*, 108 B.R. 608, 612 (Bankr. N.D. Ohio 1989). In exercising its discretion, the bankruptcy court must make an

independent determination that the settlement is fair and reasonable. *See Bard v. Sichertman (In re Bard)*, Nos. 01-3006, 01-3029, 2002 WL 31371984 at *2 (6th Cir. Oct. 15, 2002).

30. In determining whether a proposed settlement is fair and equitable and in the best interest of the debtor's estate, courts consider the following factors:

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in collecting any judgments that might be rendered;
- c. the complexity of the litigation involved, as well as the expense, inconvenience and delay necessarily attendant to the litigation; and
- d. the paramount interests of creditors with proper deference to their reasonable views.

In re Parkview Hospital-Osteopathic Med. Ctr., 211 B.R. 603, 608 (Bankr. N.D. Ohio 1997);
McGraw v. Yelverton (In re Bell & Beckwith), 87 B.R. 476, 478 (Bankr. N.D. Ohio 1988).

31. The approval of the Settlement Agreement is warranted under the circumstances given (a) the resulting substantial reduction in claims properly asserted against the Debtors' estate, (b) the cost and expense associated with litigating the Reserve Group Claims and certain of the PBGC Claims and (c) the impact on the Plan confirmation process.

A. The Approval of the Settlement Agreement Will Result in a Substantial Reduction in the Claims Asserted Against the Debtors' Estates

32. The approval of the Settlement Agreement will result in a substantial reduction in the claims properly asserted against the Debtors' estates by resolving the PBGC Claims and the Reserve Group Claims.

1. The Resolution of the PBGC Claims

33. First, the approval of the Settlement Agreement will completely resolve the PBGC Claims — collectively defined to include (a) the Contingent PBGC Claims in the amount of \$5,196,895.00, of which \$1,875,000.00 is asserted as a priority claim and (b) the Non-

Contingent PBGC Claims in the amount of \$207,124.54, collectively defined to include (i) the Prepetition Funding Claims in the amount of \$81,242.00, (ii) the Postpetition Funding Claims in the amount of \$29,776.00, (iii) the Prepetition Premiums Claims in the amount of \$53,624.54 and (iv) the Postpetition Premiums Claims in the amount of \$42,482.00.

34. The approval of the Settlement Agreement and the assumption of the Pension Plans by Superior will avoid the termination of the Pension Plans, thereby voiding the Contingent PBGC Claims completely. Under the Settlement Agreement, CEPP is required to make a contribution to the Pension Plans of, at most, \$29,776.00 for the normal cost portion of contributions attributable to the postpetition period; thus, satisfying the Postpetition Funding Claims. Settlement Agreement at § 2.02.B. Superior has agreed to assume liability for the remaining funding contributions, *i.e.*, the Prepetition Funding Claims in the amount of \$81,242.00. *Id.* Similarly, under the Settlement Agreement, CEPP is required to pay the PBGC, at most, \$42,482.00 for postpetition premiums; thus, satisfying the Postpetition Premiums Claims. *Id.* at § 2.02.A. Superior has agreed to discharge any remaining premiums and related interest and penalties, including the Prepetition Premiums Claims in the amount of \$53,624.54. *Id.*

35. Accordingly, under the Settlement Agreement, the PBGC Claims will either be rendered void, satisfied by CEPP or assumed by Superior. Additionally, the Settlement Agreement makes the assumption of the Pension Plans by Superior expressly contingent upon the PBGC's withdrawal, compromise or modification of its claims against the Debtors' estates. *Id.* at § 3.01.

2. The Resolution of the Reserve Group Claims

36. Second, the approval of the Settlement Agreement will cause the Reserve Group to (a) withdraw the Reserve Group Claim in the amount of \$3,735,039.00, (b) waive its right to

assert an administrative expense claim for postpetition services and (c) waive its right to seek indemnification from CEPP under Paragraph 6 of the Management Agreement. *Id.* at § 4.03.

37. In sum, the approval of the Settlement Agreement will cause (a) \$7,057,024.00 in general unsecured claims and \$1,875,000.00 in priority claims to be either withdrawn or rendered void and (b) \$134,866.54 in general unsecured claims to be assumed by Superior. In order to facilitate this substantial reduction in claims against the Debtors' estates, the Debtors are required to pay, at most, \$110,258.00 — (a) \$72,258.00 of which may be due and owing to the PBGC for Postpetition Premiums Claims and the Postpetition Funding Claims, (b) \$18,000.00 of which will be due and owing for the accrual of benefits and the change in liabilities under the Plans for the month of July of 2007 (a substantial portion of which is attributable to postpetition services) and (c) \$20,000.00 of which may be due and owing to Watson Wyatt & Company for postpetition services. Accordingly, it is likely that most, if not all, of these funds would not be available for distribution to the Debtors' unsecured creditors in the absence of the Settlement Agreement.

38. The Debtors, thus, submit that the approval of the Settlement Agreement will substantially increase the recovery to general unsecured creditors in these Cases and is in the best interest of the Debtors' estates.

B. The Approval of the Settlement Agreement Will Avoid the Cost and Expense Associated with Litigating the PBGC Claims and the Reserve Group Claims

39. Second, the approval of the Settlement Agreement will avoid the cost and expense associated with litigating the Reserve Group Claims, the PBGC Claims, provide the Reserve Group Parties with the comfort of a release and limit certain of the Reserve Group Parties potential exposure to liability under section 4062 of ERISA for the PBGC Claims.

40. The Debtors and the Committee have investigated and considered (a) the merits of the Breach of Fiduciary Duty Claims, the Reserve Group Claims and the PBGC Claims and (b) the costs associated with litigating each of these claims and the impact of such litigation on the confirmation of the Plan.

41. As set forth above, the Debtors and the Committee do not believe that the Breach of Fiduciary Duty Claims have any merit. Further, the Debtors do not believe that the complexity and cost associated with litigating the Reserve Group Claims and certain of the PBGC Claims is in the best interest of creditors given likelihood of success on the merits. Indeed, such litigation likely would result in a diminished recovery to unsecured creditors if it resulted in the termination of the Pension Plans. Accordingly, the Debtors submit that the Settlement Agreement is fair and equitable under the circumstances.

**C. The Approval of the Settlement
Agreement Is Essential to Plan Confirmation**

42. Finally, the approval of the Settlement Agreement is essential to the confirmation of the Plan proposed by the Debtors and the Committee. The assumption of the Pension Plans by Superior, and thus the approval of the Settlement Agreement, is a condition precedent to the confirmation of the Plan. *See* Plan at § 10.2(d). The consequences of the failure to approve the Settlement Agreement, thus, include not only the termination of the Pension Plans, but also substantial delay in the confirmation process and the related administrative costs and expenses associated with these Chapter 11 proceedings. In order to minimize such costs and expenses and maximize the return to unsecured creditors, the Debtors submit that the approval of the Settlement Agreement is in the best interest of the Debtors' estates and all parties in interest.

RESERVATION OF RIGHTS

43. Nothing in this Motion, nor the Debtors' proposed payment of the Postpetition Funding Claims or the Postpetition Premiums Claims, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors, including, without limitation, the PBGC Claims or the Reserve Group Claims; (b) a waiver of the Debtors' right to dispute any claim, including, without limitation, the PBGC Claims or the Reserve Group Claims, on any grounds; (c) a waiver of the Debtors' right to respond to seek the confirmation of the Plan absent the Court's approval of the Settlement Agreement; or (d) a promise to pay any claim, including, without limitation, the PBGC Claims or the Reserve Group Claims, provided, however, that the Debtors have agreed to pay the Postpetition Funding Claims and the Postpetition Premiums Claims up to the amounts set forth in the Settlement Agreement if the Court approves the Settlement Agreement and the Settlement Agreement becomes effective.

NOTICE

44. 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 PBGC.

45. 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 B**, granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: June 26, 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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