

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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In re: : Case No. 06-51848  
: (Jointly Administered)  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> :  
: Chapter 11  
Debtors. :  
: Honorable Marilyn Shea-Stonum  
: :  
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**DEBTORS' RESPONSE TO THE MOTION TO EXPEDITE HEARING ON  
WASHINGTON PENN PLASTIC COMPANY, INC.'S MOTION TO APPOINT  
EXAMINER PURSUANT TO 11 U.S.C. § 1104(c)(1)**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”) hereby respond (the “**Response**”) to the *Motion to Expedite Hearing on Washington Penn Plastic Company, Inc.’s Motion to Appoint Examiner Pursuant to 11 U.S.C. 1104(c)(1)* (the “**Motion**”). In support of this Response, the Debtors respectfully represent as follows:

1. This Court has the authority to rule on the underlying Motion to Appoint Examiner (the “**Underlying Motion**”) without further hearing because the Underlying Motion is not well-pleaded. The relief requested by Washington Penn is not available under Section 1104(c) which provides, in part, that an examiner may be appointed:

to conduct such an investigation *of the debtor* as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the *affairs of the debtor* of or by current or former management of the debtor

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<sup>1</sup> The Debtors are: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

11 U.S.C. § 1104(c) (emphasis added). The Debtors have reviewed reported authority in the Sixth Circuit and have not been able to locate any authority in the Sixth Circuit which supports Washington Penn's conclusion that an examiner can be appointed to review the actions of professionals employed by a creditors' committee. Because the relief requested is legally not available under Section 1104(c), the Underlying Motion should be denied without further hearing.

2. The Underlying Motion should also be denied because this Court should exercise its broad discretion under Section 1104(c)(1) to determine that the relief requested by Washington Penn is not in the best interests of the Debtors' creditors. Section 1104(c)(1) provides that an examiner "shall" be appointed only "if . . . such appointment is in the interests of creditors, any equity security holders, and other interests of the estate." 11 U.S.C. § 1104(c)(1). The Bankruptcy Court has broad discretion to determine whether or not an examiner should be appointed pursuant to Section 1104(c)(1). *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S. Inc.)*, 898 F.2d 498, 501 (6th Cir. 1990). Based on the pleadings filed on this matter, the Court has sufficient information to determine that the relief requested by Washington Penn is not in the best interests of all creditors because:

a. Washington Penn has requested an examiner to review any claims the Debtors' estates may have against Wachovia related to the LBO and the consideration provided by Wachovia in exchange for the release granted to Wachovia. Unless this Court is willing to overturn its final, non-appealable order to which Washington Penn did not object, these issues are moot.

b. Despite not asserting any allegations of failed disclosures, Washington Penn seeks the appointment of an examiner to review issues of disinterestedness. These

issues have already been reviewed by the United States Trustee and this Court. Any further issues of disinterestedness should appropriately be resolved through the fee application process. The appointment of an examiner is unnecessary to this process and would be wasteful. Additionally, releases, if any, granted in the plan of liquidation should be review and ruled upon by this Court through the plan confirmation process which is the appropriate forum to address such concerns.

c. Finally, Washington Penn has sought an examiner to opine on releases, if any, contained in the plan of liquidation. The role of an examiner is to investigate and report, not opine on a plan of liquidation. *See In re Gliatech, Inc.* 305 B.R. 832, 836 (Bankr. N.D. Ohio 2004). Washington Penn's requested relief is inappropriate as a matter of law.

3. Washington Penn cannot show that the requested relief is in the best interests of all the Debtors' creditors. As such, this Court should employ its ample discretion to immediately deny the Underlying Motion.

4. Should this Court determine that further hearing on the Underlying Motion is proper, the Debtors request that this Court expedite any such hearing because any delay caused by litigation of this matter will have a negative affect on the pace of the Debtors' cases and ultimately on return to unsecured creditors.

WHEREFORE, the Debtors request that this Court deny the Underlying Motion as not having been well-pleaded, but if the Court decides to conduct a further hearing that such hearing be heard on an expedited basis.

Dated: March 27, 2007  
Cleveland, OH

CEP HOLDINGS, LLC, et al.,  
Debtors and Debtors-in-Possession

By: /s/ Joseph F. Hutchinson, Jr.  
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