

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.,¹ :
 : Chapter 11
 Debtors. :
 : Honorable Marilyn Shea-Stonum
 :
 : Related Docket No. 779
 :
 : 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 MOTION
OF FIRST COMMUNICATIONS TO COMPEL PAYMENT OF
ADMINISTRATIVE PRIORITY 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 Motion of First Communications to Compel Payment of Administrative Priority Claim (the “**Motion**”). 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**”) (Docket 567). The Debtors and the Official Committee of Unsecured Creditors likewise filed the First Amended Disclosure Statement to Accompany the Plan on May 25, 2007 (the “**Disclosure Statement**”) (Docket 568).

6. As more fully discussed in the Disclosure Statement, the Debtors sold substantially all of their assets by virtue of various orders entered by this Honorable Court. See Disclosure Statement at V.E.

7. The CEP Liquidating Trust submits that the Debtors ceased any conceivable operations on or before March 1, 2007 (the date of the last sale).

8. 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.

9. 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 (the “**Administrative Expense Bar Date Notice**”) (Docket 691). The CEP Liquidating Trust submits that First Communications was provided

notice of the Administrative Expense Bar Date. See Administrative Expense Bar Date Notice at pp. 54, 139.

10. On January 10, 2008, First Communications filed the Motion seeking the allowance and payment of an alleged administrative expense claim in the amount of \$371,609.36 (the “**First Communications Administrative Expense Request**”).

OBJECTION

11. 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.

12. The CEP Liquidating Trust submits that by virtue of First Communications untimely filing the Application (January 10, 2008) prior to the Administrative Expense Bar Date (September 17, 2007), this Honorable Court should deny First Communications’ Application.

13. Further, to the extent First Communications’ Motion is not barred as untimely, the CEP Liquidating Trust submits that First Communications must establish that it provided the CEP Liquidating Trust, as successor in interest to the Debtors, a **direct** and **substantial** benefit.

14. In the Motion, First Communications displays the following balances:

<u>Invoice</u>	<u>Invoice Date</u>	<u>Billing Period</u> <u>Ended</u>	<u>Past Due</u>	<u>New Services</u>	<u>Amount Due</u>
244754	10/08/2006	09/30/2006	\$5,588.66	\$14,797.45	\$20,386.11
245852	11/06/2006	10/31/2006	\$17,764.82	\$14,797.45	\$32,694.46
248117	01/01/2007	12/31/2006	\$17,764.82	\$14,797.45	\$32,933.25
249258	02/04/2007	01/31/2007	\$18,371.16	\$14,801.60	\$33,729.86
250399	03/02/2007	02/28/2007	\$0.00	\$366,940.14	\$366,940.14

251293	04/02/2007	03/31/2007	\$366,940.14	\$5,669.22 (tax and late charge)	\$372,609.36
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15. Specifically, CEP's balance to First Communications as of the date of the complete cessation of operations (March 1, 2007) was \$0.00; however, First Communications asserts that the Debtors somehow incurred charges and/or services during the month of February, 2007 in the amount of \$366,940.14 (or approximately twenty times the typical services incurred in the immediately previous month). The CEP Liquidating Trust submits that during the month of February, 2007, the Debtors had no business operations and a skeletal staff that consisted of less than five (5) employees.

16. Given the status of CEP's "operations" during February, 2007, the CEP Liquidating Trust submits that the charges and/or "services" sought by First Communications in the Motion are not for ordinary course business services. Further, the CEP Liquidating Trust submits that First Communications is unable to substantiate a direct and substantial benefit to the Debtors' estates for the February, 2007 and March, 2007 charges (which represent the entire administrative expense request by First Communications).

17. In light of the above, this Court must deny the First Communications Administrative Expense Request.

RESERVATION OF RIGHTS

18. The CEP Liquidating Trust reserves the right to object further to the Motion, or any other claims asserted by First Communications, 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 First Communications or other interested parties, (b) further object to any claim for which First Communications 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 Motion and grant such other and further relief the Court may deem proper.

Dated: January 28, 2008

McGuireWoods LLP

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