

**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  
: :  
: 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 ENTER INTO A  
SETTLEMENT AGREEMENT WITH THE UNITED STEEL, PAPER  
AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED  
INDUSTRIAL AND SERVICE EMPLOYEES INTERNATIONAL UNION  
REGARDING THE RESOLUTION OF THE DEBTORS' OUTSTANDING  
OBLIGATIONS UNDER COLLECTIVE BARGAINING AGREEMENTS**

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 *Final Effects Bargaining Agreement* (the “**Settlement Agreement**”), by and between Creative Engineered Polymer Products, LLC (“**CEPP**”) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Employees International Union f/k/a/ United Steelworkers of America, AFL-CIO, CLC (the “**Union**”), a copy of which is attached

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

hereto as **Exhibit A** and is fully incorporated herein by reference. In support of the Motion, the Debtors respectfully represent as follows:

### **INTRODUCTION**

The Settlement Agreement resolves the Debtors' outstanding obligations under the Collective Bargaining Agreements (as such term is defined below) and complex claims asserted by the Union against the Debtors' estates that would be expensive and costly to litigate. Further, the approval of the Settlement Agreement is a condition precedent to the assumption of the Debtors' defined benefit pension plans (the "**Pension Plans**") by Superior Fabrication, LLC ("**Superior**") and, thus, is necessary for the Plan to become effective. For this reason, the approval of the Settlement Agreement is integral to the Plan confirmation process. The Settlement Agreement has been negotiated with the Union and is proposed with the support of the official committee of unsecured creditors (the "**Committee**"). Accordingly, for the reasons set forth below, the Debtors believe that the approval of the Settlement Agreement is in the best interest of the Debtors' estates and all parties in interest.

### **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.

**The Plan and Disclosure Statement**

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.

**The Assumption of the Pension Plans by Superior**

8. Pursuant to Section 10.2(d) of the Plan, the assumption of the Debtors’ Pension Plans by Superior is a condition precedent to the Plan becoming effective. Plan at § 10.2(d); *see also* Disclosure Statement § V.F.

9. In order to effect the assumption of the Pension Plans by Superior, on June 26, 2007, the Debtors filed the *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* (Docket No. 608) (the “**Pension Assumption Motion**”). A hearing on the Pension Assumption Motion has been scheduled for July 24, 2007 at 1:30 p.m., Eastern Time.

10. Pursuant to the Pension Assumption Motion, the Debtors seek the approval of a *Settlement Agreement and Mutual Release*, by and between the Debtors, the Committee, the Reserve Group Management Company (the “**Reserve Group**”) and Superior (the “**Pension Settlement Agreement**”) that will result in the assumption of the Pension Plans by Superior. See Pension Assumption Motion at Exhibit A. The Pension Settlement Agreement, if approved by the Court, however, will not become effective unless and until the Union agrees to a freeze of the accrual of benefits under the Pension Plans as of a date no later than July 31, 2007. See Pension Assumption Motion at ¶ 24(c); Pension Settlement Agreement at § 6.01(c). Accordingly, as set forth below, the relief sought by this Motion is necessary to effect the assumption of the Pension Plans by Superior and, as a result, for the Plan becoming effective.

### **The Collective Bargaining Agreements and the Union Claims**

#### **A. The Collective Bargaining Agreements**

11. Prior to the Petition Date, on or about August 17, 2005, CEPP, 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, Crestline, Ohio and Middlefield, Ohio.

12. Pursuant to the Purchase Agreement,<sup>2</sup> CEPP agreed to assume Carlisle's obligations under the following collective bargaining agreements related to certain of the transferred employees at the facilities in Canton, Ohio, Crestline, Ohio and Middlefield, Ohio: (a) the Collective Bargaining Agreement between Carlisle and the United Steelworkers of America AFL-CIO, CLC on behalf of its Local 3610-04, effective January 1, 2005 through March 31, 2009 (the "**Canton CBA**"); (b) the Collective Bargaining Agreement between Carlisle and the United Steelworkers of America AFL-CIO, CLC on behalf of its Local 563-L, effective February 25, 2004 through March 31, 2006 (the "**Crestline CBA**"); and (c) the Collective Bargaining Agreement between Carlisle and UNITE AFL-CIO, CLC and Local 1902, effective December 1, 2003 through November 30, 2006 (the "**Middlefield CBA**").

13. As originally executed, the Middlefield CBA was set to expire on November 30, 2006. The Debtors and the Middlefield Union negotiated an extension of the Middlefield CBA from November 30, 2006 through December 19, 2006 or at such time as production at the Debtors' facility in Middlefield, Ohio ceased. Production at the Debtors' facility in Middlefield, Ohio ceased on December 20, 2006. Accordingly, the Middlefield CBA has expired according to its own terms. The Crestline CBA was extended by mutual agreement and does not expire until March 31, 2009 — the same date as the Canton CBA. Accordingly, the only collective

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<sup>2</sup> Section 8.5 of the Purchase Agreement provides:

Union Contracts. As of the Closing Date, Buyer shall take all action necessary to (a)(i) with respect to the Canton Union Contract and the Crestline Union Contract, recognize the United Steelworkers of America and the applicable Locals, and (ii) with respect to the Middlefield Union Contract, recognize the Union of Needletrades, Industrial and Textile Employees and the applicable Local, and (b) assume the Union Contracts and Seller's obligations thereunder (including, without limitation, the obligation under the Middlefield Union Contract to contribute to the TWUA National Pension Fund) as well as the obligation to negotiate in good faith with respect to such Union Contracts.

Purchase Agreement at § 8.5.

bargaining agreements that remain in effect are the Canton CBA and the Crestline CBA (together, the “**Collective Bargaining Agreements**”).

**B. The Union Claims**

14. The Union, as the exclusive representative of the bargaining unit employees formerly employed at the Debtors’ facilities in Canton, Ohio and Crestline, Ohio (the “**Union Employees**”) has asserted the following claims against CEPP’s estate:

- a. an unliquidated unsecured claim for (i) any and all unpaid wages and benefits due to the employees represented by the Union, (ii) unpaid medical benefits on behalf of the employees represented by the Union and their dependents, (iii) contributions and related obligations due to the defined benefit pension plans and the 401(k) plan sponsored by CEPP that cover individuals represented by the Union; (iv) unpaid and future health plan continuation coverage for individuals represented by the Union; (v) any and all unresolved grievances; and (vi) any union dues or similar obligations that were withheld from employees’ wages but not remitted to the Union (Claim No. 626) (the “**Unpaid Benefits Claim**”); and
- b. an unliquidated unsecured claim for damages under Section 5(a)(1) of the WARN Act, 29 U.S.C. § 2104(a)(1), resulting from the Debtors’ failure to provide proper notice of either the “plant closing” or “mass layoff” of its production facilities located in Canton, Ohio and Crestline, Ohio, as such terms are defined in Section 2(a)(2) and (a)(3) of the WARN Act, 29 U.S.C. 2101(a)(2) and (a)(3) (Claim No. 627) (the “**Notice Claim**” and, together with the Unpaid Benefits Claim, the “**Union Claims**”).

15. The Union asserts that part of the Unpaid Benefits Claim may be entitled to priority treatment under sections 503(b), 507(a)(2), (4), (5) and 1113(f) of the Bankruptcy Code. *See* Unpaid Benefits Claim at ¶ 3. The Union further asserts that part of the Notice Claim may be entitled to priority treatment under sections 503(b), 507(a)(2), (4) and (5) of the Bankruptcy Code. *See* Notice Claim at ¶ 4.

16. Most of the claims asserted by the Unpaid Benefit Claim were paid by the Debtors pursuant to the *Interim Order, Pursuant to Sections 105(a), 363(b), 507(a)(4), 507(a)(5)*

and 541(d) of the Bankruptcy Code, (I) Authorizing the Debtors to Pay: (A) Prepetition Employee and Independent Contractor Wages, Salaries and Related Items; (B) Prepetition Employee and Independent Contractor Business Expenses; (C) Prepetition Contributions to and Benefits Under Employee Benefit Plans; (D) Prepetition Employee Payroll Deductions and Withholdings; (E) Additional Workforce Costs; and (F) All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (II) Granting Certain Related Relief (Docket No. 50). Further, the Pension Settlement Agreement provides for the payment of contributions and related obligations due to the Pension Plans. See Pension Settlement Agreement at § 2.02.

17. The Notice Claim is based upon the Debtors' failure to provide the Union Employees with 60 days notice of the closing of the Debtors' facilities in Canton, Ohio and Crestline, Ohio. The Debtors had anticipated that production would continue at their facilities in Canton, Ohio and Crestline, Ohio until the end of November 2006. These facilities, however, closed sooner than expected due to the unanticipated decision of certain of the Debtors' customers to resource production within days of the Petition Date.

18. Additionally, the following employees, both of whom are represented by the Union, filed individual claims against the Debtors: (a) Mildred Freeman (Claim No. 587) (the "**Freeman Claim**"); and (b) Cora King (Claim No. 391) (the "**King Claim**"). The Debtors have not been able to discern the basis for the Freeman Claim or the King Claim given that both lack supporting documentation.

### **The Proposed Settlement Agreement**

19. In order to resolve the Union Claims (and the King Claim) and the Debtors' outstanding obligations under the Collective Bargaining Agreements, the Debtors and the Union

have engaged in effects bargaining. The product of these negotiations has resulted in the Settlement Agreement, the significant portions of which are as follows:<sup>3</sup>

- a. **Payment to Employees:** The 288 employees<sup>4</sup> listed on Attachment 1 to the Settlement Agreement will receive a one time payment of \$1,000.00 from CEPP within 15 business days of the approval of the Settlement Agreement by the Court to settle any and all claims that arise out of the terms of the Collective Bargaining Agreements or are related to the Unpaid Benefits Claim, the Notice Claim and the King Claim. The Union agrees that such payment will satisfy the Union Claims in full and will withdraw the Union Claims when such payments are made. The Union further represents that such payment will satisfy the King Claim in full and that the King Claim will be withdrawn, and the Union further acknowledges that no payment will be made by the Debtor pursuant to the Settlement Agreement to Cora King until the King Claim has been formally withdrawn.
- b. **Group Health Insurance:** For bargaining unit employees and their covered dependents: CEPP has extended the self-paid coverage available under their group health plan for an extra 30 days past the date other employees' plan coverage terminated, and made special arrangements to ensure claims can be made, processed (and where properly payable, paid). CEPP also has made arrangements for an affiliated company to continue these arrangements for such bargaining unit employees and dependents;
- c. **Pension Plans:** CEPP has made arrangements to (a) fully vest all bargaining unit employees actively accruing service under the Pension Plans covering the employees represented by the Union at the Debtors' facilities in Canton, Ohio and Crestline, Ohio as of October 1, 2006, who were furloughed as a result of the cessation of manufacturing operations, (b) recognize benefit accrual service through July 31, 2007 for those participants entitled to accrue benefit service under the Pension Plans, (c) recognize continuing

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<sup>3</sup> 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.

<sup>4</sup> The Union is currently unable to verify that the following Canton plant employees represented by the Union terminated prior to the date of the notice of the closing of the Canton plant: Tijah Baskerville, Brook Ewing, Judy Garcia, Jennifer Grey, Cheryl Kimble, Liz Shasteen and Jeffrey Warrick. The Debtor agrees to pay any such employee the \$1,000.00 payment provided in the Settlement Agreement if it is later determined that he or she did not terminate prior to the date of the notice of plant closing.



vesting service under the Pension Plans, and (d) cause the Pension Plans to be assumed by Superior Fabrication, LLC, rather than be subjected to termination in connection with the Debtors' liquidation. The Debtors will have no further obligation for the Pension Plans under the Collective Bargaining Agreements after the assumption. The Union agrees to a complete freeze of benefit accrual service under the Pension Plans as of a date no later than July 31, 2007;

- d. **Union General Release and Waiver:** The Union agrees to waive its ability to file a grievance or any charge with any governmental agency, file any lawsuit or initiate any proceeding in any court of law or with any other entity against the CEPP for any reason based on actions that have occurred at any time in the past up to and including the date of the Settlement Agreement; including but not limited to, the Union's ability to allege that CEPP failed to bargain in good faith over the decision or the effects of the decision to close the Debtors' facilities in Canton, Ohio and Crestline, Ohio. The Union also agrees that it will not assist anyone in filing such a charge or prosecuting any lawsuit against CEPP, except to comply with any subpoena or other lawful process of a court or agency. The Union also agrees that it has resolved all claims against the Debtors of the employees listed on Attachment 1 to the Settlement Agreement that arise out of the terms of the Collective Bargaining Agreements or with respect to the receipt of notice of plant shutdown for the Debtor' facilities in Canton, Ohio and Crestline, Ohio; provided, however, that the Settlement Agreement shall have no impact whatsoever on the Freeman Claim unless Mildred Freeman agrees to participate in the Agreement on or before July 24, 2007, in which event, the Union represents that the proposed payment to Mildred Freeman will satisfy the Freeman Claim in full and that the Freeman Claim will be withdrawn, and the Union acknowledges that no payment will be made by CEPP pursuant to the Settlement Agreement to Mildred Freeman until the Freeman Claim has been formally withdrawn; and
- e. **Termination of Collective Bargaining Agreements:** Once the payments to the employees referenced in paragraph (a) above have been made, the Collective Bargaining Agreements shall be deemed terminated.

20. The Settlement Agreement does not become effective unless and until it is approved by this Court. Further, this Court shall have exclusive jurisdiction to determine as a

core proceeding any dispute or controversy with respect to the interpretation or enforcement of the Settlement Agreement.

21. As set forth below, the Debtors 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 the Union over the Union Claims and (b) the adverse impact on the Plan if the Settlement Agreement is not approved. Because the King Claim lacks supporting documentation, the Debtors are unable to consider the merits of the King Claim. The King Claim itself, however, is irrelevant to the Settlement Agreement itself insofar as Ms. King would be entitled to the proposed payment had she not filed any proof of claim in these Cases. Nevertheless, the resolution of the King Claim under the Settlement Agreement is beneficial to the Debtors' estates to the extent that it results in the withdrawal of an unliquidated claim.

#### **RELIEF REQUESTED**

22. 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**

23. The approval of an agreement that will effect the consensual termination of a collective bargaining agreement is considered a transaction outside of the ordinary course of business and, thus, is governed by section 363(b) of the Bankruptcy Code. *In re N. Am. Royalties, Inc.*, 276 B.R. 587, 591-94 (Bankr. E.D. Tenn. 2002) (approving a termination agreement negotiated with a labor union to relieve the debtor of its obligations under a collective bargaining agreement as a transaction outside of the ordinary course of business that was

justified by a sound business purpose and stating, “[Section 1113] makes no provision for approval or disapproval of an agreement between the debtor and the union.”)<sup>5</sup>

24. 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).

25. 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).

26. 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

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<sup>5</sup> Section 1114 of the Bankruptcy Code is inapplicable to this Motion and the Settlement Agreement because the Debtors did not maintain any plan, fund or program for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death. *See* 11 U.S.C. § 1114(a); *Adventure Res., Inc. v. Holland*, 137 F.3d 786, 795 (4th Cir. 1998) (holding that section 1114 of the Bankruptcy Code has no application to pension benefits); Lawrence P. King, 7 COLLIER’S ON BANKRUPTCY ¶ 1114.02[2][b] (15th rev. ed. 2007) (“[The benefits covered by section 1114] does not encompass retired employees’ pension benefits . . . or other compensation payments made after retirement.”).

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).

27. 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).

28. For the reasons set forth below, the approval of the Settlement Agreement is warranted under the circumstances.

**A. The Approval of the Settlement Agreement Will Result in a Fair Resolution of the Union Claims Given the Probability of Success in Litigation**

29. The Debtors have investigated the merits of the Union Claims and have determined that the proposed Settlement Agreement, which will cost the Debtors’ estates a total of approximately \$288,000.00, presents a fair and equitable resolution of the claims asserted

against the Debtors' estates by the Unions. In reaching this conclusion, the Debtors have considered: (a) the amount or components of the Union Claims that likely are entitled to priority under sections 503(b), 507(a)(2), (4), (5) and 1113(f) of the Bankruptcy Code; (b) the probability that the Debtors would be successful in obtaining an order providing for either (i) the disallowance of all or part of the Union Claims under section 502 of the Bankruptcy Code or (ii) the reclassification of all or part of the Union Claims as non-priority claims; and (c) the cost and expense of litigating the Union Claims.

30. In particular, the Debtors have considered their defenses to the Notice Claim, including (a) whether the Debtors' failure to provide proper notice of the plant closings in Canton, Ohio and Crestline, Ohio was in "good faith" and did not violate the WARN Act, *see* 29 U.S.C. § 2104(a)(4), and (b) whether the decision of certain of the Debtors' customers to resource the production of component parts from the Debtors' facilities in Canton, Ohio and Crestline, Ohio qualifies as a "business circumstance that [was] not reasonably foreseeable" at the time that a WARN notice would have been required, *see* 29 U.S.C. § 2102(b)(2)(A); 20 C.F.R. § 639.9.

31. The Debtors believe that there is a risk that the Union Claims could prevail over the Debtors' defenses described above. Accordingly, the Debtors believe that the proposed Settlement Agreement and the allowance and payment of the Union Claims thereunder represents a fair settlement of the Notice Claim given the events and circumstances surrounding the closing of the Debtors' facilities in Canton, Ohio and Crestline, Ohio.

**B. The Approval of the Settlement Agreement Is Warranted Given the Complexity of Litigation with the Union, the PBGC and the Reserve Group**

32. The approval of the Settlement Agreement is warranted given the complexity of litigation with (a) the Union of the Union Claims, (b) the PBGC over its claims against the

Debtors' estates and (c) the Reserve Group over its claims against the Debtors' estates. First, if the Settlement Agreement is not approved, the Debtors and the Union will have to litigate the Union Claims, which will require considerable time and expense given the fact intensive inquiry necessary to apply and consider the Debtors' defenses set forth above.

33. Second, if the Settlement Agreement is not approved, the Pension Plans will not be assumed by Superior. The Union's agreement to a freeze of the accrual of benefits under the Pension Plans as of a date no later than July 31, 2007 is a condition precedent to the assumption of the Pension Plans by Superior. *See* Pension Assumption Motion at ¶ 24(c); Pension Settlement Agreement at § 6.01(c). Thus, if the Settlement Agreement is not approved, the Pension Plan likely will be terminated and the Debtor will have to litigate with the PBGC over the claims that it has asserted against the Debtors' estates.

34. Third, if the Settlement Agreement is not approved, the Debtors would have to litigate with the Reserve Group over the claims that it has asserted against the Debtors' estates. The Reserve Group's withdrawal of its claim is dependent upon the Reserve Group receiving the releases provided for in the Pension Settlement Agreement. *See* Pension Assumption Motion at ¶ 36. Thus, if the Settlement Agreement is not approved and the Pension Settlement Agreement is voided, the Reserve Group will not be released and, as a result, the Reserve Group will not withdraw its claim against the Debtors' estates.

35. Litigation with the Union, the PBGC and the Reserve Group could potentially take a year or more and would result in substantial delay in any distribution to the Debtors' unsecured creditors. Given the complexity, time and expense of litigation with the Union, the PBGC, and the Reserve Group, the Debtors' submit that the Settlement Agreement should be approved.

**C.     The Approval of the Settlement Agreement Is in the Best Interest of Creditors**

36.     The approval of the Settlement Agreement is in the best interest of creditors. First, as set forth above, the Committee supports the approval of the Settlement Agreement. Second, the approval of the Settlement Agreement is a condition precedent to the assumption of the Pension Plans by Superior. As set forth in the Pension Settlement Motion, the approval of the Pension Settlement Agreement is highly beneficial to the Debtors' estates because it avoids (a) the termination of the Pension Plans and the PBGC's contingent claims related thereto and (b) the claims asserted by the Reserve Group against the Debtors' estates. *See* Pension Settlement Motion at ¶¶ 32-37. If the Settlement Agreement is not approved, the creditors in these Cases will lose not only the benefit of the proposed Settlement Agreement, but also the benefit of the Pension Settlement Agreement, which will lower the recovery to unsecured creditors in these Cases.

37.     Finally, the approval of the Settlement Agreement is necessary for the Plan to become effective. The assumption of the Pension Plans by Superior is a condition precedent to the Plan becoming effective, *see* Plan at § 10.2(d), and the Union's agreement to a freeze of the accrual of benefits under the Pension Plans as of a date no later than July 31, 2007 is a condition precedent to the assumption of the Pension Plans by Superior.

38.     Accordingly, if the Settlement Agreement is not approved, these Cases will devolve into complex, expense and time-consuming litigation over the allowance of various complex and substantial claims, prolonging the plan confirmation process and forcing the Debtors' estates to incur the related administrative costs and expenses. In order to avoid this result, 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**

39. Nothing in this Motion, nor the Debtors' proposed payment of the Union Claims or the King Claim, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors, including, without limitation, the Union Claims or the King Claim; (b) 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 (c) a promise to pay any claim, including, without limitation, the Union Claims, provided, however, that the Debtors have agreed to pay the Union Claims and the King Claim up to the amounts set forth in the Settlement Agreement if the Court approves the Settlement Agreement and the Settlement Agreement becomes effective.

### **NOTICE**

40. 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 Union and all employees referenced on Attachment 1 to the Settlement Agreement.

41. 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: 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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