

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

IN RE:	§	Case No: 06-51848 (Jointly Administered)
	§	
CEP Holdings, LLC, <u>et al.</u>	§	Chapter 11
	§	
Debtors. <sup>1</sup>	§	Judge Marilyn Shea-Stonam

**MOTION OF HONDA OF AMERICA MFG., INC. FOR DETERMINATION OF  
ADMINISTRATIVE CLAIM IN ACCORDANCE WITH THE TERMS OF FIRST  
AMENDED JOINT PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS AND  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Now comes Honda of America Mfg, Inc. (“HAM”), on its behalf and on behalf of Honda of South Carolina Mfg, Inc. (“HSC”) (hereinafter collectively referred to herein as “Honda”). Honda hereby moves the Court for allowance of an administrative claim, pursuant to Section 503(b) of the Bankruptcy Code.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear and decide this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

2. The above-captioned Debtors commenced these cases on September 20, 2006 (“Petition Date”) by filing their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”).

3. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their affairs as debtors-in-possession.

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

4. The Debtors are, among other things, manufacturers of products that are used in the automotive and motor vehicle industry.

5. Prior to the Petition being filed, Honda purchased parts for its all terrain vehicles (ATV's) from Debtor, Thermoplastic Acquisition, LLC. Honda purchased parts that were made mainly at the Bishopville, South Carolina facility. The Bishopville facility produced one hundred percent (100%) of its manufactured parts for Honda. Prior to the Petition being filed, Honda had existing purchase orders in place that the Bishopville facility was obligated to fulfill.

6. Honda had certain tooling in place at the Bishopville facility, and its own production schedule of its ATV vehicles was dependent upon parts produced by suppliers such as the Debtors at the Bishopville facility. Production of ATV vehicle parts at the Bishopville facility impacted production lines of Honda facilities.

7. Shortly after the Petition Date, the Debtors filed an Emergency Motion pursuant to Sections 362, 363, and 364 of the Bankruptcy Code, and Bankruptcy Rules 4001(B) and (C), for Interim and Final Orders (I) Authorizing Debtors to Incur Post-Petition Secured Indebtedness, (II) Granting Security Interest and Priority Claims, (III) Granting Adequate Protection; (IV) Modifying Automatic Stay, and (V) Setting Final Hearing [Docket No. 66] ("Emergency Motion").

8. As described in Honda's Objection to the Emergency Motion [Docket No. 91], Honda was not given adequate notice or time to inquire before certain deadline dates were scheduled. Honda hereby incorporates the facts and circumstances recited in its Objection.

9. Pursuant to certain actions described by the Debtors in their Emergency Motion and Honda's Objection, Honda was involuntarily forced (under Debtors' threat of immediate cessation of production which would have disrupted Honda's production facilities and caused

immense economic and other damages to Honda) to become an Assisting Customer and pay unwarranted additional monies not contractually provided for to the Debtors to assure Debtors' performance under existing contracts.<sup>2</sup>

10. On October 2 and 3, 1996, Debtors presented Honda with an agreement that included a "Price Surcharge" of \$539,000.00 to be paid immediately by Honda in order to continue production of component parts from September 20, 2006 to October 31, 2006. Debtors knew that the component parts only were made by them for Honda. Honda had a single source, the Debtors, for the component parts at that time. Debtors made it quite clear that failure to pay "would result in the ceasing of production of your products." Despite the fact that purchase orders were already in place, Honda had to pay the \$539,000.00 price surcharge. (*See* corresponding documents attached as Exhibit A.)

11. As an Assisting Customer, Honda was required to pay \$539,000.00 for continued production of its parts through October 31, 2006. A Final DIP Order authorized the Debtors to enter into certain documents with Wachovia and the Subordinated Participating Customers for an aggregate maximum principal amount of \$30,880,000.00. Subject to the terms of the Plan, all amounts due and owing to Wachovia and the Subordinating Participating Customers are to be paid in full, if not already paid in full.

12. Honda's post-petition payment of \$539,000.00 that it was involuntarily forced to make (under Debtor's threat of immediate cessation of production) allowed the Debtors' Bishopville facility to continue to operate for thirty days post-petition.

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<sup>2</sup> Debtors' actions may be determined to amount to a rejection of existing executory contracts with Honda without compliance by the Debtors with the mandatory provisions of §365 of the Bankruptcy Code. Debtors took no formal action through this Court to reject the existing executory contracts. In the alternative, Honda also makes this claim for damages caused pursuant to 11 U.S.C. § 365(d) and the rejection of the existing executory contracts. To the extent that this administrative claim is allowed, Honda will amend its amended proof of claim accordingly. Honda has filed a proof of claim and an amended proof of claim for damages on the basis of a rejection of the existing executory contracts. The attached documentation also is in support of the rejection damages claim.

13. Debtors committed a wrongful act and/or threat, a threat of failure to produce the component parts, which impacted Honda's continued production lines within a very limited time to respond. The facts in this case are very similar to those found in Blodgett v. Blodgett (1990), 49 Ohio St. 3d 243, 245-246 and General Motors Corp. v. Paramount Metal Products Co., 90 F.Supp. 2d 861, 875 (E.D. Mich. 2000), citing Mancino v. Friedman (1980), 69 Ohio App. 2d 30, 36. Said post-petition actions were damaging to Honda. Said actions require reimbursement of the \$539,000.00 post-petition amount paid to Debtors.

14. Additionally, because the Debtors threatened to continue their post production material breaches of existing executory contracts during the course of the Debtors' bankruptcy case, and to continue to demand additional unwarranted fees and charges from Honda to assure continued production that the Debtors were obligated to deliver to Honda, the Debtors forced Honda to incur added production costs, moving expenses, professional fees, and other related expenses for moving production out of Bishopville to another facility that agreed to take over the production that the Debtors were unwilling and unable to provide under their existing contracts with Honda.

15. The post-petition move of this production was solely due to the breaches by Debtors of Honda's contracts and the predicted sale and closure of the Bishopville facility. Honda's costs and expenses for the move and increased costs related to purchase orders for November 2006 are summarized below.

	<b><u>Summary Description of Costs and Expenses</u></b>	<b><u>Amount</u></b>
1.	Expedites (HAM)	\$ 12,641.38
2.	Manpower (HAM)	47,097.00
3.	Travel Expenses (HAM)	27,648.34
4.	Morton Custom Plastic Compensation (HAM)	34,079.00
5.	Morton Custom Plastic Compensation (HSC)	147,031.00
6.	Expedites (HSC)	49,828.00
7.	Manpower (HSC)	93,958.00

8.	Miscellaneous (HSC)	11,762.00
9.	Travel Expenses (HSC)	8,226.00
10.	Professional Fees (HAM)	60,604.00
11.	November Cost Impact (HAM)	462.82
12.	November Cost Impact (HSC)	49,149.07
13.	Assisting Customer Payment Demand (October)	539,000.00
	<b>Total</b>	\$ 1,081,487.60

*(See corresponding documents attached as Exhibit B. Additional documents which contain information that will need to be redacted will be supplied to Debtors prior to any hearing held on this Motion.)*

16. These obligations of the Debtors occurred post-petition. The continued presence of Honda in the Bishopville facility obviously preserved value for the estate and the forced Assisting Customer Payment allowed the Bishopville facility to continue production until at least October 31, 2006. Shortly after requiring Honda to enter into this Assisting Customer Payment, Debtors represented to this Court that Bishopville as a going concern would have more value at sale. Debtors represented to this Court that the paramount goal of any proposed sale of property of a bankruptcy estate is to maximize the proceeds received by the estate. (See Motion for Order: (A) Granting Authority for the Sales of Assets Pursuant to § 363(b); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases Pursuant to § 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; and (E) Approving From of Notice [Docket 103]).

17. Section 503(b)(1) provides, in pertinent part, that “the actual, necessary costs and expenses of preserving the estate” shall be allowed as an administrative expense. 11 U.S.C. § 503(b)(1).

18. Section 503(b)(4) provides that there shall be allowed as an administrative expense the “reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowed under [Section 503(b)(3)], based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.” 11 U.S.C. §503(b)(4).

### **CONCLUSION**

19. It is beyond dispute that Honda’s actions, as forced by Debtors, in these bankruptcy cases have served to “preserve the estate” and “substantially contributed” to the progress of the Debtors.

20. Accordingly, HAM is entitled to an administrative expense claim for the costs and expenses summarized above.

21. Alternatively, Debtors’ actions may be determined to amount to a rejection of existing executory contracts with Honda without compliance by the Debtors with the mandatory provisions of §365 of the Bankruptcy Code. Debtors took no formal action through this Court to reject the existing executory contracts. Honda has filed a proof of claim and an amended proof of claim for damages on the basis of a rejection of the existing executory contracts. To the extent that this administrative claim is allowed, Honda will amend its amended proof of claim accordingly. In the alternative, Honda also makes this claim for damages caused pursuant to

11 U.S.C. § 365(d) and the Debtors' rejection of the existing executory contracts.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2007, the foregoing was served via first class mail postage prepaid, or electronically as indicated to the entities listed below.

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