IT IS SO ORDERED.

Dated: 02:27 PM November 17 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 06-51848
	)	Jointly Administered
CEP HOLDINGS LLC, et al.,	)	
	)	Judge Marilyn Shea-Stonum
Debtors.	)	
_____	)	Chapter 11
	)	
	)	ENTRY OF JUDGMENT

This matter is before the Court on motion of Debtors pursuant to sections 105(a), 363(b) and 503(c)(3) of the Bankruptcy Code for entry of an order authorizing them to adopt a performance bonus plan [docket #97] (the "Motion") and the written objections filed by the Official Committee of Unsecured Creditors [docket # 165], the United Steelworkers [docket #168], the Independent Contractors [docket #170] and the United States Trustee [docket #180] (collectively, the "Objections"). The Court held a hearing on the Motion and the Objections on October 24, 2006. On October 26, 2006, the Court entered an oral decision on the matter.

A copy of the text of the Court's oral decision is attached hereto as Exhibit A and incorporated by reference as if fully re-written (All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Exhibit A). In accordance with this Court's oral decision, the Court allowed counsel to proffer the identity of the insiders to be excluded from the operation of the Plan. Debtors' counsel made such proffer. Counsel for the United Steelworkers objected to the proffer. The Court allowed further testimony regarding the identity of insiders. Following the further testimony, the Court took this matter under advisement with respect to the identity of the alleged insiders. Consistent with this Court's oral decision, which incorporated findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, the Motion is granted, in part, with respect to the non-insider participants in the Plan, and remains under advisement with respect to the alleged insider participants.

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EXHIBIT A

This is the decision of the Court as to the Motion of CEP Holdings LLC Pursuant to sections 105(a), 363(b) and 503(c)(3) of the Bankruptcy Code for entry of an order authorizing them to adopt a performance bonus plan [docket #97], which I will refer to in this oral decision as the "Plan".

This proceeding arises in a case referred to this Court by General Order No. 84 entered in this district on July 16, 1984 and is determined to be a core proceeding pursuant to 28 U.S.C. §157(b)(2), over which this Court has jurisdiction pursuant to 28 U.S.C. §1334. The Court is authorized to enter final judgment in this proceeding.

The following constitute the Court's findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

In reaching its determinations,
the Court considered the written Plan attached to the Debtors' motion; the Stipulation between the Debtors, the Independent Contractors, the US Trustee and the United Steelworkers arguments of counsel; and the written objections filed by the Official Committee of Unsecured Creditors [docket # 165], the United Steelworkers [docket #168] and the Independent Contractors [docket #170]. [1] The Court also considered the testimony at the October 24, 2006 hearing of Joseph Mallak, President and CEO of CEP, and the record in the case as a whole to date.

Without changing its final judgment, the Court reserves the right to add, alter or delete any language, grammar or punctuation in this oral decision so that it correctly reflects the Court's intention in determining this proceeding. In addition, the Court reserves the right to add additional legal citation in support of its decision.

In the event of an appeal, following the Court's review of the transcript of this oral decision, a complete transcript of the court's oral decision will be entered as a separate filing in the proceeding.

Based upon the foregoing, the Court makes the following Findings of Fact and Conclusions of Law:

FINDING OF FACTS

1. The circumstances surrounding the Debtors' motion are unusual. The chapter 11 petitions were filed on September 20, 2006. At the September 22, 2006 hearing on first day motions, Debtors' counsel represented to the Court that while some of the Debtors' operating plants would be closed and their assets liquidated, the Debtors thought that at least four of the plants could be sold as operating concerns. It now appears that most, if not all, of the

[1] At the hearing, the Independent Contractors withdrew their objection based upon the Debtor's agreement to adjourn the remaining matters pending under Debtors' motion to pay certain prepetition items. [Dkt #8]. At the conclusion of the hearing, the U.S. Trustee withdrew its objection except as related to payments to insiders.

Debtors' U.S. operations will be closed by November 15, 2006. The Court is therefore being asked to approve performance payments that relate to a very narrow period of post-petition time; this request comes before the Debtors have even filed their Statement of Financial Affairs and Schedules. Those documents are due on October 27, 2006. In the Court's experience, these are not the normal circumstances for requesting payments over and above the regular compensation of employees. The primary driver of the motion appears to be the desire of the Participating Customers to have an orderly transition of the tooling and equipment necessary to the production of their components to parties capable of meeting their ongoing needs, coupled with the production by the Debtors of sufficient inventory to the specifications of the Participating Customers to meet their needs during this period of transition. Thus, the primary funding for the Plan would come from payments by the Participating Customers earmarked solely for the Plan.

2. The Plan divides potential bonus recipients into four tiers, with some subdivisions. There are 21 "Tier 1" employees or officers, who are further divided into a Tier 1A Group and a Tier 1B Group. Tier IB has the following subdivisions: "Tier 1B Plant Specific Group" and "Tier 1B Central Group". Tier 2 consists of 15 employees of the Corporate Finance, Account, and IT Departments out of the Akron office, Tier 3 consists of certain employees from the Livonia office, and Tier 4 consists of 76 employees from various locations.

3. The Plan proposes two "Bonus Periods." Period One covers the time from the petition date to October 15, 2006. Period Two runs from October 15, 2006 to October 31, 2006. Payment of bonuses for both periods under the Plan is to take place on or about November 15, 2006.

4. The maximum bonuses payable to all Plan participants in the aggregate is approximately $1.3 million. Tier 1 participants have been allocated a maximum aggregate of $715,000, with up to $250,000 allocated to Tier 1A and with $465,000 allocated to Tier 1B. Tier 2 and Tier 3 could share a maximum aggregate of $108,000 and Tier 4 has been allocated a potential $500,000.

5. $1.273 million of the funding for the Plan has been paid by the "Participating Customers", as that term is defined in the "Participating Customer Participation Agreement", to a BBK Trust Account in the form of "Cash Infusions", again as defined in the Participating Customer Participation Agreement. To the extent that the Plan is not approved by the Court or the funds are not earned by the covered participants, the Cash Infusions will be returned to the Participating Customers.

6. A small portion of the Cash Infusions proposed to fund the Plan and related to Tuscaloosa may convert to debt in favor of Participating Customer Visteon if certain levels of sales proceeds are achieved for that plant.

7. The $50,000 of Plan funding from Wachovia Capital Finance Corporation (Central) is solely payable from the proceeds for certain equipment in the Vandalia plant if the Debtors receive proceeds from such sale in excess of $1.7 million. An offer of $1.85 million for the purchase

of the Vandalia plant has been filed with the Court.

8. The Debtors will only receive funds from the BBK Trust Account on account of the Plan if (i) the plan is approved by the Court and (ii) the Plan's incentive goals are met.

9. If and when payments are made under the performance bonus plan, they will be paid through the Debtors' normal payroll service as wages from the Debtors with all appropriate withholdings and reportings to taxing authorities.

10. The Plan bonuses are determined with reference to production of "daily release requirements," which are set by the Participating Customers and which can be reduced by the Debtors' management if they exceed plant capacity or if the raw materials necessary for production are not reasonably available. The employee is credited with a "Target Achieved Day" for each day the daily release requirements are met.

11. For Period One, not all of the potential bonuses were earned and Mr. Mallak testified that he does not anticipate that all of the Period Two bonuses will be earned. Upon cross-examination, Mr. Mallak agreed that a "substantial majority" of the daily release requirements had to date been met.

12. Mr. Mallak was brought in as CEO and President at the end of February of 2006 in an attempt to address the Company's operational and financial difficulties with an eye to restructuring the company. Despite some improvements in operations efficiency, the Debtors were unable to obtain on a non-judicial basis a necessary restructuring of their indebtedness and it became apparent that a liquidating chapter 11 proceeding would be necessary.

13. Mr. Mallack reported that the failure to obtain non-judicial restructuring and the decision to file the present liquidating chapter 11 case created morale problems for many of the employees, including some hourly employees, service personnel, and salaried employees. Mr. Mallak was especially concerned about the morale of employees who, if the liquidation were to proceed as planned, would be required to produce sufficient inventory for any necessary customer "banks" and whose technical expertise would be necessary for a quick shut down of plant machinery accompanied by a quick delivery to the customers of their tooling equipment. Mr. Mallak believes that the work being undertaken during the 42 day period covered by the Plan far exceeds employee demands made while the Debtors were conducting normal operations.

14. In Mr. Mallak's opinion, if he had not announced the Plan, the Debtors would not have been able to meet their obligations to their customers and to their primary lender under the operating agreements that appear on this Court's docket as exhibits to the motion regarding use of cash collateral and other matters, Docket Number 22. Mr. Mallak specifically mentioned that it was the Debtors' goal to close six plants by the first of November and that he feared the employees with the technical skills to achieve that goal would take unused

vacation unless the Plan were approved by this Court.

15. Covered employees under the Plan include Senior Management, plant managers, management within the different facilities, salaried office people, and selected technical people who operate the plants. On cross-examination, Mr. Mallak explained how some of these positions could impact the Debtors' plan for an orderly liquidation that would also produce sufficient inventory for the Participating Customers.

16. In footnote 3 of its objection, the United Steelworkers identified the following seven Tier I individuals as officers of the Debtor and, therefore, "insiders" as that term is defined under Section 101(31)(B) of the United States Bankruptcy Code: James Van Tiem (Chairman of the Board); Joseph Mallak (CEO and President); Bruce Fassett (Vice President of Sales); David Dick (Senior Vice President of Operations); Warren Knipple (Chief Financial Officer); Robert Poynter (Vice President of Purchasing); and George Pucci (Senior Vice President of Quality & Lean). At the hearing on this matter, the Debtors did not dispute the characterization of these individuals as insiders. Nor, as noted previously, have the Debtors filed their Statement of Financial Affairs, which might have been helpful to the Court in determining which employees should be deemed insiders.

17. Mr. Mallak testified that he considered his senior management team to include Mr. Dick, Mr. Fassett, Ms. Cindy Brumbaugh (Director of Human Relations), Mr. Poynter and Mr. Pucci. These members of senior management are included under the Plan as either Tier 1A or Tier 1B participants.

18. Thus, on the record developed so far, using the concept of control over the Debtors, it may be that all individuals identified in Paragraphs 16 and 17 should be deemed "insiders" for the purpose of Section 503 of the Bankruptcy Code. Because of the rapidity with which matters have necessarily come before the Court, I will take the unusual step of allowing the issue of who are insiders to be further addressed.

19. Mr. Mallak testified on cross-examination that even if the Plan were not approved by the Court, he personally would do his best to achieve the liquidation goals, as he views himself as obligated to do that. He also indicated that even though the Plan had not yet been approved, his senior management team was doing its best to complete the rapid liquidation.

20. In response to questions from the Court, Mr. Mallak testified that the idea of the Plan was introduced by the legal professionals so that there be an incentive for the employees to perform at a certain level and that a rapid liquidation of the Debtors was anticipated at the time the Plan emerged. Mallak had no prior personal knowledge of a liquidating company having an incentive plan similar to the Debtor's.

21. The Debtors do not contend that implementation of the Plan would constitute "ordinary course of business" under Section 363(a) of the Code. Instead, they seek approval of this Court under Sections 105(a), 363(b) and 503(c)(3) of the Code.

CONCLUSIONS OF LAW

1. Section 503(c)(3) provides that transfers to insiders of the debtor that are not the result of retention plans or severance plans may be approved only if "justified by the facts and circumstances of the case."

2. The Debtors are adamant that the Plan is an "incentive plan" and thus falls outside the purview of Section 503(c)(1), which with respect to insiders limits approval of retention plans to a showing of specific facts that the Debtors concede are missing in the present case. All of the objectors are equally adamant that the Debtors have proposed a retention plan under the guise of a different name.

3. In this case, the Court need not reach a conclusion whether the Plan is governed by Section 503(c)(1) because the Court has concluded that even under Section 503(c)(3) certain attributes of the Plan cannot be approved. Specifically, the Court does not consider the proposed payments to insiders under the Plan to be "justified by the facts and circumstances of the case." While the Court appreciates the effort being put forth by the insiders to ensure that the needs of the Participating Customers are being met, no evidence has been introduced to the Court to suggest that the remuneration the insiders are receiving in the form of salaries is so out of line with tasks that they need to perform during the 42 day Plan period as to demand additional compensation. Indeed, inasmuch as the Statement of Financial Affairs has not yet been filed in this case, the Court has no evidence at all as to what the insiders are earning. What the record evidence does suggest is that Mr. Mallak negotiated his compensation less than 10 months ago and must have understood that part of his function would be crisis management.

4. At the evidentiary hearing on the Plan, Debtors relied upon the opinion in the case of *In re Nobex Corporation*, Case No. 05-20050 (Bankr. Del). While this Court views *Nobex* as soundly decided on the facts and circumstances of that case, the *Nobex* facts are much different than the facts here. First, the Court in *Nobex* made the factual finding that the performance of the bonus recipients would produce "the best result and maximum return *to the Debtor's estate*," Slip Op. at Paragraph 6 (emphasis supplied), and the Official Committee of Unsecured Creditors appointed in the *Nobex* case endorsed the requested relief. Moreover, the *Nobex* Court found as a factual matter that the two individuals named in the *Nobex* plan "are especially important in this specific case in view of their knowledge and understanding of the science and technology of the Debtor's pharmaceutical assets." In the present case, the Official Committee of Unsecured Creditors, among others, has objected to the requested relief as it relates to insiders and no evidence has been put forth that unsecured creditors will achieve a higher return because the insiders possess unique talents or skills. Finally, the Court reads the *Nobex* opinion's reference to a "stalking horse bid" to indicate that the anticipated sale in that case was to be of the going concern variety, which does not appear applicable in the present case. In *Nobex*, the upside for the two incented

individuals was linked directly to upside for creditors of the estate. In marked contrast, the Plan at issue here proposes to direct $80,000 to Mr. Van Tiem, the apparent shareholder of at least one of the Debtors, for his historical knowledge.

5. In reaching the conclusion that the Plan cannot be approved with respect to the insiders, the Court is especially mindful of the need to avoid the appearance of self-dealing in light of some of the shared features of the Debtors' Plan and traditional retention plans. *Compare In re Regensteiner Printing Co.*, 122 B.R. 323, 326 (N.D. Ill. 1990), which cites the United States Supreme Court opinion in *Pepper v. Litton*, 308 U.S. 295, 306-308 (1962) for the proposition that rigorous scrutiny should be applied by a court in reviewing employment contracts for insiders. The Court also assumes that all of Debtor's senior management will, as a matter of professional pride and responsibility, remain with the Debtor for the relatively short period of time remaining in the liquidation process, as Mr. Mallak has testified he will.

6. As the Committee points out in its brief, of the 97 officers, management, and employees eligible for the bonuses, the four people in the Tier 1A Group can receive as much as 19% of the proposed bonus funds. When the aggregate potential payments to those individuals who the Court presumes at this stage to be insiders are considered, that percentage rises to almost 35%. Elimination of these payments will significantly address the concerns voiced by the United Steel Workers that a Plan favoring upper management while excluding Union members could serve to "breed strong resentment on the part of the production employees whose efforts *directly* determine whether production goals are met." United Steel Workers Brief at Paragraph 18.

7. The Court does believe that the payments are justified with respect to employees who are not insiders and approves the payments to them called for in the Plan. Whether the Plan is characterized as a retention plan or an incentive plan, it has the probable effect of encouraging the Debtor's nonunion workforce to remain with the Debtor and to reach increased productivity goals through the Plan end date. When Congress set specific statutory limits upon retention plans, those limits were restricted to insiders. With respect to non-insiders, the only restriction is that any retention plan be "justified by the facts and circumstances of the case." As the Debtors' brief points out, the standard under Section 363(b) of the Code is whether the payment of estate funds is an exercise of the debtor's sound business judgment and is proposed in good faith. This Court does not read Section 503(c)(3) to change those standards with respect to non-insiders. Based upon Mr. Mallak's testimony and the Court's review of the schedules detailing the anticipated payments, the Court believes that the Debtor's Plan results from sound business judgment and is proposed in good faith and willcreate the beneficial effects of retaining employees who are critical to increased production of inventory and allowing for the rapid, orderly liquidation of most if not all of the Debtor's operating plants. This conclusion is further bolstered by the fact that the Participating Customers , who are the primary beneficiaries of the concerted efforts sought under the Plan, have chosen to infuse cash to make the Plan payments.

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Having determined the issues in this proceeding, the Court will enter an order / entry of judgment consistent with this oral decision.