



## JURISDICTION AND VENUE

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and Article 12.1(d) of the Plan (as such term is defined below). Consideration of this Objection is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a) and 502 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## BACKGROUND

### Pre-Bankruptcy

4. The Debtors’ businesses in Ohio were acquired as part of two separate transactions. On August 17, 2005, Creative Engineered Polymer Products, LLC (“**CEPP**”), a Debtor, acquired facilities from Carlisle Engineered Products, Inc. (“**Carlisle**”) in (i) Chardon, Ohio; (ii) Canton, Ohio; (iii) Crestline, Ohio; (iv) Middlefield, Ohio; and (v) West Alexandria, Ohio (the “**Carlisle Facilities**”). As part of the acquisition of the Carlisle Facilities, CEPP became the employer of Carlisle’s employees at the Carlisle Facilities (“**Carlisle Employees**”). On December 21, 2005, Thermoplastics Acquisition, LLC (“**Thermoplastics**”), a Debtor, acquired, among other assets and operations, a facility from Parker-Hannifin Corporation (“**Parker-Hannifin**”) in Vandalia, Ohio (the “**Parker-Hannifin Facility**” together with the Carlisle Facilities, the “**Ohio Facilities**”). As part of the acquisition of the Parker-Hannifin Facility, Thermoplastics became the employer of Parker-Hannifin’s employees at the Parker-Hannifin Facility (“**Parker-Hannifin Employees**”).

5. As part of the contract to acquire the Carlisle Facilities, CEPP agreed to assume responsibility for the administration and payment of workers' compensation claims and occupational disease claims with respect to the Carlisle Employees.<sup>2</sup> Thermoplastics, however, did not under the agreement of sale to acquire the Parker-Hannifin Facility (among other assets and operations) assume such liabilities of the Parker-Hannifin Employees.

6. During the time frame in which the Debtors owned and operated the Ohio Facilities, from August 17, 2005 to January 22, 2007 (the "**Operational Period**"), the Debtors (CEPP and Thermoplastics) functioned as a self-insured employer in Ohio. The Debtors utilized Specialty Risk Services ("**SRS**") as their third party claims administrator. Pursuant to applicable Ohio law, SRS, as a claims administrator to the Debtors, was obligated and required to process and pay any and all workers' compensation claims and occupational disease claims submitted to the Debtors, who, in turn, submitted such claims to SRS for payment.

7. During the Operational Period, the Debtors incurred approximately \$453,425.55 in workers' compensation claims (\$151,109.72 for total indemnity, \$230,670.99 for total medical and \$71,644.84 for total expenses) (the "**Total Ohio Workers' Compensation Claims**"). See attached Loss Run Analysis provided by SRS attached hereto and incorporated herein by reference as Exhibit "A."

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<sup>2</sup> Upon information and belief, Carlisle satisfied the requirements set forth in section 4123.35 of the Ohio Revised Code and section 4123:19-03 of the Ohio Administrative Code and operated as a self-insured employer in Ohio. Thereafter, CEPP likewise operated as a self-insured employer with respect to the Carlisle Facilities and, upon acquisition of the Thermoplastics Facilities, Thermoplastics operated as a self-insured employer.

8. By and through SRS, the Debtors paid the entirety of the Total Ohio Workers' Compensation Claims in the ordinary course of business<sup>3</sup>. A copy of the Debtors' payment history to SRS is attached hereto and incorporated herein by reference as Exhibit "B." Further, prior to the Petition Date, the Debtors deposited security with SRS in the amount of \$76,246.00 (the "**SRS Security Deposit**") to ensure payment of workers' compensation and occupational disease claims.

9. On September 20, 2006 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

10. On or about December 31, 2006, the Debtors ceased operations and retained no employees in the State of Ohio.

11. On or about January 22, 2007, SRS ceased paying the Debtors' workers' compensation claims.

12. On February 27, 2007, SRS filed the following proofs of claim: (i) a bifurcated secured claim in the amount of \$83,545.04 (\$76,246.00 – secured (the "**SRS Secured Claim**"), \$7,299.04 – general unsecured claim (the "**SRS Unsecured Claim**")) at Claim No. 623 (the "**SRS Bifurcated Claim**"); and (ii) an administrative claim in the amount of \$5,419.78 at Claim No. 623 (the "**SRS Administrative Claim**" together with the SRS Bifurcated Claim, the "**SRS Claims**").

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<sup>3</sup> Prior to the Petition Date (defined below), the Debtors made these payments to SRS in the ordinary course of business. After the Petition Date, the Debtors made these payments in accordance with the Order, Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code, (I) Authorizing the Debtors to (A) Continue Their Existing Workers' Compensation Programs and (B) Pay Certain Prepetition Workers' Compensation Premiums, Claims and Related Expenses; and (II) Granting Certain Related Relief (dated September 26, 2006; Docket 69).

13. On April 23, 2007, Hartford Fire Insurance Company (an affiliate of SRS) filed a claim noted as “unknown” at Claim No. 656 (the “**Hartford Claim**”). As noted below, this Court disallowed the Hartford Claim in the SRS Stipulation and Order (defined below).

14. By an Order entered on July 25, 2007 (Docket No. 661), the Court confirmed 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**”).

15. On December 19, 2007, this Court entered the Stipulation and Agreed Order Resolving Claim of Hartford Fire Insurance Company and Specialty Risk Services (Claim Nos. 622, 623 and 656) (the “**SRS Stipulation and Order**”) (Docket 771).

16. Pursuant to the SRS Stipulation and Order, this Court allowed SRS’s claims (including the Hartford Claim) as follows: (i) \$76,246.00 – secured; (ii) \$5,419.78 – administrative priority; and (iii) \$7,299.04 – general unsecured. Further, SRS was granted relief from the automatic stay, to the extent necessary, to apply the Security Deposit in the amount of \$76,246.00 to pay and fully satisfy its secured claim. The Debtors have also paid and fully satisfied the allowed administrative priority claim of SRS in accordance with the SRS Stipulation and Order. As such, the Liquidating Trustee submits that the total allowable amount of unpaid workers’ compensation and occupational disease claims against the Debtors is, at most, \$7,299.04 (or the SRS Unsecured Claim).

17. On March 16, 2007, the Ohio BWC filed the Ohio BWC Unsecured Claim (\$50,868.10) and the Ohio BWC Priority Claim (\$1,082,851.07).

18. Pursuant to Article 8.1 of the Plan, the Liquidating Trustee has the right to object to general unsecured claims, priority tax claims and priority non-tax claims, including the Ohio BWC Claims. See Plan at § 8.1.

### **OBJECTION**

19. The Ohio BWC Claims represent unpaid premiums for participation in the Ohio Workers' Compensation Fund, which participation would have been required of the Debtors had they not operated as self-insured under the Ohio Workers Compensation Program. As demonstrated by virtue of the payments to SRS and SRS's payment of claims asserted against the Debtors, the Ohio BWC Claims do not, and cannot, represent valid claims against the CEP Liquidating Trust (as successor to the Debtors).

20. Pursuant to section 4135.35(B) of the Ohio Revised Code, employers, like the Debtors, may apply to the Administrator of the Ohio BWC to be treated as a "self-insuring employer". Further, a "self-insuring employers' guaranty fund" exists under applicable Ohio law. See Ohio Rev. Code § 4135.351(D)(1). The "self-insuring employers' guaranty fund" provides for payment of compensation and benefits to employees of self-insuring employers that default in payment. See Ohio Rev. Code § 4135.351(A). "Self-insuring employers" are required "to pay a contribution, calculated under this section, to the self-insuring employers' guaranty fund established pursuant to this section". Id.

21. The Ohio BWC's remedy for an employer's failure to pay premiums to the workers' compensation fund is delineated in section 4135.79 of the Ohio Revised Code. Pursuant to section 4135.79 of the Ohio Revised Code, "[A]ny interested party may enjoin the further operation of an employer subject to this chapter who has failed to pay the employer's premium to the workers' compensation fund as prescribed in this

chapter.” Ohio Rev. Code § 4135.79(A). An “interested party” is defined to include the Administrator of the Ohio BWC. See Ohio Rev. Code § 4135.79(C)(1)(c). Of note, the Ohio BWC’s remedies do not include fines or penalties.

22. The Debtors operated as a “self-insured employer”; however, the Debtors did not actually apply for such status and the Ohio BWC did not approve the Debtors to operate as a “self-insuring employer.” Notwithstanding the Debtors’ technical failure to apply for a “self-insuring employer” status, the Debtors conducted their business as a self-insuring employer; however, the Debtors actually paid all workers’ compensation and occupational disease claims asserted against them with the limited exception of \$7,299.04 (or the SRS General Unsecured Claim) by and through SRS rather than through participation in the Ohio BWC insurance program. The Ohio BWC’s remedy for failure of the Debtors to pay premiums to the Ohio’s workers’ compensation fund is to seek an injunction against the Debtors to cease operations. The Debtors, however, have long since terminated operations and as such, injunctive relief is moot at this juncture.

23. No statutory monetary relief exists for instances of a company operating in Ohio as a self-insuring employer where such approval has not been made by the Ohio BWC. To the extent the Ohio BWC Claims are allowed, such an allowance would result in an unjust enrichment of the Ohio BWC. Pursuant to section 101(5), the term "claim" means (A) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to

an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The Ohio BWC has no right to an allowed claim of any nature or status.

### **RESERVATION OF RIGHTS**

24. The Liquidating Trustee reserves the right to object further to the Ohio BWC Claims on any and all additional factual and/or legal grounds. Without limiting the generality of the foregoing, the Liquidating Trustee specifically reserves the right to (i) amend this Objection, (ii) file additional papers in support of this Objection, (iii) file a subsequent objection on any ground or grounds to any part of the Ohio BWC Claims that are not disallowed in their entirety as requested herein and (iv) take other actions to, *inter alia*, (a) respond to any allegation or pleading that may be filed in response to this Objection by or on behalf of the Ohio BWC or other interested parties, (b) further object to any claim for which the Ohio BWC provides (or attempts to provide) additional documentation or substantiation or (c) further object to any claim based on any additional information that may be discovered upon further review by the Liquidating Trustee or through discovery pursuant to the applicable provisions of Part VII of the Bankruptcy Rules.



**CONCLUSION**

WHEREFORE, the CEP Liquidating Trust respectfully requests that the Court disallow the Ohio BWC Claims, in their entirety, and grant such other and further relief the Court may deem proper.

Dated: April 23, 2008

McGuireWoods LLP

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