

**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>	)	Chapter 11
	)	
Debtors.	)	Case No. 04–27848–MBM
	)	(Jointly Administered)
ACR MANAGEMENT, L.L.C., <i>et al.</i> ,	)	
	)	Document No. _____
Movants,	)	
	)	
v.	)	Hearing Date and Time: _____
	)	
SOUTH CAROLINA DEPARTMENT OF	)	Objection Deadline: _____
REVENUE,	)	
	)	
Respondent.	)	

**DEBTORS’ OBJECTION TO PROOF OF CLAIM FILED BY THE  
SOUTH CAROLINA DEPARTMENT OF REVENUE PURSUANT  
TO 11 U.S.C. §§ 105(a), 502(b), 505(a) AND FED. R. BANKR. P. 3007**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby file this objection (the “Objection”) to the proof of claim filed by the South Carolina Department of Revenue (the “DOR”) and respectfully state as follows in support thereof:

**JURISDICTION AND STATUTORY PREDICATE**

1. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a),

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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.

502(b), 505(a) and 507(a)(8) of the United States Bankruptcy Code, 11 U. S. C. §§101, et seq. (the “Bankruptcy Code”), and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

2. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334 and Bankruptcy Code § 505(a). Except as provided therein, section 505(a) of the Bankruptcy Code permits a bankruptcy court to determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

### **BACKGROUND**

3. On June 14, 2004, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (these “Chapter 11 Cases”).

4. On December 29, 2004, the Debtors filed their third amended plan of reorganization (CM/ECF #1079, the “Plan”), and on December 30, 2004, this Court entered an Order confirming the Plan (CM/ECF#1094, the “Confirmation Order”). On January 28, 2005, the Plan became effective pursuant to its terms.

5. The last day for governmental entities to assert a “claim” against the Debtors’ estates by filing a proof of claim with the Debtors’ claims and noticing agent was December 13, 2004. On December 8, 2004, the DOR filed a proof of claim in these Chapter 11 Cases, which claim was assigned Claim No. 912 (the “Claim”). A copy of the Claim is attached hereto as Exhibit A.

6. In the Claim, the DOR asserts that it holds an aggregate claim of \$3,367,579.91, of which the \$1,028,945.14 should be treated as an unsecured priority claim and the remaining amount, \$2,338,633.77, should be treated as an unsecured non priority claim. The DOR further

asserts that \$130,061.88 of the Claim is for interest and \$168,784.34 of the Claim is for penalty fees.

### **RELIEF REQUESTED**

7. In connection with the Debtors' efforts to conclude their cases, the Debtors have analyzed the claims filed against their estates, including the Claim. After reviewing their books and records (the "Books and Records"), the Debtors assert that the Books and Records reflect that they do not owe the amount the DOR asserts in the Claim.

8. Accordingly, based upon the Books and Records and applicable law, the Debtors hereby object to the Claim and respectfully request that the Court disallow and expunge the Claim for the following reasons:

- i. the 69 pages of documentation attached to the Claim is incoherent and insufficient to allow the Debtors to determine the basis of its purported pre-petition tax liability, if any;
- ii. the "Total" assessment set forth on the table of the Claim (the "Table") is an unsubstantiated estimate<sup>2</sup>. Indeed, the Debtors have no way of correlating a particular tax amount asserted with the equipment operating in the state for the time period involved;
- iii. upon information and belief, the amount of the Claim has no correlation with any tax return that has been filed by any of the Debtors. Additionally, it does not appear that the Claim is based on any audit of the Debtors' assets. The only audit conducted by the DOR was for the tax period January 1, 2000, through December 31, 2002 (the "Audit"), and, with respect to the Audit, the amounts set forth in the Claim and its attached supporting documentation are inconsistent with the Audit findings;
- iv. the Claim does not appear to be based on any formal tax assessment made by the DOR. While the Audit was performed by the DOR in 2003, no formal assessment was ever provided to the Debtors for that tax period or for any previous or subsequent tax periods. In fact, except for approximately \$14,857.99 of taxes (which the DOR alleges were assessed on January 27, 2003, and

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<sup>2</sup> In fact, in a telephone conversation with the Debtors' Vice President of Administration Ronald Marmo, an auditor from the DOR expressly stated that he was going to estimate, at least in part, the amount set forth on the Claim.

January 5, 2004. See Table, on page 33 and page 44), the Table concedes that no assessments were made for these tax periods. As for those taxes the DOR alleges it assessed on January 27, 2003 and January 5, 2004, the Debtors assert that they have never received either assessment;

- v. since no assessment was made for taxes incurred in the years 1998, and 1999, and 2000, these tax periods are closed to assessment under the applicable South Carolina statute of limitations and the DOR is barred entirely from seeking payment for these tax periods. See Table, pgs. 1-24;
- vi. the DOR does not explain or provide a statutory basis for asserting that \$1,028,945.14 of the Claim should be treated as an unsecured priority claim. While the Debtors concede that to the extent there are any sales taxes owed (signified by the “SU” on the Table), those taxes would be entitled to priority status; however, to the extent the taxes owed are use taxes (as signified by the “LO”), only use taxes incurred on or after May 1, 2001 could be considered a priority claim. 11 U.S.C. §507(a)(8)(E). Moreover, in contravention of the Bankruptcy Code §507(a)(8)(G), the DOR characterizes penalty claims as priority even though the penalties assessed are not compensatory in nature;<sup>3</sup> and
- vii. Finally, the total amount of the Claim, as set forth in the Table, is not even mathematically correct. Indeed, the amounts in the “Total” column on the Table equal \$1,678,305, not \$3,367,579.91, a substantial difference.

### **RESERVATION OF RIGHTS**

9. The Debtors hereby reserve the right to object in the future to the Claim on any other grounds, and to amend, modify and/or supplement this Objection, including without limitation, to object to an amended, surviving, transferred, re-classified and newly-filed claims of the DOR. Separate notice will be served and a separate hearing will be scheduled for any such objection.

10. The Debtors also file this Objection without prejudice to file additional objections to other proofs of claim filed in these Chapter 11 Cases.

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<sup>3</sup> For example, on page 33 of the Table, the DOR mischaracterizes a tax dated December 31, 2001, in the amount of \$8.31 for penalty fees, as priority. See also Table, pgs. 34, 41, 45, 50, 51, 52, 58, 61, 64, 65, and 66.

WHEREFORE, the Debtors respectfully request that this Court enter the proposed form of Order disallowing and expunging the Claim described in this Objection and grant such further relief as is just and proper.

Dated: Pittsburgh, Pennsylvania  
February 23, 2005

Respectfully submitted,

CAMPBELL & LEVINE, LLC

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