

EXHIBIT C

(Affidavit of Leonard J. LoBiondo)

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

[illegible]

1. I am a member of the firm KZC Services, LLC (either “KZCS” or “KZC Services, LLC”), a New Jersey limited liability company. I am also a Senior Managing director

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.

and Co-Chief Operating Officer of the firm Kroll Zolfo Cooper LLC² (“KZC” and collectively, with KZC Services, LLC, “KZCSLLC”).

2. This affidavit is being submitted in connection with the Debtors’ Motion for Approval of the Agreement with KZC Services, LLC and Leonard LoBiondo (“LoBiondo”) to provide services to the Debtors and services of LoBiondo as the Chief Restructuring Officer and the services of Associate Directors of Restructuring as defined in the Agreement attached to the Motion as Exhibit A.

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 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

² Kroll Zolfo Cooper LLC was retained up to the Petition Date, as defined hereunder, to provide advisory services in connection with the Debtors’ financial restructuring.

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.

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).

4. Accordingly, the Debtors require the services of an experienced Chief Restructuring Officer to assist them in restructuring the business and developing, negotiating and confirming a plan of reorganization. Because of LoBiondo and KZCS's expertise and experience at a national level in providing management, reorganization, litigation support and forensic accounting and a broad range of consulting services to Debtors and other parties in interest in financially complex troubled situations and LoBiondo and KZCS's significant role and interaction with internal and external constituencies, 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 have requested that LoBiondo and KZCS provide such services to them.

5. LoBiondo and KZCS have agreed to provide assistance, in accordance with the terms and conditions set forth herein, in the Motion and in the Agreement and incorporated herein by reference. Accordingly, I make this Affidavit in support of an order authorizing such retention.

QUALIFICATIONS

6. KZCSLLC 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. KZCSLLC specializes in working with companies, creditors, investors and others in out-of-court workouts and chapter 11 proceedings. KZCSLLC 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 KZCSLLC has cultivated an in-depth understanding of the various economic stakeholders, their divergent perspectives and the ways to achieve consensus amid contention. KZCLL has experience in virtually all aspects of the energy industry, as well as experience with large multinational companies. A sample of KZCSLL'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. A statement setting forth the Firm's qualifications is attached to the Motion as Exhibit D.

STAFFING AND APPROACH

7. A substantial portion of KZCLLC's work is management and involves KZCSLLC's professionals counseling senior client personnel regarding high-level strategic and tactical issues. Consistent with its relatively unique practice, KZCSLLC's staff consists primarily of seasoned professionals. A typical new employee at the Firm is a former "Big 5" partner or manager frequently with from five to more than seven years of experience. Indeed, more than 50% of KZCSLLC's professionals have in excess of ten years of relevant business experience. Both the Firm's internal structure and work approach are designed around its unusual staff composition of senior professionals. Individual staff members are assigned project roles, to bring to bear their particular talents and experience in view of the specific requirements of the engagement. KZCLLC provides high value for its fees, efficiently leveraging its experienced professionals by directing client personnel to perform routine tasks.

8. I, Leonard LoBiondo, CPA, CIRA, the member who will be responsible for this engagement, have more than 21 years of business experience, including 16 years advising troubled Companies. I am a graduate of Villanova University. I gained significant experience in

developing and implementing solutions for companies facing financial or operational problems. Pursuant to the Agreement, I will serve as the Chief Restructuring Officer to the Debtors.

9. Integral to any team approach, and essential to minimize misunderstandings and assure continuity of service in a large, multifaceted case such as this one, are conferences, meetings and worksessions among the members of the engagement team. Ongoing communications and review of workproduct facilitate the sharing of information and assure continued alignment with established priorities and objectives, thereby reducing the time expended and avoiding duplicative efforts. LoBiondo and KZCS communicate continually with their clients on the status and results of their work efforts and interfaces with other professionals to improve coordination and ensure that it does not duplicate services rendered by other professionals retained in the case.

BILLING PRACTICES

10. It is the intention of LoBiondo and KZCS to seek compensation for their services as described herein and in the Motion and Agreement in accordance with its customary practices and in accordance with the guidelines of this Court. It is the customary practice of the KZCS to bill clients for travel time consistent with the guidelines of the jurisdiction. LoBiondo and KZCS' compensation under the Agreement shall consist of the following:

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 this 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 this 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.

11. The Debtors shall pay to KZCS the compensation set forth in the Agreement, based upon the submission of monthly invoices by KZCS setting forth the number of hours each month expended by LoBiondo and by each of the Associate Directors of Restructuring on behalf of the Debtors, the billing rate for each such person and a detailed listing of the expenses sought to be reimbursed. The compensation provided for in the Agreement shall constitute full payment for the services to be rendered by LoBiondo and KZCS to the Debtors thereunder.

12. All compensation and reimbursement due to, and other rights of, LoBiondo and KZCS in accordance with the Agreement, including, without limitation indemnification obligations, 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 applicable terms and provisions of the Agreement.

13. Lobiondo and KZCS charge their clients only for reasonably incurred, out-of-pocket expenses associated with an assignment including, but not limited to, costs of reproduction, typing, our legal counsel, any applicable state sales or excise taxes and other direct expenses. Except as necessary to comply with an applicable Administrative Order, all such expense billings are in accordance with the LoBiondo and KZCS' customary practices. LoBiondo and KZCS' personnel stay at convenient, quality hotels and eat at quality restaurants; LoBiondo and KZCS do not incur costs for luxury accommodations or deluxe meals and when prohibited by applicable Administrative Order does not bill clients for first class airfare. Except as follows, all expenses will be billed at actual cost, exclusive of amortization of the cost of any

investment, equipment or capital outlay: (i) internal charges for facsimile transmissions will be billed at \$2.00 per page and (ii) internal photocopy charges will be billed at \$.30 per page.

14. LoBiondo and KZCS maintain contemporaneous records of the time expended and out-of-pocket expenses incurred in support of its billings for services. All such records are located in the KZCLLC offices and are available for inspection, subject to certain matters contained therein that may be privileged.

15. Invoices for services rendered and out-of-pocket expenses incurred during each month will be submitted to the Debtors. Each such invoice will be accompanied by a list of professional, paraprofessional and support personnel providing services, their respective billing rates; the aggregate hours expended by each such person and a reasonably detailed breakdown of the disbursements incurred. Invoices are payable by the Debtors upon receipt. LoBiondo and KZCS shall not be required to apply for payment of any compensation or reimbursement of any expenses under the Agreement.

16. I acknowledge and respectfully represent that the elements of section 327 and Bankruptcy Rule 2014 are not necessary or relevant in connection with LoBiondo and KZCS' employment, which is being made under section 363 of the Bankruptcy Code. Nevertheless, I desire to make the following assertions: to the best of my knowledge and belief, insofar as I have been able to ascertain after due inquiry, no one of the managing directors or employees of KZCSLLC is related to the debtors and debtors-in-possession, the other above-captioned debtors and debtors-in-possession, their creditors, other parties in interest herein, or the United States Trustee or anyone employed in the Office of the United States Trustee, or holds or represents any interest adverse to any such party, except that LoBiondo and KZCS and its affiliates are connected with the Debtors by virtue of the Agreement and KZC's prior engagement of

May 26, 2004, and KZCSLLC may represent or have represented certain of the Debtors' creditors or other parties in interest in the proceedings, or interests adverse to such creditors or other parties in interest, in matters unrelated to the Debtors' bankruptcy cases.

17. In connection with the preparation of this Affidavit, KZCS conducted a review of its professional contacts with the Debtors, their affiliates and other interested parties identified on a list ("Interested Party List") provided to KZCS by the Debtors' counsel in this proceeding. KZCS ran the Interested Party List through its parent company, Kroll, Inc.'s Conflict Check System ("KCCS") conflict database ("Database"), which is an internal computer database containing names of individuals and entities that are present or recent former clients of Kroll, Inc., and all of the following subsidiaries of Kroll, Inc.: Kroll Background America Inc. ("KBA-BSG"), Kroll Laboratory Specialists, Inc. ("KLS-BSG"), Kroll Factual Data ("KFD-BSG"), Kroll Limited ("KL-CARG"), KZC, Kroll Associates, Inc. ("KA-CSG"), Kroll Lindquist Avey ("KLA-CSG"), Kroll Fact Finders Ltd. ("KFF-CSG"), Kroll Associates, Inc. ("KA-SSG"), Kroll Schiff & Associates ("KSA-SSG"), Kroll Associates, Inc. ("KA-TSG"), and Kroll Ontrack Inc. ("KO-TSG"). KZCS then reviewed those results, which review was completed under the supervision of the in-house General Counsel of KZCSLLC. A summary of such relationships is set forth in Schedule 1 to this Affidavit. None of the services, that were or will be provided in the course of these other engagements: (i) is connected in any way to this proceeding; (ii) will impact or conflict with the rights of the Debtors in this proceeding; and (iii) will compromise LoBiondo and KZCS ability to continue providing services in this proceeding. LoBiondo and KZCS acknowledge their continuing obligation to supplement this Affidavit and discloses new relationships.

18. It should be understood that KZCSLLC's former clients and their affiliates, officers, directors, principal shareholders and their respective affiliates may have had relationships with parties in interest in these bankruptcy cases of which KZCSLLC was not informed or, subsequent to the performance of LoBiondo and KZCS' services, may have developed relationships with such parties of which KZCLLC is unaware.

19. In addition to KZCSLLC's former clients and their affiliates, officers, directors, principal shareholders and their respective affiliates, the Database includes the limited partners, investees, and their respective affiliates that are known to KZCSLLC, of Catalyst Equity Fund, LP (the "Fund"), a Delaware limited partnership that invests in middle market businesses that are not performing to their full potential, primarily financially distressed companies. The Fund's general partner, Catalyst Equity Fund Partners, LLC ("CEFP"), a Delaware limited liability company, is majority-owned by CFL Capital, LLC ("CFL"), a New Jersey limited liability company that is controlled (through limited partnerships under their control) by Stephen F. Cooper, Michael E. France and Leonard LoBiondo, who are employees of KZCSLLC. The limited partners, consisting of large financial institutions, funds and sophisticated individual investors and investment trusts, are passive investors in the Fund that are not required to disclose to the Fund, CEFP, CFL or ZC their holdings or interests. Accordingly, they may own interests in or otherwise be connected to the Debtors, the Debtors' creditors, other parties in interest herein or interests adverse to such parties of which the Fund, CEFP, CFL and KZCLL are not aware. The limited partners are the following entities or affiliates thereof: BancBoston, William R. Berkley, JP Morgan Chase ("Chase"), Citibank, N.A., Cramer Rosenthal McGlynn, Inc., CRM 20/20 Fund, LLC, Duane Morris & Heckscher, LLP, David Dillard, The Zuckerman Children's Trust, First Union National Bank, Michael Fuchs, General Electric Capital

Corporation, RS Catalyst Limited Partnership, R & M Catalyst Investors, Hexagon Investments, Inc., Robert J. Higgins, ING Barings (U.S.) Capital Corporation, Robert Martin, Hoyt C. Murray, Lexington Partners-Hamilton Lane 2000, LLC, John E. O'Connor, James A. Paduano, the Pergament Family, Edwin Roland, Nicholas J. and Julie Sakellariadis, David Supino, Linda J. Pohs, John R. Tillotson, Lad Equity Partners, L.P., P.E. Partners, LLC, and Travelers Insurance Group.

20. To the best of KZCSLLC's knowledge and belief, except as set forth in Schedule 1 to this Affidavit, none of KZCSLLC's former clients (including their affiliates, officers, directors, principal shareholders and their respective affiliates) or the limited partners or investees (including their respective affiliates that are known to KZCSLLC) of the Fund or Chase is connected to the entities listed below, other parties in interest herein or interests adverse to such parties:

- (a) the Debtors and their affiliates;
- (b) the Debtors' officers and directors;
- (c) the 20 largest unsecured trade creditors of each Debtor;
- (d) significant lenders;
- (e) the attorneys, accountants and investment bankers that the Debtors have sought authority to employ in these chapter 11 cases, pursuant to applications filed on the Petition Date;
- (f) insurers;
- (g) litigation parties;
- (h) significant equity investors;
- (i) indentured trustees and agents;
- (j) noteholders;
- (k) counterparties to leases and executory contracts;
- (l) secured creditors and lienholders;
- (m) significant customers; and
- (n) issuers of outstanding surety bonds

21. On May 26, 2004 the Debtors engaged KZC to provide advisory services. The Debtors engaged KZC to: (i) advise and assist management in evaluating and challenging the Debtors' business plan, including underlying assumptions, and in identifying potential strategies and tactics to improve the Debtors' economic model; (ii) advise and assist management in developing long-term capital restructuring alternatives; and (iii) such other services as Debtors' requested and we agreed to perform.

22. KZC provided such services from the date of its engagement letter up to immediately prior to the filing of the chapter 11 petitions.



Leonard LoBiondo

Sworn and subscribed to
before me this day
of June 2004


Notary Public

ERIK TALMADGE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 30, 2008