

**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  
: :  
: Hearing Date: N/A  
: 3018 Motion Deadline: 7/2/2007 at 4:00 p.m.  
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**OBJECTION OF DEBTORS AND DEBTORS IN  
POSSESSION TO ALLOWANCE OF CLAIMS FOR VOTING PURPOSES**

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 object (the “**Objection**”) to the allowance of certain claims for voting purposes (collectively, and as described in more detail below, the “**Non Voting Claims**”). In support of this Objection, the Debtors respectfully represent as follows:

**PRELIMINARY STATEMENT**

By this Objection and the Order entered by the Court approving the Disclosure Statement and establishing the Tabulation Rules (as such terms are defined below), the Non Voting Claims, described in more detail on **Exhibits B-1** and **B-2**, are hereby disallowed for *voting purposes only* and not for the purpose of allowance and distribution under the Plan. The Non Voting Claims are either (a) duplicative claims or (b) claims for which the Debtors have no liability.

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

Accordingly, allowing the Non Voting Claims to be counted for or against the confirmation of the Plan would be inappropriate under the circumstances.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Objection is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

#### **General Background**

3. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to an order entered by the Court on September 26, 2006, the Cases are being jointly administered for procedural purposes only.

4. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 28, 2006, the United States Trustee appointed an official committee of unsecured creditors (the “**Committee**”). No trustee or examiner has been appointed.

5. On October 30, 2006, the Debtors filed their *Schedules of Assets and Liabilities* (Docket No. 194) (the “**Schedules**”).

#### **First Omnibus Claims Objection**

6. On March 9, 2007, the Debtors filed the *First Omnibus Objection of Debtors and Debtors in Possession to Duplicative Proofs of Claim and Amended Proofs of Claim [Non-Substantive Objection]* (Docket No. 439) (the “**First Claims Objection**”). On April 19, 2007, upon consideration of the First Claims Objection, the Court entered the *Order Granting First Omnibus Objection of Debtors and Debtors in Possession to Duplicate Proofs of Claim and*

*Amended Proofs of Claim [Non-Substantive Objection]* (Docket No. 549) (the “**First Claims Order**”).

7. The entry of the First Claims Order resulted in the disallowance and expungement of a substantial number of duplicative claims filed in these Cases; however, a number of duplicative claims remain outstanding in these Cases. As of the date of this Objection, the First Claims Objection is the only claims objection that has been filed by the Debtors or the Committee in these Cases.

**First Amended Plan and Disclosure Statement**

8. On May 25, 2007, the Debtors and the Committee jointly filed the *First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated May 25, 2007* (as it may be amended or modified, the “**Plan**”); and the related *First Amended Disclosure Statement to Accompany First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors Dated May 25, 2007* (as it may be amended or modified, the “**Disclosure Statement**”).

**Approval of the Disclosure Statement and Related Items**

9. On May 26, 2007, the Debtors and the Committee jointly filed the *Amended Joint Motion of Debtors and Debtors in Possession and the Official Committee of Unsecured Creditors, Pursuant to Sections 502, 1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3016, 3017, 3018 and 3020, for Entry of an Order: (A) Approving Proposed Disclosure Statement; (B) Establishing Procedures for Solicitation and*

*Tabulation of Votes to Accept or Reject Proposed Joint Plan of Liquidation; and (C) Scheduling Certain Dates in Connection Therewith* (Docket No. 572) (the “**Motion**”).<sup>2</sup>

10. On June 7, 2007, upon consideration of the Motion and the Disclosure Statement, the Court entered the *Order (A) Approving Proposed Disclosure Statement, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Joint Plan of Liquidation and (C) Scheduling Certain Dates in Connection Therewith* (Docket No. 593) (the “**Order**”). A copy of the Order is attached hereto as **Exhibit A** and is fully incorporated herein by reference.

11. Pursuant to the Order, on or about June 13th and 14th, 2007, BMC Group, Inc. (“**BMC**”), the Debtors’ claims and noticing agent, served copies of the Disclosure Statement, the notice of the confirmation hearing (the “**Confirmation Hearing Notice**”) and related materials on the appropriate parties. *See* Docket No. 602.

### **The Tabulation Rules**

12. By the Order, the Court approved the tabulation rules proposed in paragraph 25 of the Motion (the “**Tabulation Rules**”). *See* Order at ¶ 6. The Tabulation Rules govern the allowance of claims solely for the purpose of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, any claim. *Id.*

#### **A. Default Rule for Vote Tabulation**

13. Under the Tabulation Rules, unless one or more of the Tabulation Rules applies and provides otherwise, claims in the class entitled to vote on the Plan are temporarily allowed for voting purposes in an amount equal to: (i) the noncontingent, liquidated and undisputed amount of such claim, as set forth in the Schedules; or (ii) if a proof of claim has been timely

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

filed in respect of such claim, the noncontingent, liquidated and undisputed amount set forth in such proof of claim. *Id.* at ¶ 6(a).

14. Accordingly, the *default rule* established by the Tabulation Rules permits the holder of any claim in Class 4 for which a proof of claim has been timely filed to vote such claim in an amount equal to the noncontingent, liquidated and undisputed amount set forth in such proof of claim. If no proof of claim has been filed, then the noncontingent, liquidated and undisputed amount set forth in the Schedules governs.

**B. Exception if Objection is Filed Within 10 Days of the Confirmation Hearing Notice**

15. The Tabulation Rules, however, create an exception to this rule for claims to which the Debtors file an objection on or before the date that is 10 days after the date of service of the Confirmation Hearing Notice. Paragraph (h) of the Tabulation Rules provides:

If the Debtors have filed and served an objection to a claim on or before the date that is 10 days after the date of service of the Confirmation Hearing Notice . . . such claim will be disallowed for voting purposes in accordance with the relief sought in the objection, unless the objection only seeks disallowance of part of such claim, in which event only the amount subject to the objection will be disallowed for voting purposes.

Accordingly, if the Debtors file and serve an objection to a claim on or before June 25, 2007, such claim will be disallowed for voting purposes in accordance with the relief sought in the objection. *Id.* at ¶ 6(h).

**C. Claimant's Right to File a 3018 Motion**

16. If the Debtors file an objection to a claim pursuant to Paragraph (h) of the Tabulation Rules, or if a claimant otherwise seeks to challenge the allowance of its claim for voting purposes, the Tabulation Rules provide that such claimant must file a motion, pursuant to Bankruptcy Rule 3018(a), for an order temporarily allowing its claim in a different amount or classification for purposes of voting to accept or reject the Plan (a “**Rule 3018 Motion**”) and

serve the motion on the Debtors so that it is received no later than 10 days after the later of (a) June 14, 2007 and (b) the date of service of a notice of an objection, if any, to the underlying claim. Order at ¶ 7.

17. Any claimant whose claim is disallowed for voting purposes by this Objection, thus, has until **July 2, 2007** to file and serve a Rule 3018 Motion. Any claimant whose claim is disallowed for voting purposes under the Tabulation Rules but not pursuant to this Objection has until **June 25, 2007** to file and serve a Rule 3018 Motion. If a Rule 3018 Motion is timely filed and served, the Debtors have 7 days to file and serve any response. *Id.* If a Rule 3018 Motion(s) and an objection thereto are timely filed and served, the Debtors anticipate that such matter(s) will be heard at the status conference scheduled for **July 17, 2007 at 2:00 p.m., Eastern Time** — the first regularly scheduled status conference at which such matter(s) could be heard given the deadlines for filing a Rule 3018 Motion and an objection thereto established by the Order. As set forth in the Motion, the Tabulation Rules afford any claimant that files a Rule 3018 Motion with an opportunity to be heard in advance of the July 24, 2007 hearing on the confirmation of the Plan. *See* Motion at ¶ 26.

### **OBJECTION**

18. The Debtors hereby object to allowance of the Non Voting Claims for voting purposes only on the following grounds: (a) certain of the Non Voting Claims are duplicative claims and (b) certain of the Non Voting Claims assert claims against the Debtors' estates for which the Debtors are not liable.

#### **A. Disallowance of Duplicative Claims for Voting Purposes**

19. The Debtors have determined that each of the claims identified on **Exhibit B-1** under the column labeled "Duplicate Claim Number" is a duplicate of another claim filed in these Cases (collectively, the "**Duplicative Claims**"). In particular, the claimants identified on

Exhibit B-1 (collectively, the “**Duplicative Claimants**”) filed identical claims against the same Debtor. As a result, the Duplicative Claimants currently assert multiple claims in these Cases for the same liabilities and, absent this Objection, would be entitled to vote multiple claims for the same liabilities under the Tabulation Rules.

20. Because the Duplicative Claimants should be entitled to vote only a single claim with respect to the liabilities asserted in the Duplicative Claims, the Duplicative Claims, if permitted to vote, would give the Duplicative Claimants undue influence over the confirmation of the Plan. Accordingly, by this Objection and the Tabulation Rules established by the Order, the Duplicative Claims are hereby disallowed for voting purposes, thereby limiting each Duplicative Claimant to a single vote for or against the confirmation of the Plan.

21. For each of the Duplicative Claims that are disallowed for voting purposes by this Objection, the Debtors have identified a surviving claim asserting the same liability (the “**Duplicative Voting Claims**”), which is unaffected by this Objection unless such Duplicative Voting Claim is identified on Exhibit B-2. The Duplicative Voting Claims are identified under the column labeled “Voting Claim Number” on the attached Exhibit B-1. Accordingly, the Duplicative Claimants’ right to vote these claims for or against the confirmation of the Plan is preserved and unaffected by this Objection, unless such claim is otherwise disallowed for voting purposes as a No Liability Claim (as defined below).

**B. Disallowance of No Liability Claims for Voting Purposes**

22. The Debtors have determined that each of the claims identified on **Exhibit B-2** under the column labeled “Claim Number,” some of which constitute claims identified on the

Schedules and some of which constitute filed proofs of claim (collectively, the “**No Liability Claims**”), should be disallowed for voting purposes.<sup>3</sup>

23. In particular, the Debtors have determined that each of the No Liability Claims improperly asserts a claim against the Debtors’ estates for one or more of the following reasons: (a) the No Liability Claim was paid or otherwise satisfied prepetition by the Debtors; (b) the No Liability Claim is a postpetition obligation that has been paid in the ordinary course of business; (c) the No Liability Claim has been transferred to another claimant who has filed a claim for the same liability; or (d) the holder of the No Liability Claim (collectively, the “**No Liability Claimants**”) has indicated to the Debtors that the underlying liability is no longer owed to such claimant.

24. Pursuant to section 101 of the Bankruptcy Code, a creditor holds a claim against a bankruptcy estate only to the extent that it has a “right to payment” for the asserted liability. *See* 11 U.S.C. §§ 101(5), 101(10).<sup>4</sup> By contrast, there is no right to payment — and, therefore, no claim — where the asserted liabilities already have been paid or otherwise are not due and owing by a debtor. Because the Debtors have determined that the No Liability Claimants have no right to payment on account of the No Liability Claims, it would be inappropriate for the No Liability Claimants to vote such claims for or against the confirmation of the Plan. Accordingly, by this Objection and the Tabulation Rules established by the Order, the No Liability Claims are hereby disallowed for voting purposes.

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<sup>3</sup> The No Liability Claims identified on Exhibit B-2 are listed alphabetically by first name where the claimant is an individual.

<sup>4</sup> Section 101(5) of the Bankruptcy Code defines a “claim” in pertinent part as a “right to payment” or “the right to equitable remedy for breach of performance if such breach gives rise to a right to payment[.]” 11 U.S.C. § 101(5). Section 101(10) of the Bankruptcy Code defines a “creditor” in pertinent part as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor[.]” 11 U.S.C. § 101(10).



## RESERVATION OF RIGHTS

25. This Objection pertains only to the allowance of the Non Voting Claims for *voting purposes only* and not for the purpose of allowance and distribution under the Plan. The Debtors, the Committee and any party with rights pursuant to the Plan, including, but not limited to, any liquidating trustee appointed thereunder, reserve their right to object at a later date on any and all factual and/or legal grounds to the allowance of the Non Voting Claims, or any other claim that is not subject to this Objection, for the purpose of allowance and distribution under the Plan.

## NOTICE

26. Notice of this Objection has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors and any other parties in interest directly affected by this Objection, including the holders of the Non Voting Claims or their counsel (as indicated on the applicable proof of claim form).

Dated: June 22, 2007  
Cleveland, OH

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

By: /s/ Joseph F. Hutchinson, Jr.  
One of Their Attorneys

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