

**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.,<sup>1</sup> :  
: Chapter 11  
Debtors. :  
: Honorable Marilyn Shea-Stonum  
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,  
PURSUANT TO SECTION 502(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 9019, FOR ENTRY OF STIPULATED AND AGREED ORDER  
SETTING CLAIM OF PARKER HANNIFIN CORPORATION RELATED TO  
BISHOPVILLE AND VANDALIA PREMISES**

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 502(a) 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 the Stipulated and Agreed Order (the “**Proposed Agreed Order**”) Setting Claim of Parker Hannifin Corporation (“**Parker**”) related to Bishopville and Vandalia Premises, 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).

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

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 502(a) 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.

### **The Bishopville and Vandalia Premises**

6. In December 2005, Debtor Thermoplastics Acquisition Corporation (“Thermoplastics”) purchased its business operations from Parker. As part of the purchase, the Debtors purchased manufacturing facilities in Bishopville, South Carolina and Vandalia, Ohio (collectively, the “Premises”). As part of the transaction, Thermoplastics leased the Premises pursuant to that certain Agreement of Lease - Bishopville, South Carolina, dated December 21, 2005, between Parker and Thermoplastics and that certain Agreement of Lease - Vandalia, Ohio, dated December 21, 2005 between Parker and Thermoplastics (collectively, the “Leases”). The Debtors aver that the Leases are properly secured finance leases.

2. The Debtors ceased manufacturing operations at each of the Premises on or about October 31, 2006. Shortly thereafter, the Debtors and Parker commenced settlement

negotiations regarding disposition of the Premises and Parker's claim arising from the termination of the Leases.

3. On May 1, 2007, Parker filed its Emergency Motion of Parker Hannifin Corporation for Relief from Automatic Stay and Abandonment (the "Relief Motion") pursuant to which Parker sought relief from stay and abandonment by the Debtors with respect to the Premises. This relief was based on purported sales of the Premises which Parker had negotiated and desired to close in May 2007.

4. The Debtors, Committee and Parker negotiated with respect to both disposition of the Premises and Parker's claim related to termination of the Leases. On May 22, 2007 the Debtors, Parker and Committee submitted a proposed order to the Court which requested relief from stay and abandonment by the Debtors with respect to the parties and which established and allowed Parker's secured and unsecured claims with respect to the Leases and Premises. Prior to the filing of this proposed order, Parker and the Debtors each obtained an independent appraisal of each of the Premises. The amount of Parker's secured and unsecured claim contained in this proposed order was based on the average of the two appraisals for each property.

5. On May 30, 2007, the Court entered the Stipulated and Agreed Order (I) Granting Motion of Parker Hannifin Corporation for Relief from Automatic Stay and Abandonment as to Bishopville Premises; and (II) Modifying Relief previously Granted as to Vandalia Premises (the "Relief Order"). Although the Relief Order granted relief from stay and abandonment with respect to the Premises, the Relief Order did not contain the agreement of the Debtors, Committee and Parker regarding Parker's claim related to termination of the Leases.

7. Pursuant to the Court's request, the Debtors, Parker and Committee entered into an order which contains the agreement of the parties regarding Parker's claim related to termination of the Leases.

8. By this Motion, the Debtors seek approval of the compromise between the Debtors, Committee and Parker regarding Parker's secured and unsecured claim related to the premises.

**The Proposed Agreed Order**

9. The Debtors, Committee and Parker 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 and Parker as set forth in the Proposed Agreed Order are incorporated herein by this reference as if fully rewritten.

**RELIEF REQUESTED**

10. By this Motion, the Debtors seek the entry of the Proposed Agreed Order pursuant to section 502(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

**BASIS FOR RELIEF**

11. Section 502(a) of the Bankruptcy Code provides in relevant part that a "claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.." 11 U.S.C. § 502(a). Parker has filed a proof of claim related to its claim arising from termination of the Leases.

12. 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).

13. 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).

14. 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 finally determines the amount of Parker's secured and unsecured claim based on termination of the Leases.

15. Determination of claims against the Debtors' estates is a necessary step in the conclusion of these cases. The Proposed Agreed Order, by determining the amount of Parker's claims based on the appraisals received by Parker, on the one hand, and the Debtors, on the other

hand, avoids the costs, risks and delays caused by litigation and the claims resolution process. The Debtors believe that avoidance of the costs in fees that would be incurred in such litigation more than justifies entering into the settlement. Additionally, because the proposed claim amounts are the average of the appraisals received by the Debtors and Parker, the amount of the claim is both reasonable and market tested.

16. The court should give proper consideration to the business judgment of the Debtors and Committee who have approved the terms and provisions of the Proposed Agreed Order.

### **NOTICE**

17. 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.

18. 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: July 3, 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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