

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

In re:	)	
	)	Case No. 04-27848-MBM
ACR MANAGEMENT, L.L.C., <u>et al.</u> , <sup>1</sup>	)	
	)	Chapter 11
	)	
Debtors.	)	(Jointly Administered)
	)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> ,	)	<b>Hearing Date and Time:</b> _____
	)	
Movants,	)	<b>Objection Deadline:</b> _____
	)	
v.	)	
	)	Docket No. _____
CALIFORNIA STATE BOARD OF	)	
EQUALIZATION,	)	
	)	
Respondent.	)	
	)	

**DEBTORS’ OBJECTION TO PROOF OF CLAIM FILED  
BY THE CALIFORNIA STATE BOARD OF EQUALIZATION  
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” or the “Company”) hereby file this objection (the “Objection”) to the claim filed by the California State Board of Equalization (the “BOE”) 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

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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.

U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 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.

6. Prior to the Petition Date, the BOE audited the Company for sales and use taxes for the period July 1, 1997, through June 30, 2000.

7. The BOE auditor issued a formal assessment (the “Assessment”) in a “Notice of Determination,” dated January 26, 2004, in the amount of \$2,133,702.86 comprised of sales and use tax due of \$1,360,155.66 and interest of \$773,547.20.

8. The Debtors believe and therefore aver that a majority of the taxes included in this Assessment are use taxes and that \$34,466.00 of the Assessment is for sales taxes.

9. In protest of the Assessment, the Debtors filed a "Petition for Re-determination" on February 20, 2004, and requested an administrative hearing with such petition.

10. After the Petition Date, the BOE was notified of the Debtors' bankruptcy filings.

11. Because of the Debtors' bankruptcy filings, the Debtors' protest of the Assessment was stayed pursuant to §362 of the Bankruptcy Code.

12. As a result of the §362 discharge injunction contained in the Order confirming the Debtors' Plan, any decision now issued by an administrative agency regarding the Assessment would be invalid, absent relief from the §362 discharge injunction.

13. On September 17, 2004, the BOE filed a proof of claim in these Chapter 11 Cases, which claim was assigned Claim No. 572 (the "Claim"), for the same tax periods covered by the Assessment. A copy of the Claim is attached hereto as Exhibit A. amount of

14. In its Claim, the BOE asserts that it now holds an aggregate claim of \$2,179,041.16 for both sales and use taxes.

15. Of the \$2,179,041.16, the BOE further asserts that \$818,885.50 of the Claim is for interest.

16. Despite the fact that a majority of the BOE's Assessment was for use taxes, the BOE asserts that the entire Claim should be treated as an unsecured priority claim.

### **RELIEF REQUESTED**

17. In connection with the Debtors' efforts to conclude their Chapter 11 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 BOE asserts in the Claim.

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

- a. The amount of the Claim is based on the Assessment, which the Debtors protest. The Debtors concede that \$34,466.00 of the Assessment is valid.
- b. The BOE does not explain or provide a statutory basis for asserting that entire Claim should be treated as an unsecured priority claim. Although sales taxes in the Assessment in the amount of \$34,466.00 should be considered a priority claim, use taxes incurred before May 1, 2001, should not be considered a priority claim. 11 U.S.C. §507(a)(8)(E).

### **RESERVATION OF RIGHTS**

19. 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 BOE. Separate notice will be served and a separate hearing will be scheduled for any such objection.

20. 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 enter the proposed form of Order reducing the BOE's Claim to an allowed unsecured, priority claim in the amount of \$34,466.00, or granting such further relief as is just and proper.

Pittsburgh, Pennsylvania  
Dated: March 7, 2005

CAMPBELL & LEVINE, LLC

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