

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

CEP HOLDINGS LLC, ET AL.,

Debtor.

Case No. 06-51848

Chapter 11

Honorable Marilyn Shea-Stonum

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**STATE OF MICHIGAN, DEPARTMENT OF TREASURY, OBJECTION TO PROPOSED
DISCLOSURE STATEMENT AND PROPOSED JOINT PLAN OF LIQUIDATION**

Now comes the State of Michigan, Department of Treasury, by and through its attorneys Michael A. Cox, Attorney General, and Victoria A. Reardon, Assistant Attorney General, and objects to any order approving the proposed Disclosure Statement and to its attached Joint Plan of Liquidation for the following reasons:

The Debtor filed its petition on or about September 20, 2006, under Chapter 11 of the Bankruptcy Code.

1. The Debtor has proposed a Disclosure Statement along with an attached proposed Joint Plan of Liquidation, and according to the attached Joint Plan of Liquidation the Effective

Date is the business day after the confirmation Date when no stay is in effect and section 10.2 conditions have been met (See Section 1.40 of the proposed Plan).

2. The business activities of the Debtor have resulted in liabilities to Treasury for taxes.

3. Treasury filed a priority claim in the amount of \$28,729.54 on January 24, 2007, none of which is secured, and a general unsecured claim in the amount of \$4,095.75 on January 24, 2007.

4. The proposed Disclosure Statement Summary and Overview, and the proposed Joint Plan of Liquidation, attached to the Disclosure Statement, fail to appropriately recognize Treasury's priority claim (§507(a)(8)) as required by 11 USC § 1129(a)(9)(c).

5. Treasury's priority tax claim, though not designated as a class type under the Plan, is covered in Paragraph 2.5 which states: "*Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall pay to each holder of an Allowed Priority Tax claim, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim.*"

6. The Bankruptcy Code, 11 USC § 1129(a)(9)(c) requires that the holder of a §507(a)(8) claim must receive on account of such claim regular installment payments in cash – (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim; (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and (iii) in a manner not less favorable than the most favored non priority unsecured claim provided for by the plan...."

7. The proposed Plan language stating that priority claims (Treasury's claim) will be paid "*on the Effective Date, or as soon thereafter as is reasonably practicable...*" presupposes that Treasury's claim may not be paid in full on the effective date. Since the State is entitled to the present value of the allowed claim on the effective date (11 USC § 1129(a)(9)(c))¹, and 11 USC 511 requires interest to enable a creditor to receive the present value of a tax claim at a rate determined under non bankruptcy law, and the Michigan Department of Treasury's current interest rate is 8.2%, then the proposed Plan fails because it does not provide for installments and post-effective date accrual of interest on the State's priority tax claim at a rate of 8.2%, in the event the total claim is not paid on the effective date.

8. The Disclosure Statement Summary and Overview of the Plan states that "*on the Effective Date, or as soon thereafter as is reasonably practicable, the Disbursing Agent shall pay to each holder of an Allowed Priority Tax Claim, in full satisfaction of such claim, an amount in Cash equal to the Allowed amount of such Claim.*" This language also fails under 11 USC 511, as payment of the amount of the claim at any time after the Effective Date requires interest. Furthermore, the Disclosure Statement merely requires the Liquidating Trustee to "*exercise reasonable business judgment to administer Trust Assets and to make timely distributions from the CEP Liquidating Trust to its Beneficiaries.*" Again, the language presupposes that the payments may not be made on the Effective Date.

9. Furthermore, the proposed Trust Agreement between the Debtors and Debtors-in-possession and the Committee of Unsecured Creditors and the Liquidating Trustee states in Section IV D 3 that "*...no Beneficiary shall be entitled to interest accruing on or after the*

¹ See also, *In re Camino Real Landscape Maintenance Contractors*, 818 F2d 1503, 1505 (CA 9, 1978).

Petition Date on a claim..." to the extent that this language attempts to bar Treasury from the interest it is entitled to under the Bankruptcy Code or bind Treasury to an agreement to which it is not a party, the State of Michigan objects.

12. Furthermore, the proposed Joint Plan of Liquidation attached to the Disclosure Statement fails to comply with 11 USC § 1123(a)(5)(G) which requires that a plan "provide adequate means for the plan's implementation," including the "curing or waiving of any default." The proposed Plan fails to specify the remedies available in the event the Debtor fails to cure a default. Thus, the Michigan Department of Treasury is not protected as required by this section which permits Treasury to pursue its non-bankruptcy rights and remedies in the event of default.

13. The following default language is warranted under 11 USC §1123(a)(5)(G) and should be added to or included in the Plan:

- a. Upon the failure of the Debtor to make any payments due on a secured or priority tax claim that is not cured within 30 days of the mailing of a written notice of default by the Creditor, such Creditor may exercise all rights and remedies available under non-bankruptcy law for the collection of its entire claim and/or seek appropriate relief in this Court.
- b. In the event of a conversion of this case to a Chapter 7 proceeding all property of the Debtor, Debtor-in-Possession, or Reorganized Debtor, including all property which will revert in the Reorganized Debtor pursuant to Confirmation of the plan of reorganization and all property acquired by the Reorganized Debtor subsequent to plan confirmation shall be property of the Chapter 7 Estate.

RELIEF REQUESTED

WHEREFORE, State of Michigan, Department of Treasury, requests that the Disclosure Statement not be approved as proposed and that confirmation of Debtor's proposed Joint Plan of Liquidation be denied, that the Disclosure Statement and Plan be modified to recognize the priority claim of the Agency, provide for means of payment of priority claims on the effective date or allow for statutory interest at 8.3% annually on installment payments that do not exceed five years, and that the Plan include the appropriate default language, or that this case be converted to a Chapter 7 or dismissed and that the State of Michigan, Department of Treasury, be granted such additional relief as is just and proper.

Respectfully submitted,

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