

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

In re:	)	
	)	
ACR MANAGEMENT, L.L.C., <i>et al.</i> , <sup>1</sup>	)	Case No. 04-27848-MBM
	)	Chapter 11
Debtors.	)	(Jointly Administered)
	)	
JOANIE KAZELIS COLLINS,	)	<b>Docket No.:</b> _____
	)	
Movant,	)	<b>Related Docket No.: 1201</b>
	)	
v.	)	<b>Objection Deadline: February 22, 2005</b>
	)	<b>Hearing Date: March 1, 2005, at 3:00 p.m.</b>
ACR MANAGEMENT, L.L.C., <i>et al.</i> ,	)	<b>(EST)</b>
	)	
Respondents.	)	

**RESPONSE OF THE DEBTORS TO THE MOTION OF JOANIE  
KAZELIS COLLINS TO EXTEND THE TIME FOR FILING A PROOF OF CLAIM**

The above-captioned Debtors-in-Possession (collectively, the “Debtors<sup>2</sup>”) by and through their undersigned attorneys, hereby submit this response (the “Response”) to the motion (filed on December 29, 2004, CM/ECF# 1201, the “Motion”) filed by Joanie Kazelis Collins (the “Movant” or “Collins”) seeking an order extending time for filing a proof of claim. In opposition to the Motion, the Debtors respectfully represent as follows:

**BACKGROUND**

1. Prior to the Petition Date, the Movant was an administrative assistant working for one of the Debtors.

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. On or about July 2003, the Movant filed a charge of discrimination with the Texas Commission on Human Rights and the Equal Opportunity Commission against one of the Debtors alleging, *inter alia*, violation of Title VII of the Civil Rights Act and the Texas Commission on Human Rights Act and wrongful termination due to her pregnancy.

3. On June 14, 2004 (the “Petition Date”), Anthony Crane Rental, L.P. d/b/a Maxim Crane Works, ACR Management, L.L.C. and Anthony Crane Rental, Inc. (the “Debtors”) filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 U.S.C (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of Pennsylvania.

4. Because of the charge of discrimination that had been filed against the Debtors, the Debtors listed the Movant, in care of her attorney, on the Debtors’ Schedules, as an unsecured creditor holding a non-priority, contingent, unliquidated, and disputed claim in an unknown amount.

5. After the Petition Date in a violation of the automatic stay of section 362 of the Bankruptcy Code, the Movant on or about July 6, 2004, initiated a proceeding against Anthony Crane Rental, L.P. (in its assumed or common name) d/b/a Maxim Crane Works in the District Court for Tarrant County, Texas, at Case No. 342–206418–04) (the “Action”), alleging causes of action in violation of Texas Commission on Human Rights Act and defamation stemming from alleged sexual harassment, discrimination based on her pregnancy and retaliation.

6. In her Motion, the Movant asserts that she is a creditor of the Debtors in the amount of \$250,000, excluding interest, from July 6, 2004, until the Petition Date, plus costs and attorneys’ fees. (Motion, ¶18).

7. On or about August 26, 2004, the Debtors' trial counsel Ann Knight filed a Suggestion of Bankruptcy in the Action and served it on Robert Lee, Esquire, Movant's trial counsel in the Action. See Suggestions of Bankruptcy attached hereto as Exhibit 1.

8. Notice of the bar date by when creditors must file Proofs of Claim in these Chapter 11 Cases (the "Bar Date"), was timely served upon Ms. Collins in care of Mr. Lee. See Affidavit of Supplemental Service (CM/ECF #516, 9/03/2005) attached hereto as Exhibit 2.

9. On or about September 10, 2004, well before the Bar Date, Ann Knight expressly spoke with Mr. Lee regarding the bankruptcy filing and sent to him correspondence regarding the same. See letter to Mr. Lee from Ann Knight, dated September 10, 2004 attached hereto as Exhibit 3.

10. The general Bar Date to file Proofs of Claim was November 17, 2004.

11. On or about November 7, 2004, the Court approved a disclosure statement for the Debtors' proposed Joint Plan of Reorganization (the "Plan"), and thereafter, the Debtors timely served a Notice of (A) Hearing to Confirm Debtors' Joint Plan of Reorganization; (B) Objection and Voting Deadline; and (C) Solicitation and Voting Procedures, together with the Plan, Disclosure Statement and all other Court- approved, Plan-related documents in care of Mr. Lee.

12. On December 30, 2004, this Court entered an Order confirming the Debtors' Plan. On January 28, 2005, the Plan became effective pursuant to its terms.

13. By her Motion, the Movant now seeks an extension of the time within which to file a proof of claim. Also, in a cursory way, the Movant appears to request relief from the automatic stay and seeks an Order from this Court denying the Debtors' discharge and excepting her claim from discharge.

## **Response to Movant's Relief Requested**

### *Request to File a Proof of Claim*

14. The Debtors object to the Movant's request that this Court extend the time within which she may file a Proof of Claim.

15. As with any service to be effectuated by regular mail, the Debtors can only represent that they served the requisite notices relative to these bankruptcy cases in accordance with the provisions of the relevant Bankruptcy Rules and/or court orders directing service.

16. In this case, all of the relevant notices were sent to the Movant in care of her litigation counsel. Given that this was a litigation matter and Mr. Lee was the individual on the Debtors' books and records designated to receive service of papers from the Debtors, the Debtors believe such service was appropriate.

17. Moreover, because of the Notice of Suggestion of Bankruptcy that was filed in the Action and because of the conversations between Ms. Knight and Mr. Lee regarding the bankruptcy case, the Movant was on both actual and constructive notice of the Bar Date.

18. The Debtors' Plan provides that unsecured creditors, such as the Movant, are to receive pro rata distributions from a fixed pot of \$3 million. To the extent that this Court ultimately allows late-filed claims to be deemed timely filed, such allowance will have the effect of diluting the distribution to other unsecured creditors.

19. There have been a significant number of motions filed in this case that seek to permit the filing of late-filed claims. While some motions candidly acknowledge failing to meet the Bar Date due to internal errors, others assert they never received a notice.

20. In this case, relevant notices were sent to the attorney designated to represent the Movant with regard to the claim she asserts against the Debtors.

21. Based upon the foregoing, the Debtors do not believe that the Movant has demonstrated excusable neglect necessary to deem any late-filed claim timely.

*Other Relief Requested by the Movant: (i) Relief from the Automatic Stay; (ii) Objecting to Discharge and Excepting Movant's Claim from Discharge*

22. The Debtors object to the Movant's cursory request in her proposed Order attached to the Motion to extend the time within which she may request relief from the Bankruptcy Code §362 automatic stay [sic]<sup>3</sup> to pursue the Action against the Debtors with recovery to be limited to recovering available insurance proceeds.

23. The Movant, in the Motion, does not mention the automatic stay anywhere in her prayer for relief and sets forth no basis as to why she should be granted such relief from the stay.

24. If the Movant is now seeking such relief from Bankruptcy Code §362, this Court should deny such relief for the following reasons:

25. In the time period relevant to the incident giving rise to the Action, the Debtors were covered by an employment liability insurance policy issued by the National Union Fire Insurance Company of Pittsburgh, PA ("National Union").

26. National Union, however, denied the insurance claim filed by the Debtors for liability arising out of Ms. Collins' Action.

27. Accordingly, the Debtors have no available insurance proceeds which the Movant could possibly seek, even if the §362 injunction were lifted as to the Movant.

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<sup>3</sup> The Debtors recognize, that since this Court has confirmed the Debtors' Plan and it is now effective, the appropriate relief to be sought by the Movant would be a relief from the Bankruptcy Code §362 injunction of proceedings against the Debtors that were or could have been commenced before the Petition Date.

28. Even if National Union somehow accepted coverage for the Debtors' insurance claim, the Debtors have a self-insured retention of \$250,000.00 per occurrence, pursuant to the terms of the National Union Policy. This means that Maxim or any other named insured potentially is solely liable for any monetary settlement or judgment in the Action up to \$250,000.00, and National Union has no exposure until this liability retention has been exhausted.

29. Based upon information and belief, the Debtors do not believe that the damages, if any, that may be awarded to the Movant arising out of the Action, will exceed \$250,000.00, the amount of the Debtors' retention.

30. In fact, the Movant concedes its claim is not in excess of \$250,000. (Motion, ¶18).

31. Consequently, neither the Debtors nor National Union should have to incur legal costs to defend an Action in which the end result for the Movant will be the same—the Movant's only relief against the Debtors directly will be limited to timely-filing a Proof of Claim for a prepetition Class 7 general unsecured claim against the Debtors' Estate in the Debtors' bankruptcy cases.

32. Accordingly, the Movant should be denied any requested relief to lift the §362 injunction to pursue her claim against the Debtors in order to liquidate the Movant's claim against the Debtors and the Debtors' insurers.

33. With respect to the Movant's discharge allegations, although such relief is absent from the Movant's prayer for relief set forth in the Motion, the Movant seems to suggest that she is entitled to object to the discharge of the Debtors pursuant to 11 U.S.C. § 727(c)(2) and to move this Court for a declaration declaring her debts to be non-dischargeable pursuant to 11

U.S.C. § 523(a)(6). (Motion, ¶5; Proposed Order, p. 2). Given the fact that these Chapter 11 Debtors are corporate entities and are not individual debtors, the Movant's discharge allegations are entirely without merit and unfounded and accordingly, should be denied. See 11 U.S.C. §727(a)(1); 11 U.S.C. §523(a).

**WHEREFORE**, the Debtors respectfully request that this Court enter an Order (i) denying the Motion in its entirety; or (ii) granting such other relief the Court deems just and proper.

Dated: Pittsburgh, Pennsylvania  
February 22, 2005

Respectfully submitted,

CAMPBELL & LEVINE, LLC

/s/ Salene R. Mazur  
Douglas A. Campbell (PA I.D. #23143)  
David B. Salzman (PA I.D. #39360)  
Salene R. Mazur (PA I.D. #86422)  
1700 Grant Building  
Pittsburgh, PA 15219  
Telephone: (412) 261-0310  
Facsimile: (412) 261-5066

*Counsel for the Debtors and Debtors in Possession*