

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	Case No. 04-0_____(____)
)	Chapter 11
Debtors.)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., et al.,)	Docket No. ____
Movants,)	Hearing Date and Time: _____
)	Objection Deadline: _____
v.)	
)	
NO RESPONDENT.)	

**MOTION OF THE DEBTORS PURSUANT TO SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE FOR APPROVAL OF SERVICES AGREEMENT
WITH LEONARD LOBIONDO AND KZC SERVICES, LLC**

The above-captioned debtors and debtors in possession (the “Debtors”) file this motion (the “Motion”) pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) seeking entry of an order approving the services agreement (the “Agreement,” a copy of which is attached hereto as Exhibit A) among the Debtors, Leonard LoBiondo (“LoBiondo”) and KZC Services, LLC (“KZC”), dated as of June 11, 2004. KZC is a

¹ The Debtors are the following entities: ACR Management, L.L.C., Anthony Crane Rental Holdings, L.P., ACR/Dunn Acquisition, Inc., Anthony Crane Capital Corporation, Anthony Crane Holdings Capital Corporation, Anthony Crane International, L.P., Anthony Crane Sales & Leasing, L.P., Anthony International Equipment Services Corporation, Anthony Sales & Leasing Corporation, Carlisle Equipment Group, L.P., Carlisle GP, L.L.C., Husky Crane, Inc., Anthony Crane Rental, L.P., d/b/a Maxim Crane Works, Maxim Crane Works, LLC, Sacramento Valley Crane Service, Inc., The Crane & Rigging Company, LLC, Thompson & Rich Crane Service, Inc.

wholly-owned subsidiary of Kroll Zolfo Cooper, LLC (“Kroll Zolfo”). In support of this Motion, the Debtors respectfully state as follows:²

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code.

Background

3. On this date (the “Petition Date”), the Debtors filed petitions for relief under the Bankruptcy Code (the “Chapter 11 Cases”). As more fully described in the First Day Affidavit, Debtors have submitted various First Day Motions that seek to stabilize the Debtors’ business operations and allow the Debtors to commence these Chapter 11 Cases in the best position possible to emerge expeditiously.³ Consistent with the relief requested in the First Day Motions, Debtors have conducted extensive negotiations and preparations with their Prepetition Senior Lenders regarding their financial obligations and future business operations and have secured a debtor-in-possession financing facility with certain of the Prepetition Senior Lenders to provide for financing of the Debtors’ operations following the Petition Date. Moreover, the Company, certain of the Prepetition Senior Lenders and Prepetition Term B Facility Lenders, and the Term C Lender have entered into a lock up and voting agreement in support of a plan of reorganization

² The facts and circumstances supporting this Motion are set forth in the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain first day motions, filed contemporaneously herewith (“the First Day Affidavit”).

³ Any capitalized terms used in this Motion that are not otherwise defined shall have the meaning ascribed to them in the First Day Affidavit.

that embodies the terms of their agreement concerning the Company's restructuring, which terms have been set forth in the term sheet attached to the lock up and voting agreement. The Debtors have also requested the Court designate the Chapter 11 Cases as a complex case pursuant to Local Rule 1002-3, and to jointly administer them pursuant to Bankruptcy Rule 1015(b).

Kroll Zolfo Cooper, L.L.C Was Consultant To The Debtors Prior To The Petition Date

4. On May 26, 2004, the Debtors engaged Kroll Zolfo, of which LoBiondo is a Senior Managing Director and Co-Chief Operating Officer, to provide certain advisory services in connection with the Debtors' financial restructuring pursuant to the terms of the engagement letter attached hereto as Exhibit B.

Information About Kroll Zolfo

5. Kroll Zolfo is one of the world's leading financial advisory, interim management and litigation support and forensic accounting organizations, with a team of over 400 restructuring, litigation and forensic specialists in North America and Europe/UK. Kroll Zolfo specializes in working with companies, creditors, investors and others in out-of-court workouts and chapter 11 proceedings. Kroll Zolfo has served as interim managers and financial advisors in financially complex bankruptcies and workouts involving billions of dollars in debt. Over the past two decades Kroll Zolfo has cultivated an in-depth understanding of the various economic stakeholders, their divergent perspectives and the ways to achieve consensus amid contention. Kroll Zolfo has experience in virtually all aspects of the energy industry, as well as experience with large multinational companies. A sample of Kroll Zolfo's public rental and leasing experience includes Agri-Till, Inc., Agway Inc., Allis, Computer Leasing Inc., Continental Information Systems, Evans Transportation Co., Golden Ocean Group, Holt Leasing NationsRent, North American Car Corp., and World Airways. Kroll Zolfo's qualifications, including a description of its staffing and approach in providing services, are more fully set forth

in the appended Affidavit of Leonard J. LoBiondo (the “LoBiondo Affidavit”) attached hereto as Exhibit C, filed in support of this Motion and in the Statement of Qualifications attached hereto as Exhibit D.

Relief Requested

6. By this motion, the Debtors request entry of an order, pursuant to sections 105(a) and 363 of the Bankruptcy Code, approving the Agreement among the Debtors, LoBiondo and KZC. A summary of the material terms and conditions of the Agreement is set forth herein.

Services to be Rendered

7. Subject to further order of this Court, the professional services that LoBiondo and KZC will be asked to render for the Debtors are set forth in the Agreement attached as Exhibit A to this Motion.

8. More specifically, the terms of the Agreement, including the services to be performed, are as follow:

1. Engagement.

The Debtors have engaged LoBiondo and KZC to perform certain services as described in the Agreement, and LoBiondo and KZC have accepted this engagement, on the terms and conditions set forth in the Agreement, effective as of the Petition Date and subject to the Bankruptcy Court entering an order approving the Agreement. The Debtors are hereby acquiring from KZC the services of LoBiondo and certain additional individuals whom KZC will assign to this engagement to perform services required of KZC under the Agreement (the “Associate Directors of Restructuring,” together with LoBiondo, the “Representatives”). The Representatives may include certain employees of Kroll, Inc., and its other subsidiaries designated by KZC, and their fees and expenses shall be governed as set forth herein.

2. Duties.

(a) **Phase I.** Not later than July 26, 2004, KZC shall have completed its assessment (the “Initial Assessment”) of the Debtors’ business and management, and, delivered a written report thereof (the “Assessment Report”) to: (i) the Board, (ii) Goldman Sachs Credit Partners L.P., as lead arranger and syndication agent, and Fleet National Bank, as administrative agent and collateral agent (in such capacities, collectively, the “Prepetition Senior Agents”), under that certain Second Amended and Restated Credit Agreement, dated as of March 31, 2002, by and among the Company, the

Prepetition Senior Agents and certain financial institutions party thereto (collectively, the “Prepetition Senior Lenders”) (as amended from time to time, the “Prepetition Senior Credit Agreement”), (iii) the “Steering Committee” as defined in the Prepetition Senior Credit Agreement (as the composition of such Committee may change from time to time, the “Steering Committee”), and (iv) such other parties that the Board shall designate. In particular, the scope of duties of KZC and LoBiondo during Phase I shall include:

- (i) assisting management and the Company’s retained professionals in evaluating and challenging the Company’s short-term cash-flow projections, including underlying assumptions;
- (ii) assisting management and the Company’s retained professionals in evaluating and challenging the Company’s business plan, including underlying assumptions, and in identifying potential strategies and tactics to improve the Company’s economic model;
- (iii) assisting management and the Company’s retained professionals by performing a detailed assessment on a region-by-region basis of the Company’s business, including analyses of the Company’s customers, competitors, equipment and fleet components, utilization of equipment, suppliers, management and any other component of the Company’s business deemed significant by KZC;
- (iv) assisting the Company and its retained professionals as required in the conduct of the Chapter 11 Cases; and
- (v) such other services as the Company may request and KZC and LoBiondo agree to perform.

(b) **Phase II.** The Board shall evaluate the Assessment Report, and in consultation with certain other parties, including the Prepetition Senior Agents and the Steering Committee, shall: (i) determine whether to continue to engage KZC in any capacity after the Assessment Report has been completed; and (ii) if KZC is to be engaged for additional services, determine, in consultation with certain other parties, including the Prepetition Senior Agents and the Steering Committee, the scope and duration thereof, including any expanded duties and responsibilities that KZC shall have (“Phase II”). The Company and KZC shall thereafter agree in writing as a modification hereto on the scope and duration of the Phase II engagement.

(c) **Reporting Responsibilities.** KZC and its Representatives, including, but not limited to LoBiondo, shall report directly to the Board on all matters. In so doing, KZC and its Representatives shall keep the Board fully apprised at all times of their findings, proposals and activities.

(d) **Interface with Management.** KZC and its Representatives, including, but not limited to LoBiondo, shall interface, as appropriate, with any member or members of the Debtors' management regarding this engagement.

(e) **Discretion In Performing Services.** KZC and its Representatives, including, but not limited to LoBiondo, shall not be obligated to be available to perform services under the Agreement for any specific minimum number of hours or at any specific location during any period, it being understood that KZC and its Representatives, including, but not limited to LoBiondo, shall be obligated to furnish such hours of service as they deem necessary in their discretion to perform their duties hereunder.

(f) **No Guarantee Of Results.** In undertaking to provide the services set forth in the Agreement, LoBiondo and KZC do not guarantee or otherwise provide any assurances that it will succeed in restoring the Debtors' operational and financial health and stability and, except for the "Success Fee" referenced in Section 4(i) of the Agreement, the Debtors' obligation to provide the compensation specified under Section 4 of the Agreement shall not be conditioned upon any particular results being obtained by LoBiondo and KZC.

3. **Term.**

(a) **Chief Restructuring Officer.** The Board has elected LoBiondo as Chief Restructuring Officer, effective as of the date of the Resolution, and he shall serve at the pleasure of the Board.

(b) **Term of KZC Engagement under The Agreement.** Subject to entry of an order of the Bankruptcy Court approving the Agreement, the term of LoBiondo's and KZC's engagement under the Agreement shall commence on the Petition Date. The term of LoBiondo and KZC's engagement with the Debtors shall continue on a month-to-month basis until terminated by either LoBiondo or KZC, on one hand, or the Debtors on the other, at the end of any such month upon written notice to the other party given at least ten days prior to the end of any such month, *provided, however*, that the Debtors shall have the right to terminate LoBiondo and KZC's engagement under the Agreement upon three days written notice once Phase I has concluded.

4. **Compensation.** The terms of LoBiondo and KZC's compensation hereunder are as follows:

(a) **Compensation Payable To KZC.** All compensation for the services and actions of KZC, LoBiondo and any other Representatives or agents or employees of KZC under the Agreement will be payable to KZC.

(b) **Standard Hourly Rates.** The fees for services of KZC, LoBiondo, other Representatives or agents or employees of KZC will be based on the hours charged at their respective standard hourly rates that are in effect when the services are rendered; these rates generally are revised semi-annually. The billing rates

for professionals who may be assigned to this engagement in effect as of January 1, 2004, are as follows:

<u>Representative</u>	<u>Per Hour</u>
Managing Directors	\$650 - \$745
Professional Staff	\$125 - \$595
Support Personnel	\$ 50 - \$225

(c) **Cap On Average Monthly Billings.** During the term of LoBiondo and KZC's engagement under the Agreement, KZC will not receive compensation exceeding \$225,000 per month on a rolling average basis over the term of their engagement. The Debtors shall withhold an amount from any month's billing in which the rolling average monthly billing exceeds \$225,000 such that the rolling average monthly billing does not exceed \$225,000 for that month; *provided, however*, that any such withheld amounts may be payable in subsequent months during the term of this engagement so long as the rolling average monthly billing does not exceed \$225,000 as a result of any such delayed payment.

(d) **Expenses.** KZC shall be entitled to reimbursement of the reasonable out-of-pocket expenses of the Representatives and any other agents or employees of KZC, including, but not limited to, costs of travel, reproduction, typing, computer usage, any applicable state sales or excise tax and other direct expenses. Expenses shall not be subject to the cap set forth in Section(c) of the Agreement.

(e) **Retainer.** KZC has received a retainer of \$225,000, against which certain prepetition amounts have been applied. The remaining amount (if any) of the retainer will be returned to the Debtors upon payment in full of all outstanding KZC invoices or shall be applied to any outstanding invoices when the Agreement terminates, as the case may be.

(f) **Monthly Invoices and Payment Terms.** The Debtors shall pay KZC the compensation set forth in Section 4(a) of the Agreement subject to the cap set forth in Section 4(c) of the Agreement and the reimbursement for expenses set forth in Section 4(d) of the Agreement based upon KZC's submission of monthly invoices setting forth the number of hours each day expended by the Representatives or other employees or agents of KZC on behalf of the Debtors and a detailed listing of the expenses sought to be reimbursed. KZC's invoices are payable upon receipt. The compensation provided for in the Agreement shall constitute full payment for the services to be rendered by KZC and LoBiondo to the Debtors under the Agreement.

(g) **Administrative Expense Priority.** All compensation and reimbursement due to, and other rights of KZC in accordance with the Agreement, including, without limitation, the Success Fee (as defined herein) and any indemnification obligations arising under the Agreement, shall be considered and allowed as administrative expenses in accordance with section 503 of the Bankruptcy Code, and shall be paid in accordance with the terms and provisions of Section 4 of the Agreement, subject to the terms and conditions of the interim and final orders entered by the

Bankruptcy Court approving postpetition financing and use of cash collateral contemplated by the Company's motion seeking approval thereof.

(h) **Acknowledgement.** The Debtors' acknowledge and agree that the hours worked, the results achieved and the ultimate benefit to the Debtors of the work performed in connection with the engagement may be variable and that Debtors, LoBiondo and KZC have taken this into account in setting the fees under the Agreement. No fee payable to any other person or entity by the Debtors, any official committee appointed in these Chapter 11 Cases or any other party shall affect any fee payable to LoBiondo and KZC under the Agreement.

(i) **Success Fee.** KZC shall be entitled to a success fee (the "Success Fee") if: (i) the Company engages KZC in a Phase II engagement as set forth in the Agreement; and (ii) the Bankruptcy Court has entered a final nonappealable order confirming a plan of reorganization (the "Plan") under chapter 11 (the date thereof being the "Confirmation Date"). The Success Fee shall be payable on the effective date of the Plan (the "Effective Date") in the amount of \$500,000 (five hundred thousand dollars) if the Confirmation Date occurs on or before December 31, 2004.

(j) **Additional Success Fee.** KZC reserves the right to make application to the Bankruptcy Court for additional amounts up to \$500,000, *provided, however*, that the total Success Fee paid to KZC pursuant to Section 4(i) and Section 4(j) of the Agreement shall not exceed a total of \$1 million.

(k) **Independent Contractor/Benefits; Taxes.** The parties intend that LoBiondo and KZC each shall render services under the Agreement as an independent contractor, and nothing in the Agreement shall be construed to be inconsistent with this relationship or status. LoBiondo and KZC shall not be entitled to any benefits paid by the Debtors to its employees. LoBiondo and KZC shall be solely responsible for any tax consequences applicable to LoBiondo and KZC by reason of the Agreement and the relationship established thereunder, and the Debtors shall not be responsible for the payment of any federal, state or local taxes or contributions imposed under any employment insurance, social security, income tax or other tax law or regulation with respect to LoBiondo and KZC's performance of services hereunder. The parties agree that, subject to the terms and provisions of the Agreement, LoBiondo and KZC may perform their duties under the Agreement and set their work schedule as the parties may determine.

(l) **Testimony.** If LoBiondo, KZC, the Representatives or any principal or agent of KZC is required to testify at any time after the expiration or termination of the Agreement at any administrative or judicial proceeding relating to any services provided by LoBiondo and KZC thereunder, then KZC shall be entitled to be compensated by the Debtors for the associated time charges for LoBiondo, the Representatives and any other KZC employees or agents at the regular hourly rates in effect at the time, and to be reimbursed for reasonable out-of-pocket expenses, including counsel fees.

5. **Indemnification**

(a) **Terms of Indemnification**. The Debtors agree to indemnify the KZC Indemnitees (as defined in Schedule A) on the terms set forth in Schedule A to the Agreement. Schedule A is incorporated herein and made a part hereof by this reference. Moreover, the Debtors shall indemnify and hold harmless the KZC Indemnitees to the fullest extent permitted under: (i) the Debtors' various governing documents (the "Constitutive Documents"); (ii) the laws of the State of Pennsylvania and (iii) any order of the Bankruptcy Court providing for indemnification of the persons engaged in the bankruptcy proceedings.

(b) **Indemnified Persons**. LoBiondo and all other Representatives who are officers of the Company are deemed to be "Indemnified Persons," as that term is defined in the Fifth Amended and Restated Partnership Agreement of Anthony Crane Rental Holdings, L.P., dated as of July 1, 1999, as subsequently amended, and as defined in each other similar Constitutive Document of the Debtors, and shall be indemnified on the same terms and to the same extent as other officers of the Debtors.

(c) **D&O Insurance**. The Debtors have furnished to KZC a true, correct and complete copy of the Directors, Officers and Private Company Liability Insurance Policy No. 353-09-27 (the "Policy") issued to the Debtors by AIG (the "Insurer"). The Debtors represent that the Policy is in full force and effect, and that no event has occurred that constitutes or, with the passage of time or notice would constitute, an event of default thereunder or that would otherwise give the Insurer any right to cancel such Policies. Promptly, and in any event within ten (10) business days after the Bankruptcy Court has entered an order approving the Agreement, the Debtors shall notify the Insurer of the election of LoBiondo as Chief Restructuring Officer, and shall thereafter, promptly notify the Insurer of the subsequent appointment of any other Representatives as officers of the Company. The Debtors shall request their insurance broker to send copies of all documentation and other communications regarding the Policy, including without limitation, any renewal or cancellation thereof, to LoBiondo's attention. The Debtors agree to give LoBiondo and KZC thirty (30) days notice of any change in the terms of coverage of directors and officers from the terms of the Policy.

(d) **Indemnification Claims Shall Be Administrative Expenses**. Any claims for indemnity made pursuant to the Agreement shall be treated as administrative expenses in the Debtors' chapter 11 cases pursuant to Section 4(g) of the Agreement.

(e) **Cap On Billings Shall Not Apply To Indemnification**. The payment of any indemnification obligations by the Debtors to LoBiondo, KZC any Representative or any principal or agent of KZC as required by the terms of Section 7 of the Agreement, shall not be included in calculating the cap on KZC's average monthly billings as required by Section 4(c) of the Agreement.

9. Any payments to be made pursuant to the Agreement shall be consistent with the

DIP Budgets and subject to the DIP Orders and the DIP Loan Amendment.

10. The Board of Managers of ACR Management, L.L.C., one of the above-captioned Debtors, and each of the other Debtors has adopted resolutions approving the terms of the Agreement and electing LoBiondo as the Debtors' Chief Restructuring Officer.

11. KZC's decision to accept this engagement to assist the Debtors is contingent upon this Court's entry of an order approving the Agreement.

12. The services listed above are vital to the success of these Chapter 11 Cases, not only because the Debtors require the expertise required to render these services, but because approval of the Agreement is a necessary condition to the lock up, voting and consent agreement with respect to the prearranged plan of reorganization that the Debtors have negotiated with various creditor constituencies. Moreover, KZC's significant role and interaction with internal and external constituencies has made the team, particularly Mr. LoBiondo, critical to completing this restructuring on an expedited basis and consistent with the tenets within which the restructuring has been managed to date. The Debtors believe LoBiondo and KZC's prior knowledge and involvement with the Debtors' situation will be beneficial and in the best interest of all parties involved. Accordingly, the Debtors believe that LoBiondo and KZC are well qualified to perform these services and to assist the Debtors in the administration of these Chapter 11 Cases.

13. LoBiondo and KZC have indicated that they understand and accept that the terms of the Agreement must be approved by the Bankruptcy Court. However, LoBiondo and KZC would prefer to resolve at this time any objection, by the Bankruptcy Court or other parties in interest, with respect to the terms of the Agreement. Accordingly, LoBiondo and KZC have chosen to be very explicit in the LoBiondo Affidavit and the Agreement, the terms and conditions of its employment, its staffing and approach, and its billing practices, and has requested that the

Debtors seek this Court's approval of such matters contemporaneously with the filing of this Motion.

Basis for Relief

14. Section 363(b) of the Bankruptcy Code provides that transactions not in the ordinary course of business must be approved by court order. Courts within this Circuit routinely have held that transactions should be approved under section 363 of the Bankruptcy Code when they are supported by the sound business judgment of management. See In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D.Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor's decision be supported by a "sound business purpose"); see also In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (Bankr. D.Del. 1999). Once a debtor articulates a valid business judgment, "the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992), quoting, Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985). The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. Id. Indeed, bankruptcy courts in other districts have authorized the employment by a debtor of a chief restructuring officer pursuant to section 363 of the Bankruptcy Code. See In re Iridium Operating LLC, et al. Case Nos. 99-45005 CB (Bankr. S.D.N.Y. 1999); In re Integrated Health Services, Inc., Case No. 00-389 (MFW) (Bankr. D.Del. 2000); In re Bill's Dollar Stores, Inc., Case No. 01-0435 (PWJ) (Bankr. D.Del. 2001); In re Warnaco Group, Inc., Case No. 01-41643 (Bankr. S.D.N.Y. 2001).

15. Similar management services agreements between KZC and/or its affiliates and other chapter 11 debtors have been approved by other courts, pursuant to sections 105 and 363 of

the Bankruptcy Code. See, e.g. In re Metromedia Fiber Network, Inc. (“MFN”), Nos. 02-22736 - 02-22742-ASH, 02-22744 - 02-22746-ASH, and 02-22751 - 02-22754-ASH (Bankr. S.D.N.Y. 2002), (KZC engaged as an independent contractor to serve as the debtors’ Chief Restructuring Officer, a member of the Boards of Directors; and a member of the Executive Committee of the Boards of Directors); In re Malden Mills Industries, Inc., Nos. 01-47214-JBR - 01-47217-JBR (Bankr. W.D. Mass. 2001) (KZC engaged as Chief Restructuring Officer for debtors).

16. Court approval is warranted here because the Debtors have exercised their sound business judgment in determining that their entry into the Agreement with LoBiondo and KZC is in the best interests of their estates and creditors. As indicated herein and in the LoBiondo Affidavit, LoBiondo and KZC are very familiar with the Debtors’ operations and capital structure. Moreover, LoBiondo and KZC are fully skilled and capable of providing the critical services to the Debtors as such are detailed herein and in the Agreement.

Notice

17. No trustee, examiner or creditors’ committee has been appointed in the Chapter 11 Cases. Notice of this Application has been provided to: (a) the United States Trustee; (b) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (c) counsel to the Agent for the DIP Lenders; (d) counsel to the Agent for the Prepetition Senior Lenders; (e) counsel to the Term B Lenders; (f) counsel to the Term C Lender; (g) the Indenture Trustee for the New Senior Notes; (h) the Indenture Trustee for the New Debentures; and (i) KZC and LoBiondo. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

18. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, (a) authorizing the Agreement among the Debtors and LoBiondo and KZC and (b) granting such further relief as the Court deems appropriate.

Dated: Pittsburgh, Pennsylvania
June 14, 2004

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-and-

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