

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

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

This matter came before this Court on the motion ("Motion") of CEP Holdings, LLC ("Holdings"), Creative Engineered Polymer Products, LLC ("CEP") and Thermoplastics Acquisition, LLC ("Thermoplastics," and together with Holdings and CEP, "Debtors")

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

requesting that this Court enter an 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 (d) grant certain related relief.

Having examined the motion, being fully advised of the relevant facts and circumstances surrounding the Motion and having completed a hearing pursuant to Code §§ 362, 363 and 364 and Fed. R. Bankr. P. 4001(b) and (c), and objections, if any, having been withdrawn or resolved or overruled by the Court, THE COURT HEREBY FINDS THAT:

A. On September 26, 2006, this Court entered the Emergency Order Re: Motion of Debtors and Debtors in Possession, Pursuant to Sections 363, 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").

B. 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

C. On April 24, 2007, this Court entered an amendment to the Final Order such that, *inter alia*, certain amounts of Cash Collateral, (i.e., Remitted Funds), were transferred to the Debtors for use in connection with administration of the Case.

D. Pursuant to the Emergency Order, Final Order, related sale orders entered in this Case and the Prepetition Documents and Postpetition Documents, Debtors have sold

² All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Final Order.

substantially all of the assets at their facilities. The proceeds of such sales constitute Cash Collateral, and Debtors have remitted such proceeds, in accordance with orders of Court, to Lender from time to time, and 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 secured amounts due to the Participating Customers under the Participating Customer Participation Agreement, and the Unsecured Participation Claim (as defined below), the Aggregate Debt of Lender has been reduced to zero.

E. Debtors and the Committee have requested that Lender indefeasibly pay and satisfy the subordinated secured participation claims of each respective Participating Customer, which subordinated secured participation claims are part of the Aggregate Debt. Debtors and the Committee have requested that Lender release Cash Collateral sufficient to indefeasibly pay and satisfy the subordinated secured participation claims of the Participating Customers in consideration of the resolution of disputed accounts receivable allegedly due from the Participating Customers to the Debtors.

F. Debtors, Committee, Participating Customers and Lender agree to the entry of this Agreed Order Amending 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 "Amendment").

G. The terms of this Amendment are fair and reasonable, have been negotiated in good faith and at arms' length, and reflect Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

H. Notice of this Amendment and the hearing held thereon satisfy the requirements of Fed R. Bankr. P. 2002, 4001(b) and (c), 9014 and, to the extent applicable, 9019, and Code §§ 362, 363 and 364, and was otherwise sufficient and appropriate under the circumstances.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. Notwithstanding anything to the contrary in the Emergency Order or the Final Order, upon entry of this Amendment:

a. Until confirmation of the Plan (as defined below) or other order of the Court, Debtors shall deposit in the Blocked Accounts all Cash Collateral hereafter coming into their possession or control.

b. Through the Termination Date, Debtors shall be authorized to use all Cash Collateral (i) in accordance with the terms of this Amendment, and (ii) in accordance with the terms and provisions of the Bankruptcy Code subject to the consent of the Committee.

c. Debtors' authorization to borrow Postpetition Debt from Lender shall be deemed terminated, and Lender shall have no further obligations to Debtors or any other party under the Postpetition Documents or with respect to the Carveout.

d. Lender is authorized and directed to immediately remit to the Participating Customers as set forth in Exhibit A hereto: (i) the sum of Two Million Five Hundred Seventeen Thousand Five Hundred Eight and 40/100 (\$2,517,508.40) (the "Participating Customer Subordinated Secured Amount"), which amount represents the secured portion of the customer subordinated participations in the Prepetition Debt plus all interest accrued thereon through May 15, 2007, plus (ii) the per diem amount set forth on Exhibit A through the date on which Lender releases the Participating Customer Subordinated Secured Amount. Exhibit A shall be construed to be part of this Amendment and is enforceable by the Court and the parties hereto.

e. Subject to Lender's obligation to remit the Participating Customer Subordinated Secured Amount to the Participating Customers in accordance with Exhibit A hereto, Lender shall be deemed authorized and directed to apply the Cash Collateral in its possession or control to repay, on a full, final and indefeasible basis, any and all Aggregate Debt, and the Aggregate Debt is hereby fully and finally allowed, other than the \$600,000.00 of Prepetition Debt (consisting of subordinated participations purchased prepetition by Delphi and Visteon) deemed unsecured under Paragraph I of the Final Order ("Unsecured Participation Claim"). At such time as Lender pays the Participating Customer

Subordinated Secured Amount: (i) the Unsecured Participation Claim shall be fully and finally transferred to Delphi in the amount of \$300,000 and Visteon in the amount of \$300,000, respectively, without need for further compliance with Bankruptcy Rule 3001(e); (ii) all obligations of Lender to the Participating Customers under the Participating Customer Participation Agreement, Customer Agreement and Access and Security Agreement shall be fully and finally satisfied; and (iii) all obligations of the Participating Customers to Lender under the Participating Customer Participation Agreement, Customer Agreement and Access and Security Agreement shall be fully and finally satisfied.

f. Subject to Lender's right to establish the "Reserve" (as defined below), Lender shall be deemed authorized and directed to remit to Debtors any Cash Collateral presently in its possession in excess of the Aggregate Debt (including, without limitation, any accrued Postpetition Charges for which the objection period in Paragraph 11(a) of the Final Order has not passed), to be administered or used by Debtors in accordance with the terms of this Amendment.

g. Lender is hereby authorized to establish and maintain a Cash Collateral reserve of Fifty Thousand Dollars (\$50,000) ("Reserve"). Lender is hereby authorized to apply amounts in the Reserve from time to time to any hereafter arising Aggregate Debt (including, without limitation, Allowable 506(b) Amounts and Postpetition Charges, which shall be deemed to include amounts incurred by Lender in responding to or defending any pleadings, demands, summons or subpoenas filed or issued upon it in connection with the "Washington Penn Case" defined below); provided, that, Lender shall provide prompt written notice of all such applications to counsel for Debtors and the Committee (including reasonable detail of the amounts being paid); provided, further, that, the Debtors and Committee shall each be deemed to have reserved their respective right to object to any such applications by Lender within twenty (20) days of the Debtor's and Committee's receipt of written notice thereof, and the Court shall decide any dispute not promptly resolved between the parties. All applications not challenged timely by the Debtors and/or Committee shall be deemed final and infeasible.

h. At any time the amount of the Reserve (net of applications by Lender) is less than Twenty-Five Thousand Dollars (\$25,000), Debtors shall immediately remit an amount of cash to Lender sufficient to increase the total amount of the Reserve to \$50,000.

i. Unless Lender has notified Debtors and the Committee in writing of indemnification claims unrelated to the Washington Penn Case (as defined below), Lender shall remit any amount then remaining in the Reserve to Debtors, net of any accrued but unpaid Aggregate Debt, and shall only then release or be deemed to release its Aggregate Liens when all of the claims in that certain case styled Washington Penn Plastic Company, Inc. v. Creative Engineered Polymer Products, LLC, et al., in the United States District Court for the Northern District of Ohio (Case No. 5:06 CV 1224, "Washington Penn Case") have been fully resolved by final order of court or agreement among the parties thereto or have become barred by an applicable statute of limitation.

j. Subject to the terms of the Reserve and Lender's continuing rights to indemnification pursuant to the Prepetition Documents and Postpetition Documents, Lender shall remit all future receipts of Cash Collateral to Debtors or their successor and Debtors or their successor shall give the Committee prompt notice of same; provided, that, Lender shall be entitled to reimbursement of any wire transfer fees it may incur in connection with such remittances. Notwithstanding anything to the contrary, Lender shall be deemed to have reserved all of its rights and claims under Sections 9.22 and 11.5 of the CEP Loan Agreement and Sections 9.21 and 11.5 of the Thermoplastics Loan Agreement.

k. The definition of "Termination Date" in Exhibit A to the Final Order shall be deemed to mean the date that is the earliest to occur of:

(1) failure by Debtors to comply with the terms of this Amendment or the Final Order (to the extent not superseded by this Amendment);

(2) dismissal or conversion of the Case;

(3) the effective date of a plan of liquidation confirmed in the Case; and

(4) to the extent in excess of the Reserve then in Lender's possession, failure by Debtors to promptly pay any obligations owed to Lender under Sections 9.22 and 11.5 of the CEP Loan Agreement and Sections 9.21 and 11.5 of the Thermoplastics Loan Agreement.

l. Debtors, Debtors' estates, CEP Mexico and the Committee, on behalf of themselves and their respective successors, assigns, trustees, members, agents, attorneys, consultants, other professionals, officers, directors, insiders and other representatives (collectively, "Releasing Parties"), acknowledge (i) the release of Lender granted under the Final DIP Order and (ii) receipt of a post-petition accounting from Lender, and do hereby absolutely, unconditionally and irrevocably release, remise and forever discharge Lender, its successors and assigns, present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, consultants, other professionals, employees, agents and other representatives (collectively, "Releasees"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of setoff, demands and liabilities whatsoever (collectively, "Claims") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any of the Releasing Parties may now or hereafter own, hold, have or claim to have against any of the Releasees for, upon, or by reason of any circumstance, action, cause or thing whatsoever arising after the Petition Date in respect of all actions or the failure to take action by the Lender relating to the Postpetition Debt, the Postpetition Documents, the Debtors, CEP Mexico, the Committee, the Participating Customers or otherwise related to the Case.

2. The automatic stay imposed by Code § 362 shall be deemed modified to the extent necessary to permit Debtors, Lender, Committee and Participating Customers to exercise the relief granted by this Amendment.

3. To the extent of any conflict between the terms of this Order and 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 (including, without limitation, all exhibits and supplements thereto, each as amended, modified or replaced from time to time) regarding the treatment or status of Lender's claims or interests, this Order shall control.

4. Lender acknowledges that none of the Participating Customers have further obligations to Lender under the Customer Participation Agreement, Customer Agreement, Access and Security Agreement or the Final Order.

5. Except as expressly set forth herein or in the April 24, 2007 Order of Court, the terms and provisions of the Final Order remain in full force and effect.

6. Upon entry of this Order by the Court, the Motion to Compel Payment of Subordinated Participation, filed by GM at docket number 569, is withdrawn as moot.

IT IS SO ORDERED

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Respectfully submitted by:

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EXHIBIT A

Terms and Conditions for Release by Debtors of Amounts from the Participating Customer Reserve Account

1. Allocation of Participating Customer Reserve Amounts of 05/15/07.

	Delphi	Visteon	GM
Principal Participation Balance	\$764,496.00	\$449,234.00	\$1,103,755.00
Interest Accrued as of 05/15/07	<u>\$68,597.80</u>	<u>\$43,468.92</u>	<u>\$87,938.68</u>
Total P&I as of 05/15/07	\$833,093.80	\$492,720.92	\$1,191,693.68
Per diem interest on principal	\$207.05	\$121.67	\$298.43

2. As between the Debtors and Visteon, the agreed amount of accounts receivable due and owing to the Debtors from Visteon is Six Hundred Thousand Dollars (\$600,000) (the "Agreed Visteon AR"). Within five (5) days following Court approval of the Amendment, the Debtors shall (i) apply the amount of the Participating Customer Subordinated Secured Amount allocable to Visteon as of May 15, 2007, or \$492,720.92 to the Agreed Visteon AR; (ii) credit against the Agreed Visteon AR per diem interest of \$121.67 from May 16, 2007 through the date on which the \$492,720.92 is applied to the Agreed Visteon AR; and (iii) cause Lender to pay over to the Debtors the sum of (i) and (ii) hereof. Within five (5) days from the date of application by the Debtors of the Participating Customer Subordinated Secured Amount allocable to Visteon, the Debtors shall invoice Visteon for the balance due from Visteon in respect of the Agreed Visteon AR and Visteon shall pay the balance due to the Debtors with respect to the Agreed Visteon AR within ten (10) days following receipt of the Debtors' written notice.

3. As between the Debtors and GM, the agreed amount of accounts receivable due and owing to the Debtors from GM is Fifty-Six Thousand and Three Dollars (\$56,003) (the

“Agreed GM AR”). Within five (5) days following Court approval of the Amendment, the Debtors shall apply \$56,003 of the Participating Customer Subordinated Secured Amount allocable to GM to the Agreed GM AR and cause Lender to pay over to GM the balance of the Participating Customer Subordinated Secured Amount allocable to GM, or \$1,135,690.68 plus additional per diem interest of \$298.43 from May 16, 2007 through the date on which the \$1,135,690.68 (plus additional per diem interest) is mailed or wire transferred to GM. Lender shall pay the Participating Customer Subordinated Secured Amount allocable to GM as GM directs Lender, which payment direction shall be provided by GM to Lender on or before the date of hearing on approval of this Order.

4. As between the Debtors and Delphi, the agreed amount of accounts receivable due and owing to the Debtors from Delphi is Four Hundred Seventy-Nine Thousand Nine Hundred Forty-Four Dollars (\$479,944), subject to a credit of One Hundred Twenty-Five Thousand Dollars (\$125,000) previously paid by Delphi to the Debtors in respect of disputed accounts receivable, or Three Hundred Fifty-Four Thousand Nine Hundred Forty-Four Dollars (\$354,944) (the “Agreed Delphi AR”). Within five (5) days following Court approval of the Amendment, the Debtors shall apply \$354,944 of the Participating Customer Subordinated Secured Amount allocable to Delphi to the Agreed Delphi AR and cause Lender to pay over to Delphi the balance of the Participating Customer Subordinated Secured Participation Amount allocable to Delphi, or \$478,149.80 plus additional per diem interest of \$207.05 from May 16, 2007 through the date on which the \$478,149.80 (plus additional per diem interest) is mailed or wire transferred to Delphi. Lender shall pay the Participating Customer Subordinated Secured Amount allocable to Delphi as Delphi directs Lender, which payment direction shall be provided by Delphi to Lender on or before the date of hearing on approval of this Order.

5. Effective upon the Debtors' receipt of payment of the Agreed Visteon AR, Agreed GM AR, and Agreed Delphi AR, respectively, Debtors, Debtors' estates, CEP Mexico and the Committee, on behalf of themselves and each of their past and present agents, directors, employees, officers, shareholders, members, subsidiaries, divisions, parent companies, attorneys, consultants, and other professionals, predecessors, affiliates, successors, assigns, trustees, insiders, and other related entities and/or representatives hereby (i) acknowledge the release of avoidance actions with respect to the Participating Customers under the Final DIP Order and (ii) absolutely, unconditionally and irrevocably respectively release, remise, acquit and forever discharge Visteon, GM and Delphi and each of their past and present agents, directors, employees, officers, shareholders, members, subsidiaries, divisions, parent companies, attorneys, consultants, and other professionals, predecessors, affiliates, successors, assigns, trustees, insiders, and other related entities and/or representatives from all manner of action, causes of action, proceedings, claims, demands, suits, covenants, contracts, controversies, damages, costs, liabilities, agreements, sums of money, bills, promises, warranties, representations, duties, debts, and obligations, any and all other claims, counterclaims, defenses, rights of setoff, demands and liabilities of every kind whatsoever in law or in equity, whether contingent or matured, whether asserted or unasserted, whether known or unknown, based on acts, omissions, or events occurring before the date of this Amendment. Notwithstanding anything contained in the Amendment, Exhibit A thereto or the Final DIP Order to the contrary, unless otherwise addressed by other or further order of the Court, all rights, claims and defenses are reserved by the Debtors (and any successor thereto), and the Committee with respect to (x) the proofs of claim filed by each respective Participating Customer (other than (a) as a means of setoff, counterclaim or otherwise, the arguments that the Participating Customer has paid the Debtors

less than the full amount of accounts receivable or the full amount of Subject Inventory (as that term is defined in section 2(c) of the Customer Agreement) allegedly due and owing by the Participating Customer to the Debtors, these arguments having been fully extinguished by the above release of claims, and (b) the Unsecured Participation Claim of Delphi and Visteon, respectively, which shall be an allowed claim under section 502 of the Bankruptcy Code), and (y) the assertion of the Debtors and Committee that additional amounts of Cash Infusions from the Participating Customers are required to be released to the Debtors in accordance with the Final DIP Order and related documents.