

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

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

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,
PURSUANT TO SECTION 363(b) AND (c) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 9019, FOR ENTRY OF AN ORDER APPROVING AGREED
ORDER AMENDING FINAL ORDER AUTHORIZING
DEBTORS TO: (A) USE 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**

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) and (c) 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 attached Proposed Agreed Order (the “Proposed Agreed Order”) Amending Final Order Authorizing Debtors to: (a) Use Cash Collateral; (b) Incur Postpetition Debt; (c) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central) (“Lender”); and

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

(d) Grant Certain Related Relief, a copy of which is attached hereto as **Exhibit A**. In support of the Motion, the Debtors respectfully represent as follows:

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) and (c) 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. Although the Debtors no longer manufacture product, they 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.

Financing

6. On September 26, 2006, this Court entered the Emergency Order Re: Motion of Debtors and Debtors in Possession, Pursuant to Sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 4001(B) and 4001(C) for Interim and Final Orders (I) Authorizing Debtors to Incur Postpetition Secured Indebtedness, (II) Granting Security Interests and Priority Claims, (III) Granting Adequate Protection, (IV) Modifying Automatic Stay and (V) Setting

Final Hearing ("Emergency Order"). Prior to the Petition Date, the Debtors did not have sufficient funds to continue to operate and build parts for the Participating Customers and other customers. The Participating Customers needed to continue to have their parts built. Rather than loan money directly to the Debtors, the Participating Customers used the mechanism of the Lender's prepetition loan facility to loan money to the Debtors. The Participating Customers purchased \$2.9 million of subordinated loan participations in the Lender's prepetition loan facility. Lender then loaned that amount to the Debtors through the prepetition loan facility. Under the terms of the Emergency Order, the Participating Customers were granted a secured subordinated participation claim for the prepetition participations in Lender's loan facility.

7. On October 27, 2006, the Court entered the Final Order Authorizing Debtors To: (A) Use 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").² During negotiations of the Final Order with the Committee, the Participating Customers agreed to bifurcate their prepetition participation claim so that the Participating Customers would have an approximately \$2.3 million secured claim (the "Subordinated Participation") and Visteon and Delphi each would have a \$300,000 unsecured claim (the "Unsecured Participation Claim") with respect to the participation.

8. Pursuant to the Emergency Order, Final Order, related sale orders entered in this Case and the Prepetition Documents and Postpetition Documents, Debtors (i) subsequently built parts and parts banks for the Participating Customers and other customers and (ii) ultimately sold substantially all of their assets. The proceeds of such sales constitute Cash Collateral. The

² All capitalized terms used herein which are not otherwise defined herein shall have the meaning ascribed to them in the Final Order.

Debtors have remitted such sale proceeds in accordance with orders of this Court to Lender from time to time. Lender has applied such amounts to the Aggregate Debt such that but for accrued and accruing Postpetition Charges, contingent and unliquidated indemnification claims, the Subordinated Participations and the Unsecured Participation Claim, the Aggregate Debt of Lender has been reduced to zero. Lender is holding nearly \$5,000,000 of Cash Collateral beyond what is needed to pay the Aggregate Debt.

9. Disputes subsequently arose between the Participating Customers, on the one hand, and the Debtors and Committee, on the other hand, relating to accounts receivable which the Debtors and Committee alleged were owed by the Participating Customers to the Debtors. The Debtors and Committee refused to consent to payment of the Subordinated Participation by Lender to the Participating Customers until such time as the accounts receivable issues were resolved.

10. The Debtors, Committee and Participating Customers subsequently reconciled the accounts receivable owed by the Participating Customers to the Debtors.

11. Based on this reconciliation, the Debtors and the Committee have requested that Lender indefeasibly pay and satisfy the Subordinated Participation net of agreed amounts owed by the Participating Customers and provide access to the Debtors of all remaining Cash Collateral held by Lender, the use of which being subject to Committee approval.

The Agreed Order

12. The Debtors, Committee, Participating Customers and Lender agreed to the terms of the Proposed Agreed Order, which is attached hereto as Exhibit A. The terms and provisions of the settlement and compromise between the Debtors, the Committee, Wachovia and the

Participation Customers as set forth in the Proposed Agreed Order are incorporated herein by this reference as if fully rewritten.

RELIEF REQUESTED

13. By this Motion, the Debtors seek the entry of the Proposed Agreed Order pursuant to section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

BASIS FOR RELIEF

14. 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).

15. 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).

16. With respect to cash collateral, Section 363(c)(2) provides:

The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

Through the Proposed Agreed Order, each entity with a secured interest in the Cash Collateral has consented to the use of the Cash Collateral requested in the Proposed Agreed Order.

17. 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. Sicherman (In re Bard)*, Nos. 01-3006, 01-3029, 2002 WL 31371984 at *2 (6th Cir. Oct. 15, 2002).

18. 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).

19. The approval of the Proposed Agreed Order is warranted and is in the best interests of the Debtors, their estates and creditors. The Proposed Agreed Order terminates the accrual of Postpetition charges by Lender and authorizes the payment of the Subordinated Participations (thus stopping the accrual of per diem interest as to the Subordinated Participations). Upon payment of the Aggregate Debt, the amounts of Cash Collateral in excess of the Aggregate Debt will be available, subject to Committee approval, for the Debtors to use to confirm the plan of reorganization that was jointly filed by the Debtors and the Committee. Such funds are needed for the Debtors to confirm and effectuate their joint plan of liquidation with the Committee. As such, the settlement and release of the Cash Collateral is a necessary step in concluding these bankruptcy cases.

20. The Proposed Agreed Order also effects the Setoff of the Participating Customer accounts receivable thus assuring full payment to the Debtors of the agreed amount of accounts receivable owed by each of the Participating Customers. The amount of accounts receivable owed to the Debtors by the Participating Customers was an issue in dispute among the Debtors, Committee and Participating Customers. Given the conditions of the records used to reconcile the accounts receivable, the uncertainty and costs of litigation regarding proof of the amounts owed by each of the Participating Customers, the Debtors, the Committee and the Participating Customers negotiated the amount of accounts receivable owed to the Debtors by each of the Participating Customers and the general structure of the Setoff. By stopping the accrual of interest, avoiding the costs, risks and delays caused by litigation and ensuring that the Debtors are fully paid on the agreed amount of open accounts receivable from the Participating

Customers, the compromise contained in the Proposed Agreed Order is in the best interests of the Debtors and their estates and should be approved.

21. The court should give proper deference to the decision of the creditors of the Debtors' estates who have approved the terms and provisions of the Proposed Agreed Order.

NOTICE

22. 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.

23. 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 the Proposed Agreed Order attached hereto as **Exhibit A** and (b) grant such other and further relief in favor of 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

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