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PROPOSED ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: § CHAPTER 11
§
CEI ROOFING, INC., *et al.*, § CASE NO. 04-35113-HDH-11
§
DEBTORS. § (Jointly Administered)

**LIMITED OBJECTION TO EMERGENCY MOTION FOR ORDER AUTHORIZING
DEBTORS TO PAY CRITICAL PREPETITION SUPPLIER CLAIMS**

TO THE HONORABLE HARLIN D. HALE, U.S. BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors of CEI Roofing, Inc., *et al.* (the "Committee") and files this Limited Objection ("Objection") to Emergency Motion for Order Authorizing Debtors to Pay Critical Prepetition Supplier Claims (the "Motion") filed herein by CEI Roofing, Inc. and its affiliated debtors (collectively, the "Debtors"), and in support thereof would respectfully show the Court as follows:

I.

BACKGROUND

1. On May 3, 2004 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under Chapter 11 of title 11, United States Code. The Debtors continue to operate their

businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On May 14, 2004, the Committee was appointed by the United States Trustee.

3. On May 13, 2004, the Debtors filed the instant Motion, requesting authority to pay, in the ordinary course of business and in the Debtors' "*absolute and sole discretion*, the Critical Certification Claims and Critical Bond Claims of certain suppliers of materials, equipment, goods and services with whom the Debtors continue to do business, whose materials, equipment, goods, and services are essential and critical to the Debtors' reorganization." *See* Motion at 5 (emphasis added).

4. On May 18, 2004, the Debtors filed their Amended Emergency Motion for Order Authorizing Debtors to Pay Critical Prepetition Supplier Claims ("Amended Motion"). In the Amended Motion, the Debtors request that the Court enter an Order, among other things (i) "superceding" its Order entered on May 5, 2004, on the Debtors' *Emergency Motion for Authority to Pay Prepetition M&M Lien Claims*, such that the definition of "Critical M&M Lien Claims" as set forth therein may be revised and expanded (*see* Amended Motion at 4-5); and (ii) revising and expanding the definitions of "Critical Certification Claims" and "Critical Bond Claims" originally proposed in the subject Motion (*See* Amended Motion at 5-6).

II.

OBJECTION

5. The Committee recognizes that the Debtors' ability to pay certain suppliers is a critical component of the Debtors' continued operations and, therefore, the Committee does not object to the *concept* underlying the Debtors' requested authority to pay certain suppliers that they deem critical. The Committee objects, however, to the **unfettered discretion** requested by the Debtors to determine which prepetition claims it will satisfy, without any input from any

other party, particularly the Committee, and the process by which objections may be lodged to the payments made on claims of suppliers that the Debtors deem critical.

6. To the extent that the Debtors seek to use funds from the bankruptcy estates to satisfy prepetition obligations of the estates, at a minimum the Committee should be an active participant in the process of determining which suppliers' claims are to be satisfied from funds of the estates, **prior to** the satisfaction of such claims and not at some point subsequent to the satisfaction of such claims.

7. Accordingly, the Committee requests that any order granting the Motion provide that the Debtors' determination as to which Critical Certification Claims and Critical Bond Claims (as defined in the Motion) are to be paid shall be made only after the Committee and other parties in interest have had a reasonable opportunity to review and provide substantive input on the Debtors' schedule of payments (defined in the Debtors' Motion as the "Critical Supplier Payment Schedule") to be made, to the extent necessary. Furthermore, the Committee respectfully requests that any order on the Motion provide that, in the event the Committee or other parties in interest object to the proposed satisfaction of any Critical Certification Claim or Critical Bond Claim on the Critical Supplier Payment Schedule, that a hearing be held prior to the satisfaction of the disputed Critical Certification Claim and Critical Bond Claim, and not at some point thereafter, as the Debtors have requested. Moreover, in such event, the Debtors should provide the objecting party with pertinent information supporting its decision.

8. In the jointly administered bankruptcy cases *In re Texas Petrochemicals LP, et al.*, Jointly Administered under Case No. 03-40258-H3-11 and pending in the Bankruptcy Court in the Southern District of Texas ("Texas Petrochemicals"), the debtors requested authority to grant administrative expense priority status to certain prepetition claims of vendors who the debtors determined to be necessary and critical to the continued operation and viability of the

debtors' businesses (the "Texas Petrochemicals Motion").¹ The basis for the relief requested by the Texas Petrochemicals debtors is substantially similar to the basis for the relief requested by the Debtors in the instant Emergency Motion.

9. In the order entered by the Bankruptcy Court on the Texas Petrochemicals Motion (the "Texas Petrochemicals Order"), a true and correct copy of which is attached hereto as **Exhibit "A"**, and which the Debtors cited to in the Motion, the Court did not grant the debtors (nor did the debtors request) unfettered discretion to decide which prepetition vendor claims to satisfy.² Instead, the Texas Petrochemicals Order provides for a reasonable, streamlined procedure whereby the unsecured creditors committee and one of the debtors' lenders (Bank of America) would be provided a list of those vendors which the debtors determined to be critical vendors. The committee then had five (5) calendar days to object to the inclusion of any proposed critical vendor on the list. If the committee did not object in writing within the five (5) calendar day period the debtors had authority to grant administrative expense priority status to the critical vendor's claim. If the committee timely objected in writing to the inclusion of a particular critical vendor, the debtors set the objection for hearing on the next regularly scheduled weekly hearing date and the debtors did not grant administrative expense priority status to the claim of the critical vendor to which there was an objection.

10. The Committee asserts that some oversight procedure is necessary and would not prejudice the Debtors in this case. The Committee proposes that, prior to paying any Critical Certification Claims and Critical Bond Claims, the Debtors serve and file a notice (the "Critical Supplier Payment Schedule") identifying with specificity those Critical Certification Claims and

¹ See *Emergency Motion for Order Granting Administrative Expense Priority Status to Pre-Petition Claims of Critical Vendors Which Agree to Extend Post-Petition Trade Credit to the Debtors and Request for Interim and Final Hearings*; Bankruptcy Case No. 03-40258-H3-11, Docket no. 8.

² See *Order Granting Administrative Expense Priority Status to Pre-Petition Claims of Critical Vendors Which Agree to Extend Post-Petition Trade Credit to the Debtors*; Bankruptcy Case No. 03-40258-H3-11, Docket no. 85.

Critical Bond Claims the Debtors have determined should be paid. If no objection is filed to the Critical Supplier Payment Schedule within fifteen (15) days from the date of its filing, the Debtors shall be authorized to pay the Critical Certification Claims and Critical Bond Claims listed on the Critical Supplier Payment Schedule and such payments shall not be subject to disgorgement. Further, simultaneously with the filing of the Critical Supplier Payment Schedule, the Debtors should provide the Committee with copies of all relevant documents supporting the Debtors' determination which Critical Certification Claims and Critical Bond Claims should be paid.

11. As the representative body for all unsecured creditors of the Debtors' estates, the Committee has a keen interest in the funds that the Debtors propose to use to satisfy prepetition obligations. To the extent that such funds would otherwise, arguably, be used to satisfy the claims of all unsecured creditors, the Committee should be involved in the process of determining which prepetition obligations are satisfied by the Debtors.

12. Furthermore, making the satisfaction of Critical Certification Claims and Critical Bond Claims subject to disgorgement in the event an interested party successfully objects to the satisfaction of any particular Critical Certification Claim or Critical Bond Claim creates not only the potential for additional costs for the estates, but also, more importantly, uncertainty for those Critical Certification Claimants and Critical Bond Claimants who release their liens and/or claims against the bonds, upon satisfaction of their claims by the Debtors pursuant to the form of order proposed by the Debtors.

13. Simply put, the process proposed by the Debtors will leave Critical Certification Claimants and Critical Bond Claimants in the precarious position of having released their liens and/or claims against the bonds, in reliance upon the Court's order, only to find out later that they must disgorge the funds previously paid to them by the Debtors because a party in interest

successfully objects to their payment. Should this happen, the Critical Certification Claimants and Critical Bond Claimants will be left with neither valid liens and/or claims against the bonds in place, because they will have already been released, nor payment on their claims, because such payments will have been disgorged by the Bankruptcy Court. Accordingly, this procedure is functionally unworkable.

14. Instead, any potential objections should be resolved prior to the satisfaction of the claims and the release of liens and/or claims against the bonds by the claimants.

15. Thus, the determination as to which Critical Certification Claims and Critical Bond Claims are satisfied should not be left to the Debtors' "sole and absolute discretion". At a minimum, the Committee should be involved in the process of deciding which prepetition claims are to be satisfied and, to the extent the Committee disagrees with any claims the Debtors propose to satisfy, a mechanism should be in place to resolve those disagreements prior to such claims being satisfied and liens being released.

16. It is not the Committee's intention to unnecessarily or unreasonably withhold its approval of the satisfaction of any proposed Critical Certification Claims and Critical Bond Claims. Nevertheless, the Committee, as the representative of the unsecured creditor body, should be involved throughout the process and not merely at some point subsequent to such payments being made.

III.

CONCLUSION

WHEREFORE, the Committee respectfully requests that (i) any order granting the Motion provide for the following: (a) a reasonable opportunity for the Committee to review and, if necessary, object in writing to the proposed satisfaction of any Critical Certification Claim and Critical Bond Claim listed on the Critical Supplier Payment Schedule prior to the satisfaction of such claims listed on the Critical Supplier Payment Schedule, and (b) a hearing before the Bankruptcy Court to resolve any timely written objections lodged by the Committee, prior to the satisfaction of an objected to Critical Certification Claim or Critical Bond Claim; and (ii) the Court grant the Committee such other and further relief to which the Committee may be justly entitled.

Dated this 19th day of May, 2004.

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PROPOSED ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF UNSECURED
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CERTIFICATE OF SERVICE

This is to certify that the undersigned caused a true and correct copy of the foregoing Limited Objection to Emergency Motion for Order Authorizing Debtors to Pay Critical Prepetition Supplier Claims to be served via telecopy on Charles Gibbs and Keith Aurzada, counsel for the Debtors (214.969.4343) and on the parties listed on the service list attached hereto as **Exhibit "B"** by depositing same in the United States Mail, first class postage prepaid, and properly addressed, on the 19th day of May, 2004.

/s/ Kevin M. Lippman

Kevin M. Lippman, Esq.

EXHIBIT A

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