

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

In re:)	
ACR MANAGEMENT, L.L.C., <i>et al.</i> , ¹)	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: _____
)	
TEXAS COMPTROLLER OF PUBLIC)	Objection Deadline: _____
ACCOUNTS,)	
)	
Respondent.)	

**DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED
BY THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
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 proofs of claim filed by the Texas Comptroller of Public Accounts (the “Comptroller”) and respectfully state as follows in support thereof:

JURISDICTION

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), 502(b),

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.

505(a) and 507(a)(8) of the United States 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”). On December 30, 2004, this Court signed an Order confirming the Plan (CM/ECF#1094, the “Confirmation Order”), and 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 (the “Bar Date”).

6. On December 17, 2004, the Comptroller filed two (2) proofs of claim (the “Claim(s)”) in these Chapter 11 Cases for sales and use taxes. Copies of the Claims are attached hereto as Exhibit A.

7. The first proof of claim in the amount of \$195,366.94, was assigned Claim No. 929 (“Claim #1”). Claim #1 was filed for tax periods April 1, 2003, through June 14, 2004. The Comptroller asserts that the entirety of Claim#1 should be treated as an unsecured priority claim. The Comptroller further asserts that \$15,277.78 of Claim #1 is for interest and \$3,273.38 is for penalty fees.

8. The second proof of claim in the amount of \$46,939.90 was assigned Claim No. 930 (“Claim #2”). Claim #2 was filed as a request for priority payment of administrative expenses incurred during the tax period of June 15, 2004, through September 30, 2004. The Comptroller asserts that \$3,707.41 of Claim #2 is for interest and \$46.31 is for penalty fees.

RELIEF REQUESTED

9. In connection with the Debtors’ efforts to conclude their cases, the Debtors have analyzed the claims filed against their estates, including the Claims. 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 Comptroller asserts in the Claims.

10. Accordingly, based upon the Books and Records and applicable law, the Debtors hereby object to the Claims and respectfully request that the Court reduce and/or disallow and expunge the Claims for the following reasons:

- a. The information set forth on both Claims is skeletal and insufficient to allow the Debtors to determine the basis of its purported tax liability, if any;
- b. The amounts of the Claims are unsubstantiated estimates. Given the information set forth on both Claims, the Debtors have no way of correlating a particular tax amount asserted with the equipment operating in the state for the time period involved;

- c. Upon information and belief, neither Claim is based on any tax return that has been filed by any of the Debtors. Additionally, it does not appear that the Claims are based on any audit of the Debtors' assets or on any formal tax assessment. Although the Debtors completed an audit questionnaire and although prior to the Bar Date the Debtors even gave the Comptroller's office specific dates on which they could conduct the audit, the Comptroller still has not conducted an audit;
- d. With respect to Claim #1, the Comptroller does not explain or provide a statutory basis for asserting that the entire claim should be treated as an unsecured priority claim. In contravention of the Bankruptcy Code §507(a)(8)(G), the Comptroller characterizes \$15,277.78 of penalty claims as priority even though the penalties assessed are not compensatory in nature.

RESERVATION

11. The Debtors hereby reserve the right to object in the future to the Claims 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 Comptroller. Separate notice will be served and a separate hearing will be scheduled for any such objection.

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

[CONTINUED ON NEXT PAGE]

WHEREFORE, the Debtors respectfully request that this Court (i) enter the proposed form of Order reducing or disallowing and expunging the Claims described in this Objection or (ii) grant such further relief as is just and proper.

Pittsburgh, Pennsylvania
Dated: February 28, 2005

CAMPBELL & LEVINE, LLC

/s/ David B. Salzman
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

Co-Counsel for the Debtors and Debtors-in-Possession