

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

IN RE: ) Chapter 11  
)  
CEP HOLDINGS, LLC, ) Case No. 06-51848  
) Jointly Administered  
Debtors. <sup>1</sup> )  
) Honorable Marilyn Shea-Stonum  
) United States Bankruptcy Judge

**MOTION OF LIQUIDATING TRUST FOR ORDER  
(I) APPROVING FINAL DECREE CLOSING CHAPTER 11  
CASES AND (II) GRANTING CERTAIN RELATED RELIEF**

The CEP Liquidating Trust (the "Liquidating Trust"), by and through the undersigned counsel, hereby moves the Court pursuant to, *inter alia*, 11 U.S.C. § 350 and Fed. R. Bankr. P. 3022 for entry of an order, substantially in the form attached hereto as Exhibit A, approving a final decree closing the above-captioned bankruptcy cases (collectively, the "Bankruptcy Cases") and granting certain related relief. In support of this Motion, the Liquidating Trustee respectfully represents as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, paragraph 17 of the Order dated July 25, 2007 (the "Confirmation Order") confirming 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, as amended (the "Plan")<sup>2</sup> and Article X11 of the Plan.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2) and venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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

<sup>2</sup> Capitalized terms used in the motion but not defined herein shall have the meanings assigned to them in the Plan.

## II. BACKGROUND

3. On September 20, 2006, each of the above-captioned debtors (the "Debtors") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code").

4. The Plan became effective in August 2007 (the "Effective Date"), and Article VII of the Plan and Paragraph 31 of the Confirmation Order provides that Shaun M. Martin is the Liquidating Trustee effective on the Effective Date.

## III. RELIEF REQUESTED

5. The Bankruptcy Cases are fully administered, and thus, by this Motion, the Liquidating Trustee seeks entry of an order, substantially in the form attached hereto as Exhibit A, approving a final decree closing the Bankruptcy Cases, and granting certain related relief, i.e., authorizing the Liquidating Trustee to terminate the Liquidating Trust.

## IV. BASIS FOR THE RELIEF REQUESTED

### A. Case Closing Authority

6. The bases for the relief sought herein are section 350(a) of the Bankruptcy Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

7. Pursuant to section 350(a) of the Bankruptcy Code, the court shall close a case "[a]fter an estate is fully administered and the court has discharged the trustee." 11 U.S.C. § 350(a). Additionally, Bankruptcy Rule 3022 provides that, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court on its own motion or on motion of a party in interest, shall enter a final decree closing the case." Fed R. Bankr. P. 3022.

8. The Sixth Circuit Court of Appeals has provided guidance regarding the standard governing the closing of a Chapter 11 case and the factors that contribute to a determination that a Chapter 11 case has been “fully administered” pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022. *Spierer v. Federated Dep’t Stores, Inc. (In re Federated Dep’t Stores, Inc.)*, 43 Fed. Appx. 820, 2002 U.S. App. LEXIS 16059 (6th Cir. Ohio 2002). In *Federated*, the Sixth Circuit observed that the phrase “fully administered” is not defined by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. *Federated*, 2002 U.S. App. LEXIS 16059 at \*6. Thus, the Sixth Circuit referred to the Advisory Committee Note to the 1991 amendment to Bankruptcy Rule 3022, which provides as follows:

Entry of final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

*Id.*

9. In *Federated*, the Sixth Circuit also explained as follows:

Bankruptcy Rule 3022 is intended to allow bankruptcy courts flexibility in determining whether an estate is fully administered. See *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997). A court should review each request for entry of a final decree on a case-by-case basis and analyze the factors set forth in Rule 3022, along with any other relevant factors, in determining whether an estate has been fully administered. *Id.* However, not all the factors set forth in the Advisory Committee Note need to be present to establish that a case is fully administered for final decree purposes. See *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990).

*Id.*

10. In this case, the Liquidating Trust submits that the Debtors’ bankruptcy estates are fully administered, as all of the *Federated* factors have been met. First, the Confirmation Order became final in August of 2007. Second, on the Effective Date, all deposits required by the Plan

were distributed, all property proposed to be transferred was transferred, and the Liquidating Trustee assumed management of property dealt with by the Plan. Third, payments under the Plan have commenced, with holders of Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Non-Tax Claims and holders of Allowed Priority Tax Claims having been paid in full. Several distributions have been made to holders of Allowed General Unsecured Claims, and a final distribution to these claimants is in process. All U.S. Trustee fees have been paid or will be paid prior to entry of a Final Decree in accordance with 28 U.S.C. § 1930(a)(6). Finally, all motions, contested matters, and adversary proceedings have been finally resolved.

11. Accordingly, the Liquidating Trust requests the Court to approve a final decree closing the Bankruptcy Cases.

**B. Closing Cases by Charitable Gift**

12. The Liquidating Trust expects that certain final distributions to holders of Allowed General Unsecured Claims may not be negotiated by such holders within the timeframe provided under the Plan – i.e., within sixty days following issuance pursuant to Section 6.2(d) of the Plan.

13. Section 7.3 of the Plan authorizes the CEP Liquidating Trust to donate the balance of the CEP Liquidating Trust to a charitable organization exempt from federal income tax under Section 503(c)(3) of the Tax Code. The Liquidating Trust proposes to donate the balance of the CEP Liquidating Trust, if any, after paying all costs of administrative and other payments required by the Plan to a local food bank in Akron, Ohio.

**V. NOTICE AND PRIOR MOTIONS**

14. Notice of this Motion and of the relief requested herein was provided to the Office of the United States Trustee, and all parties filing notices of appearance and/or requests for service of papers in Jointly Administered Case No. 06-51848 as of the date hereof.

15. This is the first request for the relief set forth herein.

**VI. CONCLUSION**

WHEREFORE, the Liquidating Trust respectfully requests that the Court enter an Order granting the relief requested herein, and grant the Liquidating Trust such other and further relief as the Court may deem just or proper.

Dated: November 8, 2012

Respectfully submitted,

/s/ Mark E. Freedlander

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