

**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., :  
 : Chapter 11  
Debtors. :  
 : Honorable Marilyn Shea-Stonum  
 :  
 : Related Docket No. 697  
 :  
 : Hearing Date: 10/02/07 at 9:30 a.m.  
 : Objection Deadline: 09/28/07 at 4:00 p.m.  
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**OBJECTION OF THE CEP LIQUIDATING TRUST TO REQUEST OF  
JAMES D. VAN TIEM FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM TO THE  
STATE OF MICHIGAN DEPARTMENT OF TREASURY**

Shaun M. Martin, the Liquidating Trustee of the CEP Liquidating Trust and successor in interest to the above-captioned debtors (the “**Debtors**”), hereby files this objection (the “**Objection**”) to Request of James D. Van Tiem for Payment of Administrative Expense Claim to the State of Michigan Department of Treasury (the “**Application**”). Pursuant to this Objection, the Liquidating Trustee requests that the Court enter an order denying the Application. In support of this Objection, the Liquidating Trustee respectfully represents as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and Article 12.1(d) of the Plan (as such term is defined below). Consideration of this 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.

3. The statutory predicates for the relief requested herein are sections 105(a) and 502 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## BACKGROUND

### General Background

4. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. By an Order entered on July 25, 2007 (Docket No. 661), the Court confirmed 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* (the “**Plan**”).

6. Pursuant to Article 8.1 of the Plan, the Liquidating Trustee has the right to object to administrative expense claims, including the Van Tiem Administrative Expense Request. See Plan at § 8.1.

### James D. Van Tiem’s Release of the Debtors

7. On June 26, 2006, the Debtors filed the Motion of Debtors and Debtors in Possession, Pursuant to Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, for Entry of an Order Approving and Authorizing the Debtors to Execute and Perform Under a Settlement Agreement by and Between the Debtors, the Official Committee of Unsecured Creditors, the Reserve Group Management Company and Superior Fabrication, LLC (the “**Settlement Motion**”) (Docket 608).

8. Under the Settlement Motion, the Debtors sought to enter into the Settlement Agreement and Mutual Release dated June 26, 2007 executed by the Debtors and The Reserve Group Management Company and its principals (including James D. Van Tiem) (the “**Settlement and Release**”). Pursuant to the Settlement and Release, Mr. Van Tiem, individually, released any and all claims against the Debtors. See Settlement and Release at ¶ 4.01.

9. On July 25, 2007, this Court approved the Settlement Motion (the “**Settlement Order**”) (Docket 660).

**James D. Van Tiem's Administrative Expense Request**

10. On September 17, 2007, James D. Van Tiem ("**Van Tiem**") filed the Request for Payment of Administrative Expense Claim to the State of Michigan Department of Treasury (the Application) (Docket 697). By the Application, Van Tiem seeks allowance of an administrative expense claim in the amount of \$55,002.42 for the State of Michigan Single Business Tax liability of the Debtors for the year 2006 (the "Van Tiem Administrative Expense Request"). The basis for the Van Tiem Administrative Expense Request is that as a managing member of the Debtor he may have personal liability to the State of Michigan an for any tax obligation of the Debtor not by for by the Debtor

**OBJECTION**

11. Presumably, Van Tiem files the Administrative Expense on behalf of the State of Michigan pursuant to Bankruptcy Rule 3005(a), which provides in pertinent part, "if a creditor does not timely file a proof of claim..., an entity that is or may be liable with the debtor to that creditor... may file a proof of claim within thirty (30) days after expiration of the time for filing claims...".

12. A literal reading of Bankruptcy Rule 3005(a) does not permit a party such as Van Tiem to file a proof of claim with respect to such contribution or guaranty until such time as the period for the primary claimant to assert such a claim has passed. <DISCUSS CITATION WITH MEF> The Van Tiem Administrative Expense Request was filed on September 17, 2007, the same date as the bar date for administrative claims. As such, the Van Tiem Administrative Expense Request, if otherwise were permissible, was filed prematurely as a matter of law.

13. Further, by virtue of the Settlement and Release, Van Tiem was absolutely prohibited from asserting claims against CEP. The Settlement and Release makes no distinction between a claim asserted under Bankruptcy Rule 3005(a) or otherwise, and to this end the Van Tiem Administrative Request is prohibited pursuant to the Settlement and Release previously approved by this Court..

14. With respect to the underlying claim, the State of Michigan has not filed an administrative claim for the 2006 Single Business Tax. Under the Plan, the bar date for administrative claims was September 17, 2007. All creditors and parties in interest, including but not limited to the State of Michigan, were timely notified of that administrative expense bar date. See BMC Affidavit of Service dated August 27, 2007 (Docket 691).

15. Accordingly, the State of Michigan is time-barred from asserting the 2006 Single Business Tax against the CEP Liquidating Trust.

### **RESERVATION OF RIGHTS**

16. The CEP Liquidating Trust reserves the right to object further to the Application on any and all additional factual and/or legal grounds. Without limiting the generality of the foregoing, the CEP Liquidating Trust specifically reserves the right to (i) amend this Objection, (ii) file additional papers in support of this Objection, (iii) file a subsequent objection on any ground or grounds to any part of the Application that are not disallowed in their entirety as requested herein and (iv) take other appropriate actions to (a) respond to any allegation or pleading that may be filed in response to this Objection by or on behalf of Van Tiem or other interested parties, (b) further object to any claim for which Van Tiem provides (or attempts to provide) additional documentation or substantiation or (c) further object to any claim based on any additional information that may be discovered upon further review by the CEP Liquidating Trust or through discovery pursuant to the applicable provisions of Part VII of the Bankruptcy Rules.

**CONCLUSION**

WHEREFORE, the CEP Liquidating Trust respectfully requests that the Court deny the Application and grant such other and further relief the Court may deem proper.

Dated: September 28, 2007

McGuireWoods LLP

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