IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	:	Case No. 06-51848
	:	(Jointly Administered)
CEP HOLDINGS, LLC, et al.,[1]	:	
	:	Chapter 11
Debtors.	:	
	:	Honorable Marilyn Shea-Stonum
	:	United States Bankruptcy Judge

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF 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

CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC ("CEP" or the "Debtors")[2] and the Committee (together with the Debtors, collectively, the "Plan Proponents") respectfully submit this memorandum of law in support of confirmation of 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 (the "Plan"). In addition, Section [V] below sets forth the Plan Proponents' responses to the objections to confirmation of the Plan filed prior to the Court imposed deadline of July 13, 2007.

Notice of (A) Deadline for Casting Votes to Accept or Reject Proposed Joint Plan of Liquidation, (B) Hearing to Consider Confirmation of Proposed Joint Plan of Liquidation and (C) Related Matters (the "Confirmation Notice")[3] was mailed on or before June 14, 2007, to all creditors and other parties in interest in these Cases.

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

[2] All capitalized terms not defined herein shall have the meaning ascribed to them in the Plan or the Disclosure Statement.

[3] Among other things, the Confirmation Notice provided that any objections to confirmation must be made in writing, filed with the Court and served upon, among others, counsel for the Debtors, the Committee and the United States Trustee, in each case no later than July 13, 2007, at 4:00 p.m. Eastern Time. The Plan Proponents each reserve the right to object and/or submit additional memoranda in response to any objections not timely made.

The Plan has been overwhelmingly accepted by the only voting Class – Class 4 General Unsecured Claims – by more than ninety percent (90%) in both numerosity and amount, as set forth in the Declaration of BMC Group, Inc. Certifying the Ballots Accepting and Rejecting the Plan, which was filed with the Bankruptcy Court on July 19, 2007. A total of two formal objections to confirmation of the Plan were received by the respective counsel for the Plan Proponents or filed with the Court, and these objections have been resolved. This memorandum, coupled with evidence to be adduced at the confirmation hearing by the Plan Proponents, will demonstrate that the Plan meets the requirements of section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), and should be confirmed by the Bankruptcy Court.

I. BACKGOUND AND BRIEF DESCRIPTION OF PLAN

Leading up to the filing of these Cases, the Debtors experienced an extreme liquidity crisis due, in large part, to (i) the September 2005 hurricanes in the Gulf region, which caused escalating resin (a key raw material for the Debtors) prices; (ii) the general instability of the automotive industry including several bankruptcy filings of several major customers of the Debtors (including Delphi); and (iii) the discontinuation of the GMT800 platform (a major source of revenue for the Debtors) without the involvement of the Debtors in the replacement platform. Given the Debtors' liquidity issues, the Debtors worked with the Subordinated Participating Customers and Wachovia to allow the Debtors to formulate a restructuring plan that would reorganize the Debtors outside of a chapter 11 proceeding. As part of this plan, in May 2006 the Debtors entered into a series of forbearance, accommodation and access and security agreements with Wachovia and the Subordinated Participating Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. The out of court plan also included additional cash infusions from the equity holders of the Debtors. During the out-of-court restructuring efforts by the Debtors, the Debtors caused an unofficial

committee of trade creditors (the “Unofficial Trade Committee”) to be organized, of which five (5) of the seven (7) members of the Committee were participants. The Unofficial Trade Committee as well as the Participating Customers rejected the Debtors’ out-of-court restructuring proposals, and accordingly, the Debtors filed for bankruptcy protection on September 20, 2006.

After the filing of these Cases, the Unofficial Trade Committee contested the Debtors’ request for use of cash collateral and the incurrence of senior, post-petition debtor-in-possession financing. In connection with the Unofficial Trade Committee’s resistance to the Debtors’ use of cash collateral and incurrence of senior, post-petition debtor-in-possession financing, the Unofficial Trade Committee (and later the Committee), the Debtors, Wachovia and the Subordinated Participating Customers entered into a consensual final debtor-in-possession financing order, which provided for the orderly liquidation of the Debtors’ (and CEP Mexico’s) assets.

On May 25, 2007, the Plan Proponents filed their First Amended Joint Plan of Liquidation (as may be further amended, modified or supplemented, the "Plan") and the First Amended Disclosure Statement to Accompany First Amended Joint Plan of Liquidation dated May 25, 2007 (the "Disclosure Statement").

On June 6, 2007, this Court entered an order approving the Disclosure Statement and solicitation procedures with respect to the Plan Proponents’ First Amended Joint Plan of Liquidation and scheduling a hearing on confirmation of the Plan (the "Disclosure Statement Order"). On or before June 14, 2007, pursuant to the Disclosure Statement Order, the Plan was sent to, among others, impaired creditors receiving distributions under the Plan for the purpose of soliciting votes on the Plan.

The Plan is the product of collective negotiations of the Debtors and the Committee with The Reserve Group Management Company, Pension Benefit Guaranty Corporation, the USWA, the Participating Customers and Wachovia. The Plan will be funded by the net proceeds from the liquidation of the Debtors’ assets, which will, on the Effective Date, be transferred together

with any other rights and interests of the Debtors to the CEP Liquidating Trust. The CEP Liquidating Trustee will liquidate any and all assets of the Debtors and distribute the same in accordance with the provisions of the Bankruptcy Code.

The Liquidating Trustee will pay all allowed administrative claims and other allowed priority claims in full in accordance with 11 U.S.C. §1129(a)(9). The Plan provides that each holder of an Allowed Priority Non-Tax Claim pursuant to subsections 507(a)(3), (4), (5), (6), (7), (8) or (9) of the Bankruptcy Code will be paid in full in cash, unless otherwise agreed by such claimant, on the Effective Date, or as soon as reasonably practicable. Holders of Allowed Priority Tax Claims pursuant to sections 502(i) or 507(a)(8) of the Bankruptcy Code will be paid in full in cash, unless otherwise agreed by such claimant, on the Effective Date, or as soon as reasonably practicable. Professionals or other Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code ("Professional Fee Claims") will be paid in full, unless otherwise agreed by such claimant, upon the date upon which the order relating to any such Administrative Expense Claim is entered by the Bankruptcy Court. All fees payable in the Cases under 28 U.S.C. §1930, as agreed by the Debtors and Committee or as determined by the Bankruptcy Court, will, if not previously paid in full, be paid in Cash on the Effective Date and will continue to be paid by the Liquidating Trustee as required under 28 U.S.C. §1930 until such time as an order is entered by the Bankruptcy Court closing the Cases.

On the Effective Date, all Equity Interests (other than Equity Interests in Holdings) are merged into Holdings. The holders of Equity Interests do not receive or retain any property or interest in property on account of such Equity Interest unless and until all Allowed Claims (including Class 4 – General Unsecured Claims) are paid in full. Because the holders of Allowed General Unsecured Claims (Class 4) are not expected to be paid in full, no holders of interests in the Debtors will not likely be entitled to a distribution under the Plan, nor will Equity

Interests receive any distribution unless all Allowed Class 4 Claims are paid in full with interest, which treatment is consistent with the absolute priority rule of 11 U.S.C §1129(b).

The Subordinated Participating Customers will be paid in accordance with the provisions of 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 (the "Amended DIP Order"). The Debtors filed the motion to approve the Amended DIP Order on June 26, 2007 with the consent and no objection of the Subordinated Participating Customers, Wachovia and the Committee, and the hearing to consider the same is scheduled contemporaneously with the hearing to consider confirmation of the Plan.

The Allowed Secured Claims of Wachovia, which was owed, pre-petition, a total of approximately $21.6 million secured by substantially all pre-petition property of the Debtors' bankruptcy estates will be paid in full in cash, to the extent not already paid, on or before the Effective Date, or as reasonably practicable thereafter, with the exception of unliquidated and contingent indemnification claims to which Wachovia may be entitled to assert under the Final DIP Order, the Plan Proponents submit that the Wachovia secured claim has been paid in full. The liens securing such Allowed Wachovia Secured Claim shall be deemed released at such time as the Wachovia Secured Claim is paid in full. Holders of Allowed Other Secured Claims shall receive, at the option of the Liquidating Trustee, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the Allowed Other Secured Claim (taking into account sections 506(a)(1) and 506(b) of the Bankruptcy Code); (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the holder's secured interest in such Collateral, net of the costs of disposition of such Collateral; (iii) such other distribution as necessary to satisfy the requirements of the Bankruptcy Code, including the surrender of any such collateral; or (iv) such other treatment as the Liquidating Trustee and such holder other Secured Claim may agree.

Allowed Subordinated Secured Participation Claims (Class 1), Allowed Other Secured Claims (Class 2), and Allowed Priority Non-Tax Claims (Class 3) are unimpaired and are conclusively presumed to accept the Plan in accordance with 11 U.S.C. §1126(f). The Plan has been accepted by Class 4, General Unsecured Claims, by over ninety percent (90%) in amount and numerosity of Class 4 claims voting on the Plan. Class 5 receives nothing in connection with the Plan, and therefore, conclusively rejects the Plan.

The Plan has therefore been accepted by all impaired classes of creditors receiving distributions under the Plan and entitled to vote. Pursuant to section 1126(g) of the Bankruptcy Code, impaired classes of Claims and Equity Interests that receive or retain no property under the Plan are deemed to have rejected the Plan. Accordingly, with respect to Class 5, Equity Interests, the Plan Proponents are seeking confirmation of the Plan under the cramdown provisions of section 1129(b) of the Bankruptcy Code.

The Plan Proponents have negotiated settlements in connection with the Plan with, among others, The Reserve Group Management Company, 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 "USW") and the Pension Benefit Guaranty Corporation (the "PBGC"). These settlements, if approved by the Court, provide for the assumption by Superior Fabrication Company, LLC (an affiliate of The Reserve Group Management Company) of the Debtors' obligations for defined benefits under two pension plans. In connection with the Cases, the Debtors, with input from the Committee throughout the sales process, facilitated the sale of substantially all of their assets (both real and personal property). The Debtors' assets, with the exception of certain potential Causes of Action identified in the Plan, are now fully liquidated and the Liquidating Trustee will investigate, and if warranted in the determination of the Liquidating Trustee, pursue Causes of Action and claim objections pursuant to the terms of the Plan and accompanying Trust Agreement.

II. THE PLAN PROPONENTS MUST DEMONSTRATE COMPLIANCE WITH PROVISIONS OF BANKRUPTCY CODE BY PREPONDERANCE OF THE EVIDENCE.

As the proponents of the Plan, the Plan Proponents bear the burden of proof on all elements necessary for confirmation. In re Keaton, 88 B.R. 154, 156 (Bankr. S.D. Ohio 1988). See generally 7 Collier on Bankruptcy ¶ 1129.02[4] at 1129-22 (15th ed. rev.). To meet this burden, the Plan Proponents must demonstrate that the Plan complies with the provisions of the Bankruptcy Code by a preponderance of the evidence. In re Trevarrow Lanes, Inc., 183 B.R. 475, 479 (Bankr. E.D. Mich. 1995) *citing* Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. (In re Briscoe Enters.), 994 F.2d 1160, 1165 (5th Cir.), cert. denied, 510 U.S. 992 (1993) (preponderance of evidence is debtors' appropriate standard of proof both under § 1129(a) and in cram down). As demonstrated below, the Plan Proponents have satisfied their burden with respect to each element required for confirmation. Accordingly, the Plan should be confirmed.

III. THE PLAN SHOULD BE CONFIMRED BECAUSE IT COMPLIES WITH THE CONFIRMATION STANDARDS SET FORTH IN SECTION 1129 OF THE BANKRUPTCY CODE.

Section 1129 of the Bankruptcy Code governs confirmation of a plan of reorganization and sets forth the requirements which must be satisfied in order for a plan to be confirmed. To confirm the Plan, the Court must find that both the Plan and the Plan Proponents are in compliance with each of the requirements of section 1129(a) of the Bankruptcy Code. In re Laurel Glen Apartments of Asworth, Ltd., 139 B.R. 199, 202 (Bankr. S.D. Ohio 1991) ("The provisions of 11 U.S.C. § 1129(a) are mandatory and the Court will require that a record be made at the confirmation hearing to show that each requirement has been met"). Pursuant to section 1129(a) of the Bankruptcy Code, the Court shall confirm a plan of reorganization only if all of the following requirements are met:

1. The plan complies with the applicable provisions of title 11;

2. The proponent of the plan complies with the applicable provisions of title 11;

3. The plan has been proposed in good faith and not by any means forbidden by law;

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or its subject to the approval of, the court is reasonable;

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan and (ii) the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy; and (B) the proponent has disclosed the identity of any insider that will be employed or retained by the reorganized debtor and the nature of any compensation for such insider;

6. To the extent that the debtor is subject to the jurisdiction of any regulatory commission, any rate change provided for in the Plan has been approved by, or is subject to the approval of, such regulatory commission;

7. With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has either accepted the plan or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;

8. Each class of claims or interests has either accepted the plan or is not impaired under the plan;

9. The treatment of administrative expense and priority claims under the plan complies with the provisions of section 1129(a)(9);

10. If a class of claims is impaired under the plan, at least one impaired class of claims has accepted the plan, determined without including the acceptances by any insiders holding claims in such class;

11. Confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor, unless such liquidation or reorganization is proposed in the plan;

12. The plan provides for payment on the effective date of all fees payable under 28 U.S.C. § 1930; and

13. The plan provides, if applicable, for the continued payment of certain retiree benefits for the duration of the period that the debtor has obligated itself to provide such benefits.

As explained below, the Plan satisfies each of these requirements, with the exception of that contained in sections 1123(a)(6) and 1129(a)(8) of the Bankruptcy Code. However, notwithstanding its failure to satisfy sections 1123(a)(6) and 1129(a)(8), the Plan may and should nevertheless be confirmed as the Plan satisfies the applicable requirements of section 1129(b) of the Bankruptcy Code, with respect to the deemed rejecting class of Equity Interests — Class 5.. Pursuant to section 1126(g) of the Bankruptcy Code, a class is deemed not to have accepted a plan if such plan provides that the holders of claims or interests in such class will not receive or retain any property under the plan on account of such claims or interests. See 11 U.S.C. § 1126(g). The members of Class 5 (Equity Interests) are projected to receive no distributions under the Plan; and accordingly, Class 5 is deemed to have rejected the Plan (the "Deemed Rejecting Class"). Thus, the requirement of section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to the Deemed Rejecting Class. The Plan Proponents will seek to invoke the "cramdown" provisions of section 1129(b) of the Bankruptcy Code with respect to the Deemed Rejecting Class, pursuant to Article XIII of the Plan. As noted above, on the Effective Date, all Equity Interests (other than Equity Interests in Holdings) are merged into Holdings. The holders of Equity Interests do not receive or retain any property or interest in property on account of such Equity Interest unless and until all Allowed Claims (including Class 4 – General Unsecured Claims) are paid in full. Further, the Plan provides for the transfer of all right, title and interests of property (real and personal) of the Debtors' Estates to the CEP Liquidating Trust. The CEP Liquidating Trust is prohibited from conducting any trade or business and its sole purpose is the liquidation and distribution of assets of the Estates and proceeds thereof in accordance with Treasury Regulation section 30.1.7701-4(d), and resolving

and administering Claims. The provisions of section 1123(a)(6) of the Bankruptcy Code are not applicable to the Plan and should be deemed satisfied.

A. The Plan Satisfies The Requirements of Section 1129(a)(1) Because The Plan Complies With The Applicable Provisions Of The Bankruptcy Code, Including Sections 1122 and 1123

Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of title 11. Although broadly drafted, this provision is directed at compliance with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan, respectively. See H.R. Rep. No. 595, 95th Cong., 2d Sess. 126 (1978); In re Gillette Associates, Ltd., 101 B.R. 866, 872 (Bankr. N.D. Ohio 1989) ("The drafters envisioned that 'paragraph (1) requires that the plan comply with the applicable provisions of Chapter 11, such as sections 1122 and 1123, governing classification and contents of plan'").

1. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code Because the Claims or Equity Interests of Each Class are Substantially Similar to the Other Claims or Equity Interests of Such Class

Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class if such claim or interest is substantially similar to the other claims or interests of such class. 11 U.S.C. § 1122(a). "Substantially similar" generally has been interpreted to mean similar in legal character to other claims against a debtor's assets or to other interests in a debtor. 7 Collier on Bankruptcy ¶ 1122.03[3], at 1122-8 (15th ed. rev.); In re Dow Corning Corp., 244 B.R. 634, 644 (Bankr. E.D. Mich. 2000).

Section 1122(a) does not require that all substantially similar claims be placed in the same class, but rather that all claims within a class be substantially similar to one another. See Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. (In re U.S. Truck Co.), 800 F.2d 581, 585 (6th Cir.1986) ("by its express language, [1122(a)] only addresses the problem of dissimilar claims being included in the same class."). Importantly, a plan proponent is afforded

significant flexibility in classifying claims under section 1122(a) so long as there is reasonable basis for the classification structure. See U.S. Truck Co., 800 F.2d at 586; In re Jersey City Med. Ctr., 817 F.2d 1055, 1060-61 (3rd Cir. 1987); In re Bryson Properties, XVIII, 961 F.2d 498 (4th Cir. 1992) (stating that §1122 grants some flexibility in classification of unsecured claims as long as a debtor does not "gerrymander" or artificially impair classes of claims in order to obtain an impaired accepting class).

Articles II and III of the Plan designate classes of claims and interests as follows:

- Unclassified Claims

  Administrative Expense Claims
  Professional Fee Claims
  Fees Under 28 U.S.C. § 1930
  Wachovia Secured Claims
  Priority Tax Claims

- Unimpaired Classes of Claims

  Class 1: Subordinated Participating Customers Secured Claims
  Class 2: Other Secured Claims
  Class 3: Priority Non-Tax Claims

- Impaired Classes of Claims

  Class 4: General Unsecured Claims

- Impaired Classes of Claims and Equity Interests not entitled to vote on the Plan

  Class 5: Equity Interests

Here, the Plan's classification structure is proper and in accordance with section 1122(a) of the Bankruptcy Code. Separate classification of Class 3 Priority Non-Tax Claims is proper because such claims differ in legal and factual nature as priority claims under section 507(a) of the Bankruptcy Code. Separate classification of secured claims is necessary, in that Class 1 Subordinated Participating Customers Secured Claims are paid in accordance with the Final DIP Order as required by this Order. Class 2 Other Secured Claims will either be paid in full on or as soon as reasonably practicable after the Effective Date, the proceeds of the sale of the Collateral securing such Allowed Other Secured Claim, receive the collateral securing its claim,

or such treatment as the Liquidating Trustee and the holder of such Allowed Other Secured Claim mutually agree. Class 5 Equity Interests are impaired, and have been deemed to reject the Plan by virtue of their members receiving no distributions thereunder. The classification structure embodied in the Plan thus complies with section 1122 of the Bankruptcy Code.

2. The Plan Satisfies the Requirements of Section 1123(a) of the Bankruptcy Code

Section 1123(a) of the Bankruptcy Code sets forth seven mandatory requirements for every chapter 11 plan. Each such requirement is addressed below:

a. The Plan Designates Classes of Claims – 11 U.S.C. §1123(a)(1) of the Bankruptcy Code

Section 1123(a)(1) of the Bankruptcy Code requires that a plan designate classes of claims and interests, other than claims of a kind specified in sections 507(a)(1) (administrative expense claims), 507(a)(2) (claims arising during the "gap" period in an involuntary case), and 507(a)(8) (tax claims). 11 U.S.C. § 1123(a)(1). Article 3 of the Plan designates five Classes of Claims and Equity Interests, not including Claims of the kinds specified in sections 507(a)(1), (2) and (8) of the Bankruptcy Code, which Claims are addressed in the Plan but not classified. Thus, the Plan complies with the requirements of section 1123(a)(1) of the Bankruptcy Code.

b. The Plan Specifies Unimpaired Classes – 11 U.S.C. §1123(a)(2) of the Bankruptcy Code

Section 1123(a)(2) of the Bankruptcy Code requires that a plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Article III of the Plan specifies that Classes 1, 2, and 3 are unimpaired under the Plan. Thus, the Plan complies with the requirements of section 1123(a)(2) of the Bankruptcy Code.

c. The Plan Adequately Specifies the Treatment of Impaired Classes – 11 U.S.C. §1123(a)(3)

Section 1123(a)(3) of the Bankruptcy Code requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). Article III of the Plan specifies that Classes 4 and 5 are impaired under the Plan and clearly and plainly

describes the treatment of each respective Class. Thus, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

d. The Plan Provides the Same Treatment for Claims or Equity Interests Within Each Class – 11 U.S.C. §1123(a)(4)

Section 1123(a)(4) of the Bankruptcy Code requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Article III of the Plan undeniably provides equality of treatment for each Claim or Equity Interest within a particular Class. Thus, the Plan complies with the requirements of section 1123(a)(4) of the Bankruptcy Code.

e. The Plan Provides Adequate Means for its Implementation – 11 U.S.C. §1123(a)(5)

Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation and enumerates specific examples of such adequate means, including, but not limited to: cancellation or modification of indentures or other instruments, amendment of the debtor's charter, issuance of new securities, retention by the debtor of all or any part of property of the estate, sales of the debtor's property, extension of maturity dates or changes in interest rates or other terms of outstanding securities. 11 U.S.C. § 1123(a)(5). Article VII and certain other sections of the Plan set forth the various means for implementation of the Plan.

The Plan provides for, among other things, (a) the establishment, funding, purpose and governance of the CEP Liquidating Trust (Article VII Section 7.1 of the Plan); (b) the vesting of all the property of the Estates to the CEP Liquidating Trust (Article VII Section 7.1(c) of the Plan); (c) the distribution to holders of Claims as of the Confirmation Date (Article VII Section 7.2 of the Plan); (d) the release of all liens against property of the Debtors or the Estates (Article VII Section 7.4 of the Plan); (e) the cancellation of existing securities other than as specified in

the Plan (Article VII Section 7.5 of the Plan); and (f) the Liquidating Trustee's post-confirmation role including, but not limited to, claims administration, general powers and administration of taxes (Article VII Section 7.6 of the Plan). The Plan also provides for the rejection of various executory contracts and unexpired leases, unless otherwise assumed pursuant to Final Order of the Bankruptcy Court or is a collective bargaining agreement governed by section 1113 of the Bankruptcy Code or an agreement providing for retiree benefits covered by section 1114 of the Bankruptcy Code.

The Plan provides a clear procedure for its implementation, and, thus, satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

f. Section 1123(a)(6) of the Bankruptcy Code is not Applicable to the Plan

Section 1123(a)(6) of the Bankruptcy Code requires that the Plan provide for the inclusion in a corporate debtor's charter provisions which prohibit the issuance of nonvoting equity securities. 11 U.S.C. § 1123(a)(6). The Plan provides that the existing securities of the Debtors other than as specified in the Plan are cancelled (Article VII Section 7.5 of the Plan) and that all assets of the Estates vest in the CEP Liquidating Trust (Article VII Section 7.1(c), Article VI Section 6.2(a) of the Plan). Further, the CEP Liquidating Trust is established and maintained for the sole purpose of liquidating and distributing assets of the Estates and proceeds thereof in accordance with Treasury Regulation section 30.1.7701-4(d), and resolving and administering Claims, with no objective to continue or engage in the conduct of a trade or business (Article VII Section 7.1(b) of the Plan). As such, section 1123(a)(6) is inapplicable and therefore the Plan does not need to comply with the same. The provisions of section 1123(a)(6) of the Bankruptcy Code are not applicable to the Plan and should be deemed satisfied.

g. The Plan Contains Appropriate Provisions Respecting the Selection of Post Confirmation Officers and Directors – 11 U.S.C. § 1123(a)(7)

Section 1123(a)(7) of the Bankruptcy Code requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director or trustee." 11 U.S.C. § 1123(a)(7).

Pursuant to Article VII Section 7.1(e) of the Plan, the initial Liquidating Trustee is Shaun M. Martin. Mr. Martin is affiliated with Huron Consulting Group, the Debtors' court-approved financial advisor. Due to its representation of the Debtors, Huron Consulting Group, and Mr. Martin by extension, are familiar with the Debtors' books and records. This provision of the Plan is consistent with the interests of creditors and equity security holders and with public policy.

Accordingly, the Plan satisfies the requirements of section 1123(a)(7), and six of the seven requirements of section 1123(a) of the Bankruptcy Code. Further, as explained at pages 14 and 15 herein, subsection 1123(a)(6) of the Bankruptcy Code is not applicable to the Plan.

B. The Plan Proponents Have Complied With The Provisions of Title 11 As Required By Section 1129(a)(2)

Section 1129(a)(2) of the Bankruptcy Code requires that a plan proponent "compl[y] with the applicable provisions of [title 11]." 11 U.S.C. § 1129(a)(2). Generally, the inquiry under section 1129(a)(2) focuses on whether the plan proponent has complied with the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977), S. Rep. No. 989, 95th Cong. 2d Sess. 126 (1978) (section 1129(a)(2) "requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as § 1125 regarding disclosure"). See also In re Revco, D.S., Inc., 131 B.R. 615, 622 (Bankr. N.D. Ohio 1990) (section 1129(a)(2) was satisfied when proponent of plan complied with requirements of section 1125).

The Plan Proponents have complied with the applicable provisions of title 11, including the provisions of section 1125, and the applicable Bankruptcy Rules regarding Plan disclosure and solicitation. On June 6, 2007, this Court entered the Disclosure Statement Order specifically finding, inter alia, after a properly noticed hearing, that the Disclosure Statement contained "adequate information," as that term is defined in section 1125(a)(1) of the Bankruptcy Code and approving, inter alia, the procedures to be used by the Debtor in soliciting and tabulating votes regarding the Plan. On or before June 14, 2007, pursuant to the Disclosure Statement Order, the Plan was sent to, among others, impaired creditors receiving distributions under the Plan for the purpose of soliciting votes on the Plan.

The Disclosure Statement, the Plan, the Disclosure Statement Order, Court-approved ballots and notices, and all other related documents were distributed to all parties designated in the Disclosure Statement Order on or before June 14, 2007. Subsequent to the July 13, 2007 voting deadline, BMC tabulated the votes in accordance with the procedures set forth in the Disclosure Statement Order. Accordingly, the Plan Proponents have complied fully with all of the provisions of title 11, and in particular the provisions of section 1125, and have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3) of the Bankruptcy Code Has Been Satisfied Because The Plan Has Been Proposed In Good Faith And Not By Any Means Forbidden By Law

Section 1129(a)(3) of the Bankruptcy Code requires that the Plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Although "good faith" is not defined in the Bankruptcy Code, Gillette Associates, 101 B.R. at 873 (Bankr. N.D. Ohio 1989), the requirements of section 1129(a)(3) are met when there is a reasonable likelihood that the plan will achieve results consistent with the standards prescribed by the Bankruptcy Code. Id. *citing* In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr.S.D.N.Y.1984); In re White, 41 B.R. 227, 229 (Bankr.M.D.Tenn.1984).

The requirements of section 1129(a)(3) are met when the debtor "honestly believe[s] that it was in need of reorganization and that the Plan was negotiated and proposed with the intention of accomplishing a successful reorganization." In re Johns-Manville Corp., 843 F.2d 636, 649 (2nd Cir. 1988). In addition, whether a plan is proposed in good faith must be determined "in light of the totality of the circumstances surrounding" formulation of the plan. In re Ridgewood Apartments of DeKalb County, Ltd., 183 B.R. 784, 789 (Bankr. S.D. Ohio 1995). As noted above, “good faith” is generally interpreted to mean that there is a reasonable likelihood that the plan will achieve results consistent with the standards, objectives and purposes of the Bankruptcy Code. Matter of Nikron, Inc., 27 B.R. 773, 778 (Bankr. E.D. Mich. 1983); Gillette Associates, Ltd., 101 B.R. at 873.

The Plan has been proposed in “good faith” within the meaning of section 1129(a)(3) of the Bankruptcy Code. The Plan is the product of the collective efforts of the Debtors and the Committee to achieve a plan of liquidation which is fair to all constituents and maximizes recoveries to creditors. The Plan furthers the chapter 11 goals of restructuring the Debtors’ obligations and businesses in a manner that makes economic and business sense, maximizes value to the Estates, and provides substantially greater distribution to trade and other unsecured creditors than projected by the Debtors at the outset of the Cases.

The liquidation of the Debtors was necessitated by the decision of the Participating Customers not to support financial concessions to the Debtors necessary to make going concern operations profitable, and in turn, the approach to a winddown of the Debtors’ business and liquidation of their assets was established with the goal and intent of maximizing return to creditors. The Plan has been conceived and proposed with the standards, objectives and purposes of the Bankruptcy Code by which “good faith” under section 1129(a)(3) is measured. Id. Further, the Plan has been proposed in compliance with all applicable laws, rules and regulations. Accordingly, the Plan has been proposed in “good faith” and not by any means

forbidden by law, and therefore satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. The Plan Provides For Court Approval Of Payment For Services And Expenses – 11 U.S.C. §1129(a)(4)

Section 1129(a)(4) of the Bankruptcy Code requires that payment for services or costs and expenses incurred in or in connection with a chapter 11 case, or in connection with a plan and incident to the case, either be approved by or be subject to approval of the court as reasonable. This section requires that such payments of compensation and reimbursement of expenses be subject to bankruptcy court review and approval as to the reasonableness of such payments. See In re Resorts Int'l, 145 B.R. 412, 475 (Bankr. D.N.J. 1990); but see In re Future Energy Corp., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988)(express provision requiring Bankruptcy Court approval of payments made in connection with plan is not required because the Bankruptcy Code requires Bankruptcy Court approval of such payments in other Bankruptcy Code provisions).

Article II, Section 2.2 of the Plan contains procedures for the filing of Professional Fee Claims and the payment thereof. The Debtors have paid such fees, costs and expenses only as and when authorized to do so by the administrative orders of this Court. The proposed Confirmation Order contains additional provisions regarding applications of professionals for final approval of fees and expenses in these cases. In addition, Article XII Section 12.1(h) of the Plan provides for the Bankruptcy Court's retention of jurisdiction to hear and determine all applications for compensation and expense reimbursement by Professionals prior to the Confirmation Date. Thus, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Plan Proponents Have Complied With Section 1129(a)(5) By Disclosing All Necessary Information Regarding Directors And Officers Of The Reorganized Debtor

Sections 1129(a)(5)(A)(i) and (ii) of the Bankruptcy Code require that the plan proponent disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor . . . or a successor to the debtor under the plan," and require a finding that "the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5)(A)(i) and (ii). Section 1129(a)(5)(B) of the Bankruptcy Code requires a plan proponent to disclose the "identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1129(a)(5)(B).

As explained herein, Article VII, Section 7.1(e) of the Plan identifies the initial Liquidating Trustee as Shaun M. Martin. Mr. Martin is affiliated with Huron Consulting Group, the Debtors' financial advisor. Due to its representation of the Debtors, Huron Consulting Group, and Mr. Martin by extension, are familiar with the Debtors' books and records.

This provision of the Plan is consistent with the interests of creditors and equity security holders and with public policy. The Committee determined that the continued involvement of Huron, through Mr. Martin, will have a beneficial impact on the success of the CEP Liquidating Trust because Mr. Martin possesses substantial business experience and is affiliated with Huron Consulting Group (which is knowledgeable of the Debtors' books and records). Accordingly, the Plan Proponents submit that the requirements of section 1129(a)(5)(A)(ii) of the Bankruptcy Code are satisfied.

F. The Plan Does Not Contain Changes in Any Rates Subject to the Jurisdiction of Any Governmental Regulatory Commission – 11 U.S.C. §1129(a)(6)

Section 1129(a)(6) of the Bankruptcy Code requires that any governmental regulatory commission having jurisdiction over the rates charged by the post-confirmation debtor in the operation of its business approve any rate change provided for in the plan. Because the CEP Liquidating Trust is not subject to the jurisdiction of any governmental regulatory commission and the Plan does not provide for any such rate changes, the provisions of section 1129(a)(6) of the Bankruptcy Code are not applicable to the Plan and thus should be deemed satisfied.

G. The Plan is in the Best Interests of Creditors – 11 U.S.C. § 1129(a)(7)

Section 1129(a)(7) of the Bankruptcy Code requires that:

> With respect to each impaired class of claims or interests --
>
> (A) each holder of a claim or interest of such class --
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] . . . on such date.

11 U.S.C. § 1129(a)(7).

This standard is commonly referred to as the "best interests" test, under which the Court must find that each dissenting impaired creditor or equity security holder will receive or retain value under the Plan that is not less than the amount such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Gillette Associates, 101 B.R. at 874. Accordingly, if the Bankruptcy Court finds that each nonconsenting member of an impaired class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the best interests of creditors test.

The "best interests" test applies only to "impaired" classes. 11 U.S.C. § 1129(a)(7). Pursuant to section 1126(f) of the Bankruptcy Code, each holder of a Claim in a Class that is not impaired is conclusively presumed to have accepted the Plan. Under the Plan, Classes 1, 2 and 3 are unimpaired and conclusively presumed to have accepted the Plan, and therefore such Claims are not impaired under section 1124 of the Bankruptcy Code. With respect to each impaired Class of Claims (Classes 4 entitled to vote on the Plan and Class 5 not entitled to vote and deemed to have rejected the Plan), the "best interests of creditors" test is satisfied.

The Disclosure Statement contains an extensive analysis (the "Liquidation Analysis"), which provides an estimate of the funds available for distribution under the Plan. The Disclosure Statement, which incorporates the Plan by reference, addresses alternatives to the Plan, including conversion of the Cases to cases under chapter 7 of the Bankruptcy Code. This analysis provides that the costs, expenses and fees, as well as delay in distribution that would inevitably result in a chapter 7 conversion, would significantly reduce the funds identified in the Liquidation Analysis available for distribution to the Debtors' creditors (Article X.C of the Disclosure Statement). The Plan Proponents submit the Plan satisfies the "best interests" test as to each impaired Class of Claims and Interests because the estimated percentage recovery under the Plan available to holders of Allowed Claims and Interests is equal to or exceeds the estimated percentage recovery that would be available to such holders in a chapter 7 liquidation. Specifically, the additional costs associated with a chapter 7 trustee and its professionals (which would be satisfied on a priority basis) would significantly reduce the funds available for distribution to unsecured creditors pursuant to the Plan. In the context of the erosion of the asset value available for distribution due to increased costs and the expected delay associated with a chapter 7 case, confirmation of the Plan provides each holder of an Allowed Claim or Equity Interest in Classes 4 and 5 – the Impaired Classes – with a recovery that is equal to or greater than the amount that such holder would receive in a chapter 7 liquidation of the Debtors.

H. The Plan Satisfies Section 1129(a)(8) with Respect To All Classes Except For The Deemed Rejected Class

Based upon the tabulation of the ballots, as set forth on the July 19, 2007 Certification filed by the Balloting Agent, BMC, the voting impaired class of Claims (Class 4) overwhelmingly voted in favor of the Plan by the requisite majorities with more than one-half in number and two-thirds in amount. In addition, pursuant to the Plan, Classes 1, 2 and 3 are unimpaired and thus deemed to have accepted the Plan. Class 5 is deemed to have rejected the Plan; accordingly, the Plan Proponents will seek confirmation of the Plan with respect to Class 5 Equity Interests pursuant to the applicable "cramdown" provisions of section 1129(b) of the Bankruptcy Code.

I. The Plan Provides For Payment In Full of All Allowed Priority Claims – 11 U.S.C. §1129(a)(9)

Section 1129(a)(9) of the Bankruptcy Code requires that, except to the extent that the holder of a particular claim agrees to a different treatment of such claim:

> a. holders of claims entitled to priority under section 507(a)(1) or (2) must receive cash in the allowed amounts of such claims on the effective date of the Plan;
>
> b. holders of claims entitled to priority under section 507(a)(3), (4), (5), (6) or (7) must receive cash in the allowed amounts of such claims on the effective date of the Plan or (if such class had accepted the plan) deferred cash payment of a value, as of the effective date of the Plan, equal to the allowed amounts of such claims; and
>
> c. holders of tax claims entitled to priority under section 507(a)(8) must receive on account of such claims deferred cash payments, over a period not exceeding six years from the respective dates of assessment of such claims, of a value, as of the effective date of the Plan, equal to the allowed amounts of such claims.

See 11 U.S.C. § 1129(a)(9).

Pursuant to Article II of the Plan, Administrative Expense Claims, Professional Fee Claims, and Allowed Priority Tax Claims, respectively, will be treated in accordance with section 1129(a)(9) of the Bankruptcy Code. The Plan provides for (i) payment in full of Administrative

Expense Claims in cash on or as soon as reasonably practicable after the Effective Date (see Article II Section 2.1 of the Plan); (ii) payment, in full, of Professional Fee Claims (see Article II Section 2.2 of the Plan); and (iii) in accordance with section 1129(a)(9)(C), Allowed Priority Tax Claims will either be paid in full on the Effective Date or as soon thereafter as is reasonably practicable thereafter, or to the extent such payment is made after the Effective Date, such holder of the Priority Tax Claim will be paid appropriate interest (see Article II Section 2.5 of the Plan). Finally, Class 3 Priority Non-Tax Claims under section 507(a)(3) and (a)(4) of the Bankruptcy Code will be paid in full on the Effective Date or as soon as reasonably practicable thereafter (see Article IV Section 4.3 of the Plan).

J. The Plan Has Been Accepted By At Least One Impaired Class of Claims That is Entitled To Vote – 11 U.S.C. §1129(a)(10)

Section 1129(a)(10) of the Bankruptcy Code requires that, if a plan has any impaired classes, at least one impaired class must vote to accept the plan, as determined without including any acceptance of the plan by any insider. In re U.S. Truck Co., Inc., 800 F.2d 581, 584 (6th Cir. 1986); In re Lloyd, 31 B.R. 283, 284 (Bankr. W.D.KY. 1983); In re Gagel & Gagel, 30 B.R. 627, 629 (Bankr. S.D. Ohio 1983). The holders of Claims in Class 4, which is impaired, have overwhelmingly voted to accept the Plan, as determined without including any acceptance by any insider in such Class. Accordingly, the requirements of section 1129(a)(10) of the Bankruptcy Code are satisfied.

K. The Plan is Feasible – § 1129(a)(11)

Section 1129(a)(11) of the Bankruptcy Code requires the Court to determine that:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). This requirement is commonly known as the "feasibility" standard. To meet the "feasibility" standard, "the plan does not need to guarantee success, but it must present reasonable assurance of success." In re Made in Detroit, Inc., 299 B.R. 170, 176

(Bankr. E.D. Mich. 2003) *citing* John-Mansville Corp., 843 F.2d at 649; Gillette Associates, 101 B.R. at 882 *citing* U.S. Truck, 800 F.2d at 589 (additional citations omitted).

The key element of feasibility is whether there exists a reasonable probability that the provisions of the Plan can be performed. The purpose of the feasibility test is to protect against potentially unrealistic or speculative plans. A plan may not be based on "visionary promises." Made in Detroit, 299 B.R. at 176; See also Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.), 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02, at 1129-36.11 (Lawrence P. King ed., 15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. See Gillette Associates, 101 B.R. at 882.

Applying the above standards of feasibility, courts have identified the following factors as probative: (i) the adequacy of the capital structure; (ii) the earning power of the business; (iii) economic conditions; (iv) the ability of management; (v) the probability of the continuation of the same management; and (vi) any other related matters which will determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. Gillette Associates, 101 B.R. at 882 *citing* In re Clarkson, 767 F.2d 417 (8th Cir. 1985).

The Plan is a plan of liquidation with substantially all proceeds of assets of the Estates (other than proceeds from potential Causes of Action) already held by or on behalf of the Debtors. Although the feasibility standard has been held to apply to liquidating cases, see 7 Collier on Bankruptcy ¶ 1129.03[11] at 1129-74.3 – 1129-74.4 (15th ed. rev.) *citing* In re Holmes, 301 B.R. 911, 915 (Bankr. M.D. Ga. 2003)*;* In re Calvanese, 169 B.R. 104, 106 (Bankr. E.D. Pa. 1994), scrutiny of feasibility with respect to liquidating debtors is not the same as a debtor that proposes to reorganize through other means. In these Cases, where proceeds of assets of the Estates have largely been recovered, there is little execution risk with respect to implementation of the provisions of the Plan.

The Plan Proponents submit that the CEP Liquidating Trust will be able to make all payments required pursuant to the Plan, subject only to risk that distributions to Class 4 Claims could be less than projected if Allowed Claims in Class 4 or other Claims with priority above that of general unsecured claims are greater than estimated by the Plan Proponents. Because the Plan is a plan of liquidation, confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization of the Debtors and, thus, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

L. The Plan Provides For Full Payments Of All Statutory Fees – 11 U.S.C. §1129(a)(12)

Section 1129(a)(12) of the Bankruptcy Code requires that fees payable under 28 U.S.C. § 1930, as determined by the Court at the confirmation hearing, have been paid or are provided under the plan to be paid on its effective date. All statutory fees incurred to date by the Debtors under 28 U.S.C. § 1930 have been paid by the Debtors during the Cases and will continue to be paid through confirmation of the Plan. In addition, Article II Section 2.3 of the Plan provides that such fees will continue to be timely paid thereafter until the closing of the Cases. Thus, the Plan complies with the requirements of section 1129(a)(12) of the Bankruptcy Code.

M. The Plan Provides For The Continuance of Retiree Benefit Obligations – 11 U.S.C. § 1129(1)(13)

Section 1129(a)(13) of the Bankruptcy Code requires a Plan to provide for the continuance of retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. The Plan Proponents submit that as of the Filing Date, the Debtors had no obligations to retirees of the kind specified in section 1114 of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors and the USW did engage in "effects bargaining" which resulted in a comprehensive settlement agreement pending before the Court. To the extent that the Debtors did owe any obligations to represented employees of the kind specified in section 1114 of the Bankruptcy Code, the Plan Proponents submit that such claims are waived under the USW 9019 motion pending before the Court. Pursuant to Fed.R.Bankr.Proc. 9019, the Debtors filed a

motion to approve settlement agreement with the USW (the "USW 9019 Motion"). The USW is the authorized representative of all represented employees of the Debtors.

The provisions of section 1129(a)(13) of the Bankruptcy Code are not applicable to the Plan and should be deemed satisfied.

IV. THE PLAN MEETS THE REQUIREMENTS FOR "CRAMDOWN" UNDER SECTION 1129(b) OF THE BANKRUPTCY CODE

Section 1129(b)(1) of the Bankruptcy Code provides, in pertinent part:

> If all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interest that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). In short, as stated above, section 1129(a)(8) of the Bankruptcy Code requires that each Class of Claims or interests either (i) has accepted the Plan, or (ii) is not impaired under the Plan. As set forth above, Classes 5 is impaired under the Plan because such Class is not projected to receive or retain any property under the Plan, and is therefore deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, the Plan Proponents intend to invoke the "cramdown" standards under section 1129(b) of the Bankruptcy Code with respect to Class 5, Equity Interests.

Class 5 is comprised of equity interests or securities law claims, which are subject to mandatory subordination to the level of common stock under section 510(b) of the Bankruptcy Code. 11 U.S.C. § 510(b). In re Int'l Wireless Communications Holdings, Inc., 237 B.R. 739 (Bankr. D. Del. 2001). Equity interests are of a different legal nature than claims. As such, if creditors are not being paid in full, and no similarly situated equity holders are receiving any distribution, the common stockholders, or any claimant holding a claim with similar priority, have no basis to object as they are all being treated alike and cannot argue that they are victims of

unfair discrimination. See In re Eagle-Picher Ind., Inc., 1996 U.S. Dist. LEXIS 17160 (S.D. Ohio Nov. 18, 1996); Matter of Johns-Manville Corporation, 68 B.R. 618, 637-38 (Bankr. S.D.N.Y. 1986).

In order to satisfy the fair and equitable standard of section 1129(b)(2)(C) of the Bankruptcy Code with respect to a class of interests, the Plan must satisfy one of the following requirements:

> (i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, and fixed redemption price to which such holder is entitled, or the value of such interest; or
>
> (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

11 U.S.C. § 1129(b)(2)(C).

With respect to subsection 1129(b)(2)(C)(i), the value of Equity Interests in the Debtors' liquidating cases is zero (0), which is the projected distribution to Class 5 Equity Interests under the Plan, and thus, this subsection of section 1129(b) of the Bankruptcy Code is satisfied. Further, under the Plan, there are no interests junior to Class 5, Equity Interests, and as such, the requirement of subsection 1129(b)(2)(C)(ii) is likewise satisfied.

As described herein, with respect to Class 5, a deemed rejecting Class, the Plan is both fair and equitable and does not unfairly discriminate. Accordingly, the Plan, as a matter of law, should be confirmed over the deemed rejection by Class 5.

V. CONCLUSION

For the reasons established in this Memorandum, the Plan Proponents submit that the First Amended Joint Plan of Liquidation Proposed by the Debtors and the Official Committee of Unsecured Creditors dated May 25, 2007 should be confirmed.

RESPECTFULLY SUBMITTED,

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