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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AKRONUNITED 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.,¹ :
 : Chapter 11
 Debtors. :
 : Honorable Marilyn Shea-Stonum
 :
 : Related Docket No. 767
 :
 : Hearing Date: 01/28/08 at 10:00 a.m.
 : Objection Deadline: 01/25/08 at 4:00 p.m.
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**OBJECTION OF THE CEP LIQUIDATING TRUST TO APPLICATION
 OF INTERGRYS SERVICES OF NY FOR THE ALLOWANCE
 OF AN ADMINISTRATIVE EXPENSE CLAIM**

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 Application of Intergrys Energy Services of NY (“**Intergrys**”) for the Allowance of an Administrative Expense Claim (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.

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

3. The statutory predicate for the relief requested herein is section 503 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. Upon information and belief, all of the services subject to the Application related to the Debtors’ former Crestline, Ohio facility (the Crestline Facility defined below).

7. On November 21, 2006, this Honorable Court entered the Order Authorizing (A) Auctions of Liquidating Facilities (located at Vandalia, OH; Bishopville, SC; Crestline, OH; Canton, OH; Lapeer, MI; Bellville, MI and Middlefield, OH); (B) Sale of Assets Free and Clear of all Claims, Liens and Encumbrances, and (C) Debtors’ Entry into an Asset Marketing Agreement on an Interim Basis (the “**Liquidation Sales Order**”) (Docket 248). Pursuant to the Liquidation Sales Order, the Debtors were authorized to liquidate, among other assets, all of the Debtors’ assets (the “**Crestline Assets**”) located at their Crestline, Ohio location (the “**Crestline Facility**”). See Liquidation Sales Order. On December 19, 2006, the Debtors conducted the auction of substantially all of the Crestline Assets at the Crestline Facility. Further, between December 19, 2006 and January 31, 2007, the approved purchasers of the Crestline Assets removed such assets from the Crestline Facility.

8. On March 1, 2007, this Honorable Court entered the Order, Pursuant to Section 363 of the Bankruptcy Code, Authorizing the Debtors to Sell Real property of the Debtors’

Estates located in Crestline, Ohio Outside the Ordinary Course of Business (the “**Crestline Facility Sale Order**”) (Docket 404).

9. Pursuant to Article 8.1 of the Plan, the Liquidating Trustee has the right to object to administrative expense claims, including the administrative expense request subject to the Application. See Plan at § 8.1.

10. Under the Plan, the bar date for administrative expense claims was September 17, 2007 (the “**Administrative Expense Bar Date**”). Notice of the Administrative Expense Bar Date was timely served by BMC on all parties in interest on August 27, 2007. See BMC Affidavit of Service dated August 27, 2007 (Docket 691). As of the Petition Date, the Debtors held a credit in the amount of \$1,275.53 with Intergrys. As such, the Debtors did not schedule Intergrys as a creditor and, presumably, Intergrys did not file a proof of claim; however, the Debtors published notice of the pendency of their bankruptcy cases and a general unsecured creditor bar date in both the Wall Street Journal, a national publication, on January 26, 2007 and Canton Repository, the newspaper of general circulation of Canton, Ohio, on January 29, 2007. See Affidavit of Service Regarding Publication of the Bar Date Notice in the Wall Street Journal (Docket 397) and Affidavit of Service Regarding Publication of the Bar Date Notice in the Canton Repository (Docket 400). Accordingly, the CEP Liquidating Trust submits Intergrys was provided constructive notice of the Debtors’ chapter 11 bankruptcy cases by virtue of the publications in the Wall Street Journal and Canton Repository.

11. On November 29, 2007, Intergrys filed the Application seeking the allowance and payment of an alleged administrative expense claim in the amount of \$24,584.41 (the “**Intergrys Administrative Expense Request**”).

OBJECTION

12. An administrative expense is allowed and entitled to priority only for “the actual, necessary costs and expenses of preserving the estate, ...” 11 U.S.C. § 503(b)(1)(A). A claim qualifies as an administrative expense when: (1) the debt arises “from a transaction with the

debtor-in-possession” and (2) the debt must provide a **direct** and **substantial** benefit to the estate. *See In re White Motor Corporation*, 831 F.2d 106, 110 (6th Cir.1987); *In re Gasel Transportation Lines, Inc.*, 326 B.R. 683, 687 (6th Cir. BAP 2005); *In re Cardinal Industries, Inc.*, 151 B.R. 833, 836 (Bankr.S.D.Ohio 1992). The administrative expense claimant must establish both prongs by a preponderance of the evidence to be afforded an allowed administrative expense claim. *Cardinal Industries*, 151 B.R. at 836.

13. The CEP Liquidating Trust submits that by virtue of Intergrys untimely filing the Application (November 29, 2007) prior to the Administrative Expense Bar Date (September 17, 2007), this Honorable Court should deny Intergrys’ Application.

14. Further, to the extent Intergrys’ Application is not barred as untimely, the CEP Liquidating Trust submits that Intergrys must establish that it provided the CEP Liquidating Trust, as successor in interest to the Debtors, a **direct** and **substantial** benefit. Specifically, CEP’s purported balance to Intergrys as of the date all of the Crestline Assets were removed was \$987.06 as set forth in Intergrys’ Application. From an after the sale of the Crestline Assets, the Crestline Facility was empty and provided no benefit to the Debtors’ estates. As such, the CEP Liquidating Trust submits that, at most, Intergrys is able to substantiate a direct and substantial benefit to the Debtors in the amount of \$987.06 and be granted the appropriate administrative expense in the same amount.

15. Additionally, as noted above, the Debtors sold the Crestline Facility on or about March 1, 2007. Pursuant to the Intergrys Application, the Debtors’ purported balance as of March 1, 2007 was \$10,027.57. To the extent this Honorable Court determines Intergrys conferred a direct and substantial benefit to the Debtors until the sale of the Crestline Facility, the CEP Liquidating Trust submits that Intergrys’ administrative expense must be capped at \$10,027.57.

16. In light of the above, this Court must deny the Intergrys Administrative Expense Request.

