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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.*, §
DEBTORS. § (Jointly Administered)

**LIMITED OBJECTION TO DEBTORS' EMERGENCY MOTION FOR AN
ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AUTHORIZING DEBTORS TO HONOR CERTAIN PREPETITION WARRANTIES**

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

The Official Committee of Unsecured Creditors of CEI Roofing, Inc., *et al.* (the "Committee") files this Limited Objection ("Objection") to Debtors' Emergency Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code Authorizing Debtors to Honor Certain Prepetition Warranties (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 from the Bankruptcy Court, pursuant to 11 U.S.C. § 105(a), "to honor, at their option, warranty obligations arising from prepetition services." *See* Motion at 2.

4. On May 17, 2004, the Debtors filed an amended motion (the "Amended Motion") deleting only one thing: the statement made in the Motion that "[t]he Debtors anticipate that such claims will be minimal". *See* Amended Motion at 5. The Committee is unaware of any further changes to the Motion.

II.

OBJECTION

5. The Committee recognizes that the Debtors' ability to honor certain prepetition warranty obligations 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 honor such obligations. The Committee objects, however, to the **unfettered discretion** requested by the Debtors to determine which prepetition warranty obligations they will honor, without any input from any other party in interest, including the Committee, and the lack of a process by which objections may be lodged to the proposed honoring of such warranties.

6. To the extent that the Debtors seek to satisfy warranty obligations that arise from prepetition services rendered by the Debtors, the Committee should be an active participant in the process of determining which warranties are to be honored. The determination as to which prepetition warranty obligations are to be honored should not be left to the Debtors' sole and absolute discretion, **especially since the Debtors now believe such obligations will not be**

minimal. At a minimum, the Committee should have some input as to which prepetition warranty obligations are to be honored and, to the extent the Committee disagrees with the Debtors' business judgment, a mechanism should be in place to resolve those disagreements.

7. Accordingly, the Committee requests that any order granting the Amended Motion provide that: (i) the Debtors' determination as to which prepetition warranty obligations should be honored shall be made only after the Committee has had a reasonable opportunity to review and provide substantive input with respect to those prepetition warranty obligations the Debtors propose to honor, including being provided with all documents relied upon by the Debtors in making their determination; and (ii) in the event the Committee objects to the proposed honoring of a particular prepetition warranty obligation, that a hearing be held before such obligation may be honored by the Debtors.

8. 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 be used to pay claims of unsecured creditors, the Committee should be involved in the process of validating which prepetition obligations are to be satisfied by the Debtors on a postpetition basis.

9. It is not the Committee's intention to unnecessarily or unreasonably withhold its approval of the honoring of prepetition warranty obligations. Nevertheless, a process should be in place to allow: (i) the Committee, as the representative of the unsecured creditor body, to provide constructive input as to which prepetition warranty obligations the Debtors choose to honor; and (ii) to the extent a disagreement arises, the Bankruptcy Court to rule on whether a particular warranty obligation should be honored.

III.

CONCLUSION

WHEREFORE, the Committee respectfully requests that (i) any order granting the Motion provide the Committee a reasonable opportunity to review, analyze and, if necessary, object to the determination by the Debtors that certain prepetition warranty obligation should be honored, including being provided with all documents relied upon by the Debtors in making their determination; 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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CERTIFICATE OF SERVICE

This is to certify that the undersigned caused a true and correct copy of the foregoing Limited Objection to Debtors' Emergency Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code Authorizing Debtors to Honor Certain Prepetition Warranties 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 "A"** 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.