

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

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In re: :  
: Case No. 06-61796  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> : (Jointly Administered)  
: :  
Debtors. : Chapter 11  
: :  
: Honorable Russ Kendig  
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO  
SECTIONS 102 AND 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULES 2002(m) AND 9007, AUTHORIZING: (I) THE ESTABLISHMENT  
OF OMNIBUS HEARING DATES; AND (II) CERTAIN ELECTRONIC  
NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES**

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 sections 102 and 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002(m) and 9007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rules 2002-1 and 9013-1, for entry of an order authorizing: (i) the establishment of omnibus hearing dates; and (ii) certain electronic notice, case management and administrative procedures. In support of this Motion, the Debtors rely on the Affidavit of Joseph Mallak in Support of Chapter 11 Petitions and First Day Orders (the “**Mallak Affidavit**”). In further support of this Motion, the Debtors respectfully represent as follows:

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

## **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 predicates for the relief requested herein are sections 102 and 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002(m) and 9007 and Local Rules 2002-1 and 9013-1.

## **BACKGROUND**

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have requested that the Cases be 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. No trustee, examiner or official committee of unsecured creditors has been appointed.

### A. Summary of Capital Structure and Current Business Operations

6. Creative Engineered Polymer Products, LLC, (“**CEPP**”) is a limited liability company formed under the laws of the State of Ohio. CEPP is wholly owned by CEP Holdings, LLC (“**Holdings**”), a privately-held limited liability company formed under the laws of the State of Ohio. Holdings is a holding company whose sole asset is its membership interests in CEPP. CEPP has three subsidiaries: (i) Composite Parts Mexico S.A. de C.V. (the “**CEP Mexico**”), a Mexican corporation which is 99.9% owned by CEPP and .01% owned by non-debtor Reserve Capital Group, Ltd; (ii) Thermoplastics Acquisition, LLC (“**Thermoplastics**”), an Ohio limited liability company which is wholly owned by CEPP and is a debtor in these cases; and (iii) CEP Latin America, LLC (“**CEP LA**”), a non-debtor Ohio limited liability company which is wholly

owned by CEPP. CEP LA was never funded and has no operations or debt. The principal place of business of the Debtors is 3560 West Market Street, Suite 340, Akron, Ohio 44333.

7. The Debtors operate 10 manufacturing plants in Ohio, Michigan, Alabama, South Carolina and Mexico, including a plant in Canton, Ohio. CEPP operates six plants in Ohio, Michigan and Alabama. Non-debtor CEP Mexico operates two plants in Mexico. Thermoplastics operates one plant in Ohio and one in South Carolina.

8. CEP and its debtor subsidiaries are custom molders and extruders of rubber and plastic products, primarily for the OEM automotive market. The Debtors have achieved a unique position as preferred suppliers of high quality products to major customers, including General Motors, Delphi Corporation, Visteon, Nissan, Daimler-Chrysler, Honda and GKN Automotive. CEP has maintained this position as a leader in the marketplace through innovative manufacturing techniques and by continuously improving its broad base of material and process technology.

9. Gross sales for the Debtors' businesses are projected to be approximately \$190 million for fiscal 2006. The Debtors' nearly 1,106 employees manufacture the Debtors' products at ten strategically located manufacturing facilities in Ohio, Michigan, South Carolina, Alabama and Mexico.<sup>2</sup> The Debtors also maintain a Technical Center in Livonia, Michigan which offers design assistance and program management services for the Debtors' businesses.

B. Prepetition Debt Structure

10. The Debtors were formed as part of two separate purchase transactions on August 16, 2005 and December 20, 2005, respectively. As part of the August 16, 2005 transaction, the CEPP and CEP Mexico businesses were purchased from the Carlisle Companies. In conjunction

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<sup>2</sup> CEP Mexico, a non-debtor, produces high quality plastic products at two factories in Mexico.

with the transaction, CEP Acquisition LLC n/k/a CEPP entered into a Loan and Security Agreement, dated as of August 16, 2005 (the “**Prepetition CEPP Credit Agreement**”) with Wachovia Capital Finance Corporation (Central) (“**WCFC**”), as both Agent and Lenders thereunder. The Prepetition CEPP Credit Agreement provided two term loans and a revolving credit facility to CEPP in the maximum amount of \$45 million (collectively, the “**CEPP Prepetition Loan**”). The CEPP Prepetition Loan is secured by substantially all the assets of CEPP, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, real property, accounts receivable, other personal property and proceeds thereof (collectively, the “**Prepetition CEPP Collateral**”). As of the Petition Date, the amount outstanding under the CEPP Prepetition Loan was not less than \$21,693,507.60 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition CEPP Credit Agreement and applicable law).

11. As part of the December 20, 2005 transaction, CEPP purchased the Thermoplastics business from Parker Hannifan Corporation. In conjunction with the transaction, Thermoplastics entered into a Loan and Security Agreement, dated as of December 21, 2005 (the “**Prepetition Thermoplastics Credit Agreement**” and together with the Prepetition CEPP Credit Agreement, the “**Prepetition Credit Agreements**”) with WCFC, as both Agent and Lenders. The Prepetition Thermoplastics Credit Agreement provided a term loan and a revolving credit facility to Thermoplastics in the maximum amount of \$5 million (collectively, the “**Thermoplastics Prepetition Loan**” and together with the CEPP Prepetition Loan, the “**Prepetition Loans**”). The Thermoplastics Prepetition Loan is secured by substantially all the assets of Thermoplastics, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, accounts receivable, other personal property and proceeds thereof

(collectively, the “**Prepetition Thermoplastics Collateral**” and together with the Prepetition CEPP Collateral, the “**Prepetition Collateral**”). As of the Petition Date, the amount outstanding under the Thermoplastics Prepetition Loan was not less than \$4,219,688.58 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition Thermoplastics Credit Agreement and applicable law). The Prepetition Credit Agreements are cross-defaulted and cross-collateralized.

12. Prior to the Petition Date, Visteon Corporation, General Motors Corporation and Delphi Corporation (collectively, the “**Customers**”) and WCFC entered into a Subordinated Participation Agreement dated June 30, 2006 and a First Amendment to Subordination Participation Agreement dated August 18, 2006 pursuant to which the Customers purchased subordinated, last out participation interests (the “**Participation Interests**”) in the Prepetition Loan Facilities. The Customers purchased \$2.9 million of Participation Interests, the proceeds of which were used by the Debtors to fund their operations and the building of the Customers’ parts.

C. Events Leading To The Filing Of These Chapter 11 Cases

13. The Debtors and other automotive suppliers and manufacturers have faced a series of unanticipated operational and market challenges that have adversely affected their operations and cash flows. These challenges have impaired both the Debtors’ suppliers and customers which in turn have severely affected the Debtors’ operations and businesses.

14. With respect to suppliers, the September 2005 hurricanes in the Gulf Coast region have disproportionately damaged manufacturers who rely on plastic resins. Shortly after the hurricanes, the Debtors began experiencing sharp increases in their principal raw materials (plastic resins) which increases were attributable to interrupted refining capacity. With prices already high due to increased global demand, insecurity and supply constraint issues, the

hurricanes magnified the rise in the price of crude oil and natural gas. The Debtors have continued to experience significantly higher costs for raw materials.

15. With respect to the Debtors' customers, the Debtors have been unsuccessful in recovering much of these increases in raw material costs from their customers through price increases. The structure of the American automotive industry is such that it is difficult for manufacturers such as the Debtors to pass rising material costs on to customers. Faced with rising costs, the Debtors have expended substantial effort in attempting to source cheaper alternatives (such as recycled materials and alternative formulations) for substitution of higher cost materials. Despite these efforts, most of the Debtors' customers have delayed approving these material substitutions. Although the Debtors are now starting to experience success in receiving approvals of the material substitutions, the damage to the Debtors' liquidity is irreversible outside the protections of the Bankruptcy Code.

16. In addition to increased material costs, the general instability of the industry has directly harmed the Debtors' liquidity. For example, the Debtors have been impaired by the bankruptcy filing of several large OEM's, including Delphi Corporation, the Debtors' second largest customer. The bankruptcy filing of Delphi in October 2005 alone resulted in a cash loss to the Debtors of nearly \$1.7 million based on the Debtors' unpaid prepetition claim in that case.

17. In addition to bankruptcy filings in the industry, the general credit downgrade has led to delays and increasingly delinquent customer payments for approved tooling programs. These programs are typically managed and paid for by the Debtors for the benefit of a particular customer which subsequently reimburses the Debtors. The increased delays and failure of customers to pay for these programs have decreased the portion of accounts receivable against

which Wachovia will lend under the Prepetition Credit Agreements. This, in turn, has further impaired the Debtors' liquidity.

18. The Debtors have further experienced excess capacity at their plants due to decisions by their customers. For example, GM's transfer from the GMT800 platform to the GMT900 platform has led to substantial idling of capacity. In late 2005, GM started phasing out the GMT800 platform, a manufacturing platform in which the Debtors were heavily involved. The Debtors have been harmed by this action because (i) the Debtors have significant up front costs invested in the GMT800 platform and (ii) GM has not provided the Debtors with replacement work in the new GMT900 platform. Thus, the Debtors have not recovered their costs associated with the GMT800 platform and are operating at significantly lower capacity at several manufacturing plants due to a failure to receive work under the GMT900 platform.

D. Prepetition Activities

19. In an attempt to create maximum value for the Debtors' creditors, the Debtors worked with the Customers and WCFC to allow the Debtors to formulate a restructuring plan which 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 WCFC and the Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. This window expired September 6, 2006.

20. Given the size and complexity of the Debtors' operations and the continuation of the market circumstances described above, the Customers, WCFC and the Debtors ultimately determined that an out-of-court restructuring was not feasible. Thus, after exploring all options and faced with a severe liquidity crisis, the Debtors have no choice but to commence these cases

as the only means of preserving the Debtors as going concerns, and, thus, maximize the value of the Debtors' assets for their creditors.

21. With the aide of this Court and the support of WCFC and the Customers, the Debtors' goal is to stabilize their business operations and financial situation and sell their assets in a manner to maximize value for the Debtors' Creditors. As detailed in the Debtors' DIP Financing Motion,<sup>3</sup> filed contemporaneously herewith, WCFC and the Customers have agreed to provide post-petition financing and cash infusions to the Debtors which financing and cash infusions will fund the Debtors' costs of operations, wind down, restructuring and liquidation until such time that the Debtors' assets are sold pursuant to section 363 of the Bankruptcy Code. The Debtors believe that this course of action will maximize the value of their assets for all creditors.

### **RELIEF REQUESTED**

22. By this Motion, the Debtors seek an order directing that all matters be heard on monthly omnibus hearing dates to be scheduled in advance by the Court and establishing filing and notice procedures in these Cases. In addition, the Debtors seek authorization for service of certain pleadings by electronic mail ("**email**") as set forth herein. The Debtors submit that by establishing these case management procedures at the outset of these cases, the administration of these cases will be simplified and the cost associated therewith will be dramatically reduced for all parties in interest.

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<sup>3</sup> The full title of the DIP Financing Motion is CEP Holdings, LLC's Motion for Emergency Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief.



**A. Proposed Omnibus Hearing Dates**

23. Given the large volume of pleadings that will be filed in these cases and the number of interested parties, the Debtors request the entry of an order scheduling regular, monthly omnibus hearing dates (the “**Omnibus Hearing Dates**”). Subject to the Court’s schedule, and other than for good cause shown, the Debtors request that all matters be heard on the Omnibus Hearing Dates.<sup>4</sup>

24. The Debtors propose that the Omnibus Hearing Dates for these cases be set on the following dates:

Tuesday, October 24, 2006 at 2:00 p.m.

Tuesday, November 14, 2006 at 10:00 a.m.

Tuesday, December 19, 2006 at 10:00 a.m.

25. Section 105(a) of the Bankruptcy Code provides that bankruptcy courts “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). By scheduling the Omnibus Hearing Dates, the Court will facilitate the Debtors’ reorganization efforts and the efficient administration of these cases by enabling both the Debtors and all parties in interest to prepare and present motions or other forms of relief in an orderly and timely basis. Additionally, such relief will minimize the costs associated with numerous and irregularly scheduled hearing dates.

26. While Omnibus Hearing Dates promote the expeditious and economical administration of these cases, parties will retain their rights to seek expedited hearings, where appropriate, which procedures shall be governed by the Local Rules.

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<sup>4</sup> To the extent any party requests permission from the Court to appear telephonically at a hearing due to special circumstances, the Debtors request that such party be required to notify counsel for the Debtors regarding such request at least three (3) business days prior to the applicable hearing date.

**B. Proposed Omnibus Hearing Agenda**

27. By 5:00 p.m. two (2) business days prior to each Omnibus Hearing Date, Debtors' counsel shall file a proposed agenda with regard to the matters that are scheduled to be heard on such Omnibus Hearing Date (the "**Proposed Hearing Agenda**"). The Proposed Hearing Agenda is a proposal for the convenience of the Court and counsel, and it is not determinative of the matters to be heard on that day or whether there will be a settlement or a continuance.

28. The Proposed Hearing Agenda will include: (a) the docket number and title of each matter to be scheduled for hearing on such Omnibus Hearing Date, including the initial filing and any responses, replies or documents related thereto; (b) whether the matters are contested or uncontested; (c) whether the matters have settled or are proposed to be continued; (d) other comments that will assist the Court; and (e) a suggestion for the order in which the matters should be addressed.

**C Foreign Attorneys**

29. The Debtors anticipate that a large number of attorneys from across the country may become involved in these chapter 11 cases (the "**Foreign Attorneys**"). The Debtors urge all attorneys to carefully review the Local Rules and, in particular, Local Rule 2090-1 regarding the procedures and requirements for appearing and practicing before this Court. *See* <http://www.ohnb.uscourts.gov/filerinfo/code-rules/LocalBankruptcyRules-OHNB.pdf>.

30. Specifically, Local Rule 2090-1 provides that:

Any member in good standing of the Bar of any court of the United States or of the highest court of any state may, upon written or oral motion, be permitted to appear and participate in a case or proceeding. Unless otherwise ordered by the Court, it shall not be necessary for any attorney entitled to practice before the Court or permitted to appear and participate in a case or proceeding to associate with or to designate an attorney with an office in this district upon whom notices, rulings, and communications may be served.

**D. Document Requests and Access to Docket**

31. The Debtors also anticipate a large volume of document requests in these Cases. The Debtors will advise interested parties that paper electronic copies of all pleadings and documents are available for a fee via ECF on the Court's web site at <http://www.ohnb.uscourts.gov>.

32. Further, contemporaneously herewith, the Debtors filed an application to employ BMC Group, Inc., as their claims and noticing agent (the "**Claims Agent**"). The Claims Agent maintains a web site at: <http://www.bmcgroup.com/cep>, where electronic copies of all pleadings and other documents will be posted within three (3) business days of filing and may be viewed free of charge.

**E. Proposed Electronic and Other Notice Procedures**

33. Due to the significant number of creditors and other parties in interest, and to reduce the administrative costs and burden on the Debtors and other parties, the Debtors propose the following procedures regarding notice in these chapter 11 cases (the "**Notice Procedures**").<sup>5</sup>

**(a) 2002 Service List and Electronic Mail Service**

34. Any party in interest who wishes to receive notice of pleadings filed in these Cases shall file a written notice of appearance and request for service of papers, which shall include such party's (a) name; (b) address; (c) name of client, if applicable; (d) telephone

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<sup>5</sup> The Notice Procedures shall not apply to any service of notice by the Debtors that is otherwise specified in the Bankruptcy Rules and as more fully described in the proposed order attached hereto as **Exhibit A**. Additionally, the Debtors further propose that, except as set forth herein or as otherwise ordered by the Court, proceedings described in Bankruptcy Rule 2002 shall be noticed in accordance with the applicable provisions of such rules. A list of Bankruptcy Rule 2002 notices carved out of the Notice Procedures described herein are set forth more fully in paragraph 20 of the proposed order attached hereto as **Exhibit A**.

number; (e) facsimile number; and (f) email address.<sup>6</sup> The Debtors will maintain a list (the “**2002 Service List**”) of all such requests (the “**2002 Notices**”) and will update the 2002 Service List as often as practicable, but in no event less frequently than every ten (10) business days. Every time the 2002 Service List is updated, the Debtors will post it on the Claims Agent’s web site. Additionally, the Debtors respectfully request that the 2002 Service List be posted on the Court’s web site.

35. Except as otherwise set forth in the proposed order attached hereto as **Exhibit A**, the Debtors propose that all pleadings and documents filed with the Court in these Cases, including the initiation of adversary proceedings, be served via email on the 2002 Service List, which shall be deemed to constitute proper service for all purposes on all parties who are sent such email service. All pleadings and documents served via email shall be in portable document format (“**PDF**”), if available, and the subject line of the email shall indicate the Debtors’ case name and the date of filing and service of such pleadings and documents. Further, parties shall include the title(s) of the pleadings(s) and/or document(s) being served in the text of the email.

36. If a 2002 Notice fails to include an email address, the Debtors will forward a copy of the Court’s order approving these procedures to such party within five (5) business days specifically requesting an email address. If no email address is provided in response to such request, such party will not be added to the 2002 Service List and will not be served with copies of pleadings and documents filed in these cases unless such pleadings and/or documents directly affect such party.

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<sup>6</sup> Parties who include more than one email address in their 2002 Notice must designate only one email address as the official email address for effectuating service. The additional email addresses will be added to the 2002 Service List for informational purposes only.

37. Any party who wishes to be exempt from providing an email address for the 2002 Service List must make a written request for such an exemption to counsel for the Debtors, Joseph F. Hutchinson, Jr., Esq., Baker Hostetler LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114 or via email at [jhutchinson@bakerlaw.com](mailto:jhutchinson@bakerlaw.com). The Debtors will allow an exemption only upon good cause shown, and if the Debtors deny a requested exemption, such party may seek an exemption upon filing the appropriate motion with the Court and after notice and a hearing.

38. The initial 2002 Service List will consist of

- (a) counsel for the Debtors: Joseph F. Hutchinson, Jr., Thomas M. Wearsch and Eric R. Goodman at [jhutchinson@bakerlaw.com](mailto:jhutchinson@bakerlaw.com), [twearsch@bakerlaw.com](mailto:twearsch@bakerlaw.com) and [egoodman@bakerlaw.com](mailto:egoodman@bakerlaw.com), respectively;
- (b) the Office of the United States Trustee at [maria.d.giannirakis@usdoj.gov](mailto:maria.d.giannirakis@usdoj.gov);
- (c) the Debtors: Joseph Mallak at [jmallak@cepprod.com](mailto:jmallak@cepprod.com);
- (d) counsel for the secured lenders: Jeremy Downs at [jeremy.downs@goldbergkohn.com](mailto:jeremy.downs@goldbergkohn.com) and Shira Isenberg at [shira.isenberg@goldbergkohn.com](mailto:shira.isenberg@goldbergkohn.com);
- (e) counsel for General Motors: Donald Baty at [dbaty@honigman.com](mailto:dbaty@honigman.com);
- (f) counsel for Visteon: Thomas Radon at [radom@butzel.com](mailto:radom@butzel.com); and
- (g) counsel for Delphi Corp.: Michael Hammer at [mhammer@dickinson-wright.com](mailto:mhammer@dickinson-wright.com).

39. With respect to filings for which particular notices are required to be served on all creditors and parties in interest, including Bankruptcy Rules 2002(a)(2) and (3), 4001, 6004, 6006, 6007 or 9019, parties shall serve all such filings only on the 2002 Service List and to other interested parties by email, first class United States mail or otherwise in accordance with the following procedures, unless otherwise ordered by the Court:

- (a) Filings related to the use, sale, lease or abandonment of property other than in the ordinary course of business shall be served on each entity asserting an interest in the property;
- (b) Filings related to relief from, or otherwise related to, the automatic stay in so far as it affects property shall be served on each entity asserting a lien or encumbrance on the affected property;
- (c) Filings relating to the use of cash collateral or obtaining credit shall be served on each adversely affected entity asserting an interest in the cash collateral or each adversely affected entity asserting a lien or other interest in property on which a lien is proposed to be granted;
- (d) Filings relating to approval of proposed compromises or settlements shall be served on any entity that is a party to the compromise or settlement or that may be directly adversely affected thereby;
- (e) Filings relating to rights under section 365 of the Bankruptcy Code shall be served on each party to the executory contract(s) or unexpired lease(s) affected thereby;
- (f) Filings objecting to applications (including final applications) for payment of compensation or reimbursement of expenses shall be served on the professional whose application is under objection; and
- (g) Notice of other matters for which the Bankruptcy Rules specifically require notice to all parties in interest shall be served on all creditors and equity security holders of the Debtors and other parties in interest, except as set forth herein or as otherwise authorized by this Court.

**(b) Noticing a Matter for Hearing: Objection and Reply Deadlines**

40. In the event that a party files a motion or an application for relief on or before twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, the Debtors propose that the matter be set for hearing on the next regularly scheduled Omnibus Hearing Date and that the objection deadline be five (5) business days prior to the Omnibus Hearing Date, with any replies thereto due no later than two (2) business days prior to the Omnibus Hearing Date; provided, however, the Debtors may propose to schedule matters on a

date other than the next applicable Omnibus Hearing Date if the Debtors in good faith believe that the hearing on a particular matter may exceed one (1) hour.

41. In the event that a party files a motion or an application for relief at least ten (10) calendar days, but less than twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, and provided that Bankruptcy Rule 2002 does not require a longer notice period, the Debtors propose that the matter be set for hearing on the next regularly scheduled Omnibus Hearing Date and that the objection deadline be two (2) business days prior to the Omnibus Hearing Date, with any replies thereto due no later than the start of the omnibus hearing at which the matter will be heard; provided, however, the Debtors may propose to schedule matters on a date other than the next applicable Omnibus Hearing Date if the Debtors in good faith believe that the hearing on a particular matter may exceed one (1) hour.

42. In the event that a party files a motion or an application for relief less than ten (10) calendar days prior to the next regularly scheduled Omnibus Hearing Date and an expedited hearing is not otherwise granted by the Court, the Debtors propose that the matter be scheduled for the next regularly scheduled Omnibus Hearing Date that is more than twenty (20) calendar days from the date of the filing of the motion or application and that the objection and reply deadlines be the same as those outlined in paragraph 40 above; provided, however, the Debtors may propose to schedule matters on a date other than the next applicable Omnibus Hearing Date if the Debtors in good faith believe that the hearing on a particular matter may exceed one (1) hour.

43. If any party violates the Notice Procedures detailed herein by, among other things, setting a hearing for a date and time other than an Omnibus Hearing Date without an order from the Court, or setting a hearing on the next regularly scheduled Omnibus Hearing Date without

adequate notice, the Debtors shall forward a copy of the Court's order approving these procedures to such party within five (5) business days after such filing. If the notice is corrected at least twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, then the hearing will be scheduled on the next Omnibus Hearing Date. If the notice is corrected less than twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, then the hearing with respect to such filing will be scheduled on the next regularly scheduled Omnibus Hearing Date that is more than twenty (20) calendar days from the date of the filing of the corrected notice.

44. The Debtors submit that if no objections are timely filed, then the relief requested in any filing can be granted without a hearing.

45. All filings shall be filed in accordance with the Bankruptcy Rules and the Local Rules unless otherwise set forth herein. Additionally, the Notice Procedures set forth herein are supplementing, not supplanting, the Bankruptcy Rules and the Local Rules. The purpose of this Motion and the procedures contained herein is to alleviate administrative burdens on the Court, the Clerk's Office and all other parties in interest and to streamline certain case management procedures. Accordingly, if Bankruptcy Rule 2002 requires a certain number of days notice for a particular filing, those rules shall be followed.

46. Additionally, nothing contained herein shall prejudice the rights of any party in interest to move the Court to further limit or expand notice of matters and proceedings upon a showing of good cause, including, but not limited to, the right to file a motion upon shortened notice or to seek an enlargement or reduction of time pursuant to Bankruptcy Rule 9006.

(c) **Motions for Relief from the Automatic Stay**

47. Unless the Court orders otherwise, for good cause shown, where the filing is a motion for relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code (a



“**Relief Motion**”), and where such motion is filed more than fourteen (14) calendar days prior to the next regularly scheduled Omnibus Hearing Date, the preliminary status hearing on such matter should be scheduled on the next regularly scheduled Omnibus Hearing Date. The preliminary hearing for any Relief Motion that is filed less than fourteen (14) calendar days prior to the next regularly scheduled Omnibus Hearing Date should be scheduled on the next regularly scheduled Omnibus Hearing Date that is more than fourteen (14) calendar days from the date of the filing of the Relief Motion. Except as specifically set forth herein, all other procedures for Relief Motions shall otherwise conform to the Bankruptcy Rules and the Local Rules.

48. Notwithstanding section 362(e) of the Bankruptcy Code, by setting a Relief Motion on an Omnibus Hearing Date, the moving party will be deemed to have consented to the automatic stay remaining in full force and effect until the conclusion of the preliminary hearing. At the preliminary hearing the Court may continue the automatic stay in full force and effect until a final hearing. Any party seeking relief from the automatic stay who does not so consent shall file and properly serve a motion for an expedited hearing.

**F. Evidentiary Hearings**

49. Pursuant to Bankruptcy Rule 9014 and in compliance with Local Rule 9014-1, in the event that an objection is made to a motion or an application for relief, the hearing on such motion or application shall be an evidentiary hearing at which witnesses may testify, unless the parties otherwise agree that any such hearing shall not be an evidentiary hearing and the Debtors’ Proposed Hearing Agenda provides as such.

50. Any party who intends to introduce evidence or witnesses with respect to a matter that is the subject of a timely filed and properly served objection shall identify with reasonable particularity its proposed evidentiary exhibits and witnesses in a written disclosure (each, a “**Disclosure**”), which shall be served only on the adverse party. With respect to the party that

files a timely objection, such Disclosures shall be made the same date as the filing of the timely objection in accordance with paragraphs 40 through 42 above. Such Disclosures shall not be filed with the Court, unless otherwise directed by the Court.

51. Any party who filed a motion or an application for relief that is subject to an objection shall serve its Disclosure on the adverse party and any party that intends to introduce evidence or witnesses with respect to a motion or an application for relief that is not subject to an objection, or any other party in interest who intends to present evidence on an Omnibus Hearing Date shall serve its Disclosure on the Debtors as follows: (a) with respect to a filing that is served at least twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, at least three (3) business days prior to the Omnibus Hearing Date on which the motion or the application will be heard; and (b) with respect to a filing that is served at least ten (10) calendar days, but less than twenty (20) calendar days prior to the next regularly scheduled Omnibus Hearing Date, at least one (1) business day prior to the Omnibus Hearing Date on which the motion or the application for relief will be heard.

52. After consultation with each party who made a Disclosure, the Debtors will indicate on the Proposed Hearing Agenda whether the matter shall be heard on the next regularly scheduled Omnibus Hearing Date or at a subsequently scheduled off-Omnibus Hearing Date to be set by the Court. Additionally, the Debtors will describe the status of contested evidentiary hearings on the Proposed Hearing Agenda.

53. Further, upon reasonable request, the parties shall provide copies of all proposed evidentiary exhibits and make all witnesses available for deposition at the expense of the requesting party and within a time period to reasonably facilitate conducting the evidentiary hearing as scheduled.

54. Any party who fails to identify its evidentiary exhibits or witnesses as provided herein may be precluded, at the Court's discretion, from presenting such evidentiary exhibits or witnesses at the hearing on the matter.

55. Nothing contained herein shall preclude any party from presenting proffers in connection with uncontested matters or agreeing with an opposing party to present proffers in any contested matter or otherwise stipulating certain facts or documents into evidence.

#### **APPLICABLE AUTHORITY**

56. Bankruptcy Rule 2002(a) provides that, unless otherwise ordered by the Court, notice of certain matters must be given to, among others, all of the Debtors' creditors, equity security holders and other parties in interest. The Bankruptcy Rules, however, further provide, that "[t]he Court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." Fed. R. Bankr. P. 2002(m); *see also* Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, . . . the form and manner in which the notice shall be given."); Fed. R. Bankr. P. 9036 (stating that when a party requests notice by a specified electronic transmission, "the court may direct the . . . person to send the information by such electronic transmission").

57. In addition, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutes or under equitable common law principles. Specifically, section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or

making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a).

58. Section 102(1) of the Bankruptcy Code states that where the Bankruptcy Code provides for an action to occur “after notice and a hearing,” such action may occur “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances . . . .” 11 U.S.C. § 102(1)(A).

59. As explained above, this case is large, complex and involves thousands of creditors and parties in interest. The Debtors expect numerous parties to file notices of appearance and requests for service of the various filings in these cases. The Debtors also expect that they and other parties will file numerous pleadings on an irregular basis throughout each month, which would ordinarily result in numerous, fragmented hearings. The costs and burdens associated with multiple hearings per month, plus the costs associated with copying and mailing, overnighting or otherwise serving paper copies of all filings will impose expensive, economic and administrative burdens on the Debtors’ estates, the Court, and all other parties in interest.

60. Indeed, mass mailings will be extraordinarily costly to the Debtors’ estates and will require the Debtors to divert limited resources. Moreover, the cost of copying and serving every pleading on a large number of parties by overnight delivery on the same day/night as the filing occurred has proven extremely costly to other debtors in large Chapter 11 cases. Additionally, the continual drafting and filing of one-off motions to limit notice increases the economic burden on the Debtors’ estates. Therefore, the Debtors submit that electronic notice, whenever possible, should be permitted to alleviate this burden.

61. As this Court is keenly aware, with the CM/ECF system, the legal fiction that the clerk’s office is always open becomes a reality since pleadings can be filed and accessed 24

hours a day, 7 days a week. *See* Fed. R. Bankr. P. 5001. Due to CM/ECF and email service, “[a]ttorneys are no longer hostages of the U.S. Postal Service” with respect to receiving service because when a document is filed, the parties will receive nearly instantaneous notice and copies thereof. *See* Hon. Stephen S. Mitchell and Dion W. Hayes, *Perspectives on the Brave New World of Electronic Case Filing*, Va. Lawyer, Oct. 2003 at 27.

62. Further, pursuant to the Administrative Procedures for Filing, Signing, Maintaining, and Verifying, and Serving Pleadings and Papers in the ECF System (Exhibit to General Order #02-2) (the “**CM/ECF Administrative Procedures**”), a registered CM/ECF participant “consent[s] to receiving electronic service of papers in lieu of mail service, unless otherwise provided by law. Upon electronic filing of a document, the System will generate a Notice of Electronic Filing, which will be automatically served electronically by the System on all parties who are registered ECF users.” CM/ECF Administrative Procedures ¶ II.D.1.

63. Pursuant to the terms of the Omnibus Hearing Date process and Notice Procedures, all parties on the 2002 Service List and all other parties in interest that may be directly affected by the relief sought in a particular filing will receive notice of such filing directly from the party submitting such documents to the Court well in advance of the applicable Omnibus Hearing Date. Further, all parties in these cases who are registered participants in this Court’s CM/ECF system will receive a “**Notice of Electronic Filing**” via email whenever a filing is effected, which will provide additional notice to such parties. Although email is nearly universally available, if a party can not reasonably obtain access to email, then such party may seek an exemption pursuant to the procedures set forth in paragraph 37 above in order to receive paper copies. Therefore, no party will be adversely affected by the proposed email service set forth herein.

64. The Debtors submit that adopting the Omnibus Hearing Date process and the Notice Procedures will substantially reduce administrative burdens and result in substantial cost savings to the Debtors' estates because of the reduction of time and money the Debtors will have to expend. Similarly, the Debtors further submit that adopting the Omnibus Hearing Date process and the Notice Procedures also will significantly reduce the administrative and economic burden placed on all other parties in interest.

65. The establishment of Omnibus Hearing Dates in particular will promote the efficient and orderly administration of these cases. Early notice to all parties in interest of regular, monthly hearings will enable all interested parties to plan efficiently for the use of hearing time, will avoid much of the need for expedited hearings and will lessen the burden on the Court and on the Debtors' estates. For these reasons, the Debtors believe that the proposed schedule of monthly Omnibus Hearing Dates is in the best interest of the Debtors, their estates, creditors and all other parties in interest.

66. Similar relief has been granted by courts in other large, complex Chapter 11 cases. *See In re US Airways Group, Inc.*, Case No. 04-13819-SSM (Bankr. E.D. Va. Sept. 14, 2004). Further, limited notice procedures are routinely granted by courts in this District and other bankruptcy courts in large Chapter 11 cases in order to reduce the expense of case administration. *See, e.g., In re RMA Mgmt. Assocs., Inc.*, No. 05-43959 (KW) (Bankr. N.D. Ohio July 8, 2005); *In re Nexpak Corp.*, No. 04-63816 (RK) (Bankr. N.D. Ohio July 19, 2004); *In re Republic Engineered Prods. LLC.*, No. 03-55118 (MSS) (Bankr. N.D. Ohio Oct. 8, 2003).<sup>7</sup> For the reasons stated herein, the Debtors believe the Omnibus Hearing Date process and the Notice Procedures are appropriate and should be approved and implemented in these cases.

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<sup>7</sup> Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of these orders will be made available to parties upon request from the Debtors' counsel.

**NOTICE**

67. Notice of the Motion has been given to (a) the Office of the United States Trustee for the Northern District of Ohio, (b) the Debtors' secured lenders, and (c) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice need be given.

68. Because this Motion presents no novel issues of law and the authorities relied upon are stated herein, the Debtors respectfully request that this Court waive the requirement contained in Local Bankruptcy Rule 9013-1(a) that the Debtors file a separate memorandum of law in support of this Motion.

69. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the Debtors request the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby.

70. No previous motion for the relief sought herein has been made to this or any other court.

**[Intentionally Left Blank]**

**WHEREFORE**, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit A** establishing omnibus hearing dates and authorizing certain electronic and other notice, case management and administrative procedures as specified herein, and granting such other and further relief as is just and proper.

Dated: September 20, 2006  
Cleveland, Ohio

CEP HOLDINGS, LLC, et al.,  
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.  
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