

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

----- x
In re : Case Nos. 06-51848
 : (Jointly Administered)
 :
CEP HOLDINGS, LLC, *et al.*,¹ : Chapter 11
 : Honorable Marilyn Shea-Stonum
Debtors. :
 : Related to Docket No. 485
----- X
Hearing Date: 3-26-07, 4:00 p.m.
Objection Deadline: 3-26-07, 1:00 p.m.

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO MOTION TO APPOINT EXAMINER PURSUANT TO 11 U.S.C. § 1104(c)(1)**

The Official Committee of Unsecured Creditors (the “Committee”) of CEP Holdings, LLC and its affiliated debtors (collectively, the “Debtors”), by and through its undersigned counsel, files the within objection (the “Objection”) to the Motion of Washington Penn Plastic Company (“Washington Penn”), Inc. to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)(1) (the “Examiner Motion”) and states as follows:

INTRODUCTORY STATEMENT

Washington Penn’s Examiner Motion is not a motion to appoint an examiner; it is a motion to create chaos, notwithstanding the fact that there is pending joint plan of liquidation [Docket No. 330] (the “Joint Plan”) that proposes to pay general unsecured creditors approximately twenty-five percent (25%) on account of their allowed claims, which is five times the zero to five percent (0 to 5%) distribution the Debtors originally proposed at the outset of these cases.

Washington Penn participated in, and raised no objection to, every aspect of the bankruptcy process that it now seeks to undo – facts which Washington Penn failed to disclose in its papers. As discussed in more detail below, the Examiner Motion and the wholly

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC

unsupportable and scandalous allegations that it makes serve no purpose but to (a) impugn the integrity of all parties-in-interest in these cases and their respective professionals, (b) delay the confirmation of a pending Joint Plan that offers a considerable (and unexpected) distribution to unsecured creditors, (c) delay important work that remains for the Committee to perform to assure this distribution on account of allowed general unsecured claims (as well as allowed claims with priority senior to general unsecured claims) and (d) add potentially significant costs to the Debtors' estates that can only reduce returns to unsecured creditors, including Washington Penn. For the reasons set forth herein, the Examiner Motion must be denied.

A. McGuireWoods' Representation of the Unofficial Trade Committee

1. As is often the case, prior to filing for bankruptcy protection, the Debtors attempted an out-of-court restructuring. During this effort, the Debtors provided their largest trade creditors information about the Debtors' financial circumstances and suggestions as to how the Debtors intended to address their financial issues. After repeated efforts in this regard, the Debtors requested that their largest trade creditors form an unofficial committee (the "Unofficial Trade Committee") to analyze and negotiate consensual terms a proposed out-of-court restructuring of the Debtors.²

2. Although Washington Penn was one of the largest trade creditors, it was not invited by the Debtors to participate on the Unofficial Trade Committee because (a) the Debtors began to do business with an alternative supplier as a result of Washington Penn's aggressive position to collect its accounts receivable; and (b) Washington Penn filed a complaint against one of the Debtors and certain insiders of the Debtors in the United States District Court for the Northern District of Ohio at Case No. 5:06-CV-01224-SEL (the "Washington Penn District Court Litigation"), alleging, *inter alia*, claims for breach of contract, unjust enrichment and breach of

² The Unofficial Trade Committee organized in July 2006, and was comprised of the following entities – LANXESS Corporation; DuPont; Rhodia, Inc.; BASF Corporation; Gold Key Processing, Ltd.; and Excel Polymers, LLC.

fiduciary duty. A motion to dismiss filed by the non-debtor defendants to this litigation is presently pending in the district court.

3. After its formation, the Unofficial Trade Committee selected McGuireWoods as its counsel and Stout Risius Ross (now Grant Thornton) as its financial advisors. During the selection process, McGuireWoods disclosed to the Unofficial Trade Committee the unrelated work that the firm performs from time to time on behalf of Wachovia-related entities. McGuireWoods likewise contacted Alan Solow of Goldberg Kohn (counsel to Wachovia in CEP) and asked him to obtain a waiver from Wachovia with respect to the involvement of McGuireWoods on behalf of trade creditors of the Debtors. Mr. Solow confirmed Wachovia's consent to the involvement of McGuireWoods on behalf of trade creditors of the Debtors without qualification or limitation.

4. In its capacity as counsel to the Unofficial Trade Committee, McGuireWoods, *inter alia*, performed due diligence with respect to the Debtors, their assets, operations, agreements with Wachovia, agreements with the Debtors' largest customers, transactions with insiders of the Debtors and issues relating to the two 2005 acquisition transactions.

5. Following the due diligence efforts by McGuireWoods on behalf of the Unofficial Committee, McGuireWoods determined and reported to the Unofficial Trade Committee its views that, *inter alia*, (a) the Debtors were unlikely to accomplish an out-of-court restructuring and thus it is likely that the Debtors would seek bankruptcy protection; (b) the Debtors' liquidation projections contained assumptions that were incorrect or overly conservative, which in turn caused the Debtors' liquidation analysis to be overly conservative; and (c) recoveries by unsecured creditors were most likely to come from the liquidation of assets in an orderly and closely monitored process, and not from litigation against Wachovia or insiders of the Debtors.

6. As a result of the work McGuireWoods performed on behalf of the Unofficial Trade Committee, McGuireWoods was able to prepare and file, less than 24 hours after the Debtors' bankruptcy filing, comprehensive papers objecting (the "DIP Objection") to the Debtors'

Emergency Motion Authorizing Debtors to (A) Use Cash Collateral on An Emergency Basis; (B) Incur Postpetition Debt on an Emergency Basis; (C) Grant Adequate Protection and Provide Security and Other Relief to Wachovia Capital Finance Corporation (Central); and (D) Grant Certain Related Relief [Docket No. 22] (the “DIP Motion”) and a companion motion to convert the Debtors’ chapter 11 bankruptcy cases to cases under chapter 7 [Docket No 40] (the “Motion to Convert”). A true and correct copy of the DIP Objection is attached hereto as Exhibit A.

7. Perhaps nothing evidences the diligence efforts of McGuireWoods more than paragraphs 1 through 13 of the DIP Objection, which describe in detail facts and circumstances of the Debtors that could only have been learned through the pre-petition diligence efforts of McGuireWoods. Significantly, the Examiner Motion appears to derive its background section from the DIP Objection.

B. McGuireWoods’ Representation of the Committee

8. Prior to the appointment of the Committee by the Office of the U.S. Trustee on September 28, 2006, McGuireWoods continued to represent the interests of the Unofficial Trade Committee. Through these efforts, an interim order was negotiated with respect to the DIP Motion that (a) attempted to clarify a previously incomprehensible document, (b) permitted the Debtors to obtain the funding necessary to operate during the interim period and (c) maintained the status quo with respect to several items in the interim order pending appointment of the Committee.

9. Washington Penn, through its counsel Leech Tishman Fuscaldo & Lampl, LLC (“Leech Tishman”), and in particular, Kimberly A. Coleman, Esq. participated in the first day hearings relating to the DIP Motion.

10. The Committee appointed on September 28, 2006, was comprised of five (5) members - LANXESS Corporation; Excel Polymers, LLC; the Brown Corporation of Greenville; DuPont; and Rhodia, Inc. – four of which were previously members of the Unofficial Trade Committee. In recognition of its knowledge of the Debtors and work performed on behalf of the

Unofficial Trade Committee, the Committee selected McGuireWoods as its counsel on October 3, 2006.³ An application by the Committee to retain McGuireWoods (the “McGuireWoods Application”), which was executed by the Committee chairman, and an affidavit in support by Mark E. Freedlander pursuant to Bankruptcy Rule 2014(a) (the “Freedlander Affidavit”) were filed with the Court on October 6, 2006 [Docket No. 109]. The Freedlander Affidavit lists various entities that are interested parties in the Debtors’ cases for which McGuireWoods has performed or may in the future perform legal work in matters unrelated to the Debtors. Included among the entities on this list were Wachovia-related entities.

11. In connection with the filing of the McGuireWoods Application, McGuireWoods discussed with Maria D. Giannirakis, Esq. of the Office of the U.S. Trustee for the Northern District of Ohio the disclosures in the Freedlander Affidavit, including, but not limited to, the work performed by McGuireWoods for the Wachovia-related entities. In particular, Ms. Giannirakis was reminded of the role served by McGuireWoods as local counsel to Congress Financial Corporation (now a Wachovia-related entity) in the WCI Steel bankruptcy proceedings that were before this Court. Ms. Giannirakis was also told that the primary relationship McGuireWoods had/has with Wachovia-related entities involves loan origination work and that there were few bankruptcy representations of Wachovia-related entities by McGuireWoods. In each of its bankruptcy representations of Wachovia-related entities, McGuireWoods was retained as local counsel by lead counsel to Wachovia as a result of the relationships of McGuireWoods with certain law firms that routinely represent Wachovia-related entities in bankruptcy proceedings.⁴

³ As with the Unofficial Trade Committee, McGuireWoods explained to the Committee that the firm performed work and may in the future perform work for Wachovia-related entities and that during the pendency of these cases such work was and will continue to be wholly unrelated to the Debtors.

⁴ This is the exact role served by McGuireWoods in the Le-Nature’s bankruptcy case pending in the United States Bankruptcy Court for the Western District of Pennsylvania at Case No. 06-25454, wherein lead counsel – Richard Toder of Morgan Lewis & Bockius LLP – to Wachovia Bank, NA (with primary operations in Charlotte, North Carolina as opposed to Wachovia with primary operations in Chicago, Illinois) retained McGuireWoods through a referral from a common colleague at an unrelated law firm.

12. On October 12, 2006, the Committee was expanded by the Office of the U.S. Trustee to include two additional members – Washington Penn and Gold Key Processing, Ltd.

13. On November 8, 2006 this Court entered an order authorizing the Committee to retain McGuireWoods without objection by the Office of the U.S. Trustee.

C. Negotiations Relating to a Final DIP Order and Entry of a Final DIP Order

14. As previously referenced, the DIP Objection and the Motion to Convert were filed by McGuireWoods on behalf of the Unofficial Trade Committee, with authority vested in McGuireWoods by the Unofficial Trade Committee to negotiate the best terms possible in the discretion of McGuireWoods. The Emergency DIP Order was entered by the Court on September 25, 2006, with a hearing on the entry of the Final DIP Order scheduled for October 24, 2006. A lawyer from Leech Tishman attended the hearing on September 25, 2006 on behalf of Washington Penn.

15. Shortly after the appointment of the Committee and its selection of McGuireWoods as its counsel, a proposed draft settlement letter was prepared by McGuireWoods on behalf of the Committee (the “Initial Proposal”) for submission to Wachovia and the three largest customers of the Debtors – GM, Delphi and Visteon (collectively, the “Participating Customers”). The Initial Proposal, among other items, agreed to limit the Committee investigation and also addressed the Committee releases of Wachovia but reserved certain investigative rights.⁵ Following a Committee conference call regarding the Initial Proposal, in which the basis of the Initial Proposal was explained in detail to the Committee, the Committee authorized McGuireWoods to submit the Initial Proposal to Wachovia and the Participating Customers and to engage in negotiations to obtain the best possible terms for the Final DIP Order.

⁵ The proposed reservation of certain investigative rights arose due to uncertainty surrounding ownership of assets located in the facilities of CEP Mexico and the corresponding lien rights in such assets.

16. McGuireWoods was able to recommend limited investigative rights and releases by the Committee as a form of consideration in negotiations of the Final DIP Order due to the work performed by McGuireWoods on behalf of the Unofficial Trade Committee prior to the Debtors' bankruptcy filings. In general, the assessment of McGuireWoods was as follows:

- The two acquisition transactions by the Debtors in 2005, were highly leveraged, financed primarily with secured borrowings from Wachovia and not substantially more than \$1.0 million in equity infusion by the equity sponsor of the Debtors. These two items, while raising fraudulent conveyance concerns, did not in and of themselves give rise to a cause of action, but instead are elements of causes of action, including fraudulent conveyance and equitable subordination;
- Ohio law, the appropriate law with respect to choice of law determinations, has adopted the Uniform Fraudulent Transfers Act, the elements of which are substantially similar to the elements of a fraudulent conveyance claim under section 548 of the Bankruptcy Code, 11 U.S.C. § 548;
- For reasons, including, but not limited to, the following, it cannot be reasonably proven that (a) Wachovia had knowledge that the 2005 acquisitions financed by Wachovia would harm future creditors or (b) the Debtors did not receive reasonably equivalent value for the liens and rights granted to Wachovia in consideration of the secured loan proceeds that financed the 2005 transactions:
 - there was no question that Wachovia loaned the money for which it was granted liens;
 - Wachovia is an asset-based lender that made loans to the Debtors premised upon percentages of appraised value rather than 100% of appraised value;
 - in the initial loan with respect to the Carlisle transaction, minimum availability requirements were established by Wachovia as a condition to closing, which the Debtor satisfied by a substantial margin as of the day of closing and the next day. Furthermore, no trade debt was assumed in the transaction and additional availability would be created as the Debtor converted materials into product that was sold to create accounts receivable;
 - minimum working capital requirements were required by Wachovia and satisfied by the Debtors in connection with the Thermoplastics transaction funding;
 - liquidation projections of the Unofficial Trade Committee evidenced that Wachovia would be paid in full with funds available for distribution to general unsecured creditors; and

- several intervening factors occurred between the time of closing on the Debtors' leveraged transactions of 2005 and the occurrence of financial difficulties experienced by the Debtors in 2006 that could not have been reasonably anticipated at the time of the acquisition financing including, but not limited to, Delphi filing for bankruptcy protection, the impact of Hurricane Katrina on resin prices and the alleged performance failings by the Debtors' chief financial officer.

McGuireWoods' assessment of claims against Wachovia was delivered first to the Unofficial Trade Committee and then to the Committee in summary discussions.

17. After the Initial Proposal was submitted to Wachovia and the Participating Customers, a series of negotiations ensued culminating in revised term sheets for settlement being prepared by McGuireWoods and submitted to the Committee for approval on or about October 19, 2006. Committee approval was obtained for submission of the term sheets to Wachovia and the Participating Customers. The revised term sheets, which included a release of claims against Wachovia, were first approved for circulation to the Committee following discussions with the co-chairs of the Committee, and then by e-mail to the entire Committee with a deadline for questions and comments. Washington Penn was a recipient of such term sheets and e-mail.

18. The submission of revised settlement term sheets by the Committee to Wachovia and the Participating Customers prompted further negotiations. Final terms were agreed upon on the day of the hearing (after an adjournment for several hours) on October 27, 2006. At the conclusion of negotiations, the general parameters of the agreed Final DIP Order were explained of record to the Court and an order was submitted for approval and ultimately entered by the Court on October 27, 2006. Counsel to Washington Penn, Ms. Coleman of Leech Tishman, participated in the hearing on the Final DIP Order.

19. As a result of an explanation to the Court of the Wachovia release provisions (the "Release") under the Final DIP Order, a Gibson notice of releases with right to object (the "Release Notice") was prepared and served on creditors and parties in interest. A true and correct copy of the Release Notice is attached hereto and incorporated herein by reference as

Exhibit B. The certificate of service attached to Exhibit B evidences service of the Release Notice upon both Ms. Coleman of Leech Tishman, as counsel to Washington Penn, and upon Washington Penn directly. No party in interest, including, but not limited to, Washington Penn, objected to the Release referenced in the Release Notice by the deadline of November 27, 2006.

D. Appointment of an Examiner Not Supportable as a Matter of Law

20. It is undeniable that Washington Penn is owed a considerable sum of money and no party can begrudge Washington Penn's endeavors to maximize recovery on its claim in the Debtors' cases, but the relief requested in the Examiner Motion simply does not make sense.

21. Assuming *arguendo* that McGuireWoods performed no due diligence with respect to potential claims against Wachovia and assuming further that McGuireWoods would not pursue claims against Wachovia as a result of its unrelated past, present and future representations of Wachovia-related entities – assertions that are vehemently denied – the appointment of an examiner cannot in any fashion change the fact that the Release was known to Washington Penn and its counsel at Leech Tishman (as well as other parties in interest in the case as evidenced by Exhibit B hereto) and NO party, including Washington Penn, filed papers questioning or challenging the Release.

22. Because more than ten (10) days have passed since the entry of the Final DIP Order, the relief sought by Washington Penn could only be obtained under Federal Rule of Civil Procedure 60(b), made applicable by Federal Rule of Bankruptcy Procedure 9024. Washington Penn cannot satisfy the standard required by these rules:

- a. The relief in the Final DIP Order did not arise from mistake, inadvertence, surprise or excusable neglect. Washington Penn is a member of the Committee and was involved in all discussions and communications regarding the Final DIP Order and no objections were raised by Washington Penn. Washington Penn has separate counsel who filed a notice of appearance and participated in all hearings related to the Final DIP Order and no objections were raised by Washington Penn. Washington Penn and its counsel also received the Release Notice and did not object.

- b. There is no newly discovered evidence that could not have been discovered by due diligence to timely appeal the Final DIP Order. The transactions about which Washington Penn now complains occurred significantly prior to the commencement of the Debtors' chapter 11 cases. The Washington Penn District Court Litigation was commenced over a year ago, leaving Washington Penn ample time to investigate such transactions as part of that case; however, as the foundation for the Examiner Motion, Washington Penn appears to rely exclusively on the DIP Objection and the Motion to Convert filed by the Unofficial Committee, not its independent discovery from the Washington Penn District Court Litigation. Significantly, the basis for both the DIP Objection and the Motion to Convert was the pre-petition due diligence performed by McGuireWoods as counsel to the Unofficial Committee, which Washington Penn amazingly alleges McGuireWoods did not perform. Washington Penn was involved in the Debtors' affairs for over six (6) months prior to the formation of the Unofficial Committee, yet now asks this Court to ignore its repeated silence before this Court with respect to the Final DIP Order and the Release Notice. In fact, given (i) the nature of the claims by Washington Penn in the Washington Penn District Court Litigation and (ii) the six (6) month head start of Washington Penn over the Unofficial Committee and its professionals, the silence by Washington Penn in response to the Final DIP Objection and the Release Notice should carry more weight rather than less. Presumably, the six (6) month head start by Washington Penn and its counsel placed it in a better position to analyze the terms of the Final DIP Order than any of the members of the Unofficial Committee and the Committee and their professionals.
- c. The Final DIP Order and the Release were not obtained by fraud, misrepresentation or other misconduct by any party-in-interest in these cases. They (i) are the result of protracted and difficult negotiations among ably represented and sophisticated parties, (ii) were the subject of several public hearings in which Washington Penn participated and (iii) were publicly noticed and filed and widely served upon all parties-in-interest including, but not limited to, Washington Penn.
- d. The Final DIP Order is not void, but is a valid and binding final order, duly entered by this Court with proper jurisdiction following multiple hearings and after the statutorily-required notice was given.
- e. Neither the Final DIP Order, nor the Release contained therein, have been satisfied, released or discharged by any party to these cases. Nor are they the subject of a prior judgment that had been reversed or otherwise vacated. Nor is there any equitable reason such that the Final DIP Order and the Release should not have prospective application. As discussed previously, the terms of the Final DIP Order (i) are the result of protracted and difficult negotiations among ably represented and sophisticated parties, (ii) were the subject of several public hearings in which Washington Penn participated and (iii) were publicly noticed and

filed and widely served upon all parties-in-interest including, but not limited to, Washington Penn.

- f. There are simply no other reasons justifying relief from the Final DIP Order.

23. Legal precedent in this jurisdiction establishes that it is appropriate for the Court to consider the costs and/or benefits of the appointment of an examiner and further determine that such appointment is in the interest of all stakeholders in the case. Regardless of the findings of an examiner with respect to issues raised by Washington Penn, the Release cannot be “undone” at this stage in light of the noticing procedures followed. Extensive hearings on appointment of an examiner and/or the time required by an examiner to perform tasks ordered by the Court will only cause delay without requisite benefits being derived from any such delay. The Debtors’ cases are currently in a posture where the Joint Plan cannot appropriately move forward in the absence of a prompt denial of the Examiner Motion. This is true because disposition of two pension plans cannot move forward until McGuireWoods as counsel to the Committee has the ability to work on behalf of the Committee without the burden of having to look over its shoulder.

24. The two pension plans sponsored by the Debtors must, as a matter of law in the Debtors’ liquidating cases, either be assumed by a member of the ERISA control group or be subject to involuntary distressed termination by the PBGC. Due to claims of the PBGC and the USWA (the members of which are the beneficiaries of the pension plans) that could be asserted in the event of an involuntary distressed termination of the pension plans, assumption of the pension plans by the non-debtor member of the ERISA control group is clearly in the best interest of the Debtors, their estates and their creditors. Furthermore, an involuntary distressed termination of the pension plans may likewise give rise to competing claims of the PBGC in the proceeds of the assets of CEP Mexico, which proceeds are currently available for distribution to creditors of the Debtors by virtue of the Debtors’ ownership interests in CEP Mexico.

25. McGuireWoods, as counsel to the Committee, has been engaged in negotiations with insiders of the Debtors (The Reserve Group) regarding the assumption of the pension plans by a non-debtor member of the ERISA control group; however, among the consideration requested by The Reserve Group in exchange for this assumption is a full release by the Debtors and the Committee. The Reserve Group is a defendant in the Washington Penn District Court litigation. As a result of the allegations made by Washington Penn in the Examiner Motion, with either the Examiner Motion pending or an examiner performing tasks required by the Court, McGuireWoods cannot reasonably be expected to make recommendations to the Committee with respect to a release of The Reserve Group.

26. Furthermore, the Committee has been involved actively in negotiations with the Participating Customers for resolution of accounts receivable claims. Certain of the Participating Customers, with which accounts receivable disputes have been resolved by the Committee, seek releases as part of the consideration for their negotiated accounts receivable settlement payment. An element of resolution of accounts receivable issues with certain of the Participating Customers involves payment of funds in respect of the subordinated secured participation interests of the Participating Customers, which claims continue to accrue interest.⁶ McGuireWoods cannot reasonably be expected to advise the Committee regarding releases of Participating Customers while either the Examiner Motion is pending or an examiner is undertaking an investigation.

27. Likewise, to bring closure to any claims that Wachovia may allege under the Final DIP Order, the Committee has been actively involved in negotiating a stipulation with Wachovia for treatment of any outstanding claims of Wachovia and the release of estate proceeds held by Wachovia under the Final DIP Order. As part of this stipulation, Wachovia has requested

⁶ The Participating Customers have demanded that Wachovia, as agent, release payment of their subordinated secured participation interests, however, the Committee intervened, stressing that section 502(d) of the Bankruptcy Code prohibited such payments while accounts receivable payments remain due from Participating Customers. Wachovia has continued to hold funds otherwise due and payable to the Participating Customers in respect of their subordinated secured participating claims.

reaffirmation of the Release granted under the Final DIP Order. Time is money and the Examiner Motion serves no purpose but to stall resolution of significant issues that must be resolved to bring the Debtors' cases to conclusion.

28. At the time of the retention of McGuireWoods, the firm assured the Committee that it would make all efforts to handle the Debtors' cases in as expedient and diligent a manner as possible, with recognition that every dollar spent on Court-approved professionals is a dollar less for distribution to general unsecured creditors. To that end, McGuireWoods has worked with the Debtors' professionals to keep professional fees in check by coordinating matters with the Debtors and dividing outstanding work and issues between the Debtors' professionals and those of the Committee. Perhaps the best evidence of such collaborative efforts is the Joint Plan and accompanying disclosure statement. The appointment of an examiner (and almost assuredly the examiner's retention of professionals) will only create substantial additional costs for the Debtors' estates to the direct detriment of unsecured creditors and in contravention of one of the Committee's tenets for approach to this case.

E. The Appointment of an Examiner Serves No Purpose

29. As the Court considers the Examiner Motion, the Committee believes that the important question that must be answered is "What does appointment of an examiner accomplish?" Washington Penn requests appointment of an examiner for four specified purposes, paraphrased as follows:

- (1) investigate potential fraudulent conveyance actions against Wachovia;
- (2) determine that consideration provided by Wachovia was sufficient to warrant a release;
- (3) determine that the Debtors' and Committee's professionals are disinterested and that a reasonably prudent investigation was performed in respect of the Release; and
- (4) opine whether it is appropriate for unsecured creditors to vote to accept a plan that releases professionals of the Debtors and the Committee.

30. As explained herein, the Release was known to the Court. It was known to Washington Penn by virtue of its participation on the Committee and the fact that its counsel's participated in all of the debtor-in-possession financing hearings and virtually every other hearing in these cases. It was known by all creditors including, but not limited to, Washington Penn through service of the Release Notice. The Final DIP Order is a final and non-appealable order and the time to object to the Release expired (without objection by any party) on November 27, 2006. Curiously, however, Washington Penn, an active participant in the Debtors' bankruptcy proceedings since their inception, has waited until the eve of a disclosure statement hearing for the Joint Plan to raise Release issues.

31. The Final DIP Order, the mechanism through which the Release was granted, is a far different order than was originally proposed by the Debtors, Wachovia and the Participating Customers as of the commencement of the cases. This is true as a result of substantive and lengthy negotiations among the Committee, Wachovia and the Participating Customers. Given the back-and-forth negotiations that yielded the Final DIP Order, which expresses and governs the complex and significant relationships between multiple interested parties, it is fundamentally inappropriate to dissect a single element of the Final DIP Order in retrospect to evaluate Release consideration. Wachovia made direct monetary concessions as well as timing and procedural concessions in the Final DIP Order all of which, when taken together with concessions made by Participating Customers, provided substantial benefit to the bankruptcy estates and their creditors.

32. With respect to release provisions of professionals under the Joint Plan, the appointment of an examiner is a drastic measure. A far simpler and cheaper remedy is that notice can be provided to all creditors indicating that the Joint Plan contains provisions that release professionals and that by affirmatively voting for the Joint Plan, that creditor approves those releases.

CONCLUSION

The Examiner Motion serves no purpose. The Final DIP Order and the Release reflect the arms-length negotiations of sophisticated parties and they are final and binding. Washington Penn participated fully in all aspects of these bankruptcy cases and did not raise any objections to the Final DIP Order, the Release or the Release Notice and is estopped from doing so now. Casting aspersions upon McGuireWoods will not change these facts. Even if the allegations made by Washington Penn were correct, which they most certainly are not, the failure of creditors (and notably Washington Penn) to file objections to the Committee-approved Release in accordance with the Gibson notice that was served, cannot negate the Release. Also, the fact that McGuireWoods represents Wachovia-related entities in wholly unrelated matters was known to the Court, the Committee, the Office of the U.S. Trustee and all others who reviewed the Freedlander Affidavit.

No useful purpose can be served by appointing an examiner in the Debtors' cases, as such appointment will merely add direct costs to the Debtors' estates and substantially slow progress on obtaining confirmation of the Joint Plan – the mechanism through which unsecured creditors will receive distributions. Most importantly, the appointment of an examiner is opposed by the Committee, which is the fiduciary for the very constituents that the Examiner Motion purportedly seeks to protect. The Examiner Motion, the purposes of which can only be (a) to create chaos in an otherwise orderly liquidation process in which a Joint Plan is pending that proposes a significant return to unsecured creditors and (b) to add leverage to Washington Penn's efforts to maximize its recovery outside its participation on the Committee, cannot be justified as a matter of law or equity and should promptly be denied.

WHEREFORE, the Official Committee of Unsecured Creditors of CEP Holdings, LLC respectfully requests that this Court promptly deny the Examiner Motion.⁷

Dated: March 26, 2007

MCGUIREWOODS LLP

By: /s/ Mark E. Freedlander
Mark E. Freedlander (PA I.D. #70593)
Sally E. Edison (PA I.D. #78678)
William C. Price (PA I.D. #90871)
625 Liberty Avenue
23rd Floor, Dominion Tower
Pittsburgh, PA 15222
Telephone: 412-667-6000
Fax: 412-667-6050

Counsel to the Official Committee of Unsecured Creditors

CONSENT TO FILE:

Committee Co-Chair

Committee Co-Chair

14501012

⁷ The Committee reserves the right to file supplemental papers in response to the Examiner Motion.

WHEREFORE, the Official Committee of Unsecured Creditors of CEP Holdings, LLC respectfully requests that this Court promptly deny the Examiner Motion.¹

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MCGUIREWOODS LLP

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Mark E. Freedlander (PA I.D. #70593)
Sally E. Edison (PA I.D. #78678)
William C. Price (PA I.D. #90871)
625 Liberty Avenue
23rd Floor, Dominion Tower
Pittsburgh, PA 15222
Telephone: 412-667-6000
Fax: 412-667-6050

Counsel to the Official Committee of
Unsecured Creditors

CONSENT TO FILE:

Susan F. New for

Committee Co-Chair *E. I. Du Pont de Nemours and Company*

Committee Co-Chair

V4501012

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WHEREFORE, the Official Committee of Unsecured Creditors of CEP Holdings, LLC respectfully requests that this Court promptly deny the Examiner Motion.¹

Dated: _____

MCGUIREWOODS LLP

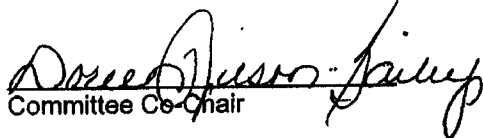
By: _____

Mark E. Freedlander (PA I.D. #70593)
Sally E. Edison (PA I.D. #78678)
William C. Price (PA I.D. #90871)
625 Liberty Avenue
23rd Floor, Dominion Tower
Pittsburgh, PA 15222
Telephone: 412-667-6000
Fax: 412-667-6050

Counsel to the Official Committee of
Unsecured Creditors

CONSENT TO FILE:

Committee Co-Chair


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