UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

	)	Chapter 11
In re:	)	
	)	Case No. 04-027848-MBM
ACR MANAGEMENT, L.L.C. *et al.*,	)	(Jointly Administered)
	)	
Debtors.	)	**Hearing Date: July 13, 2004 @ 2:00 p.m.**
	)	**Objection Deadline for the Committee: July 9, 2004**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING DEBTORS TO RETAIN AND EMPLOY SITRICK AND COMPANY INC. AS CORPORATE COMMUNICATIONS CONSULTANTS FOR THE DEBTORS AND APPROVING PROPOSED FEE STRUCTURE

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), through its proposed undersigned counsel,[1] hereby submits this objection (the "Objection") to the Debtors' motion, dated June 15, 2004 (the "Sitrick Motion"), that seeks entry of a final order, pursuant to sections 327 and 328 of 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), authorizing the Debtors to retain and employ Sitrick & Company Inc. ("Sitrick") as corporate communications consultants to the Debtors in connection with the Debtors' Chapter 11 cases. In support of this Objection, the Committee respectfully states as follows:

[1] The Committee's application seeking the employment and retention of the undersigned counsel will be filed with this Court in the coming days.

BACKGROUND

1. On June 15, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On June 24, 2004, the United States Trustee appointed the Committee.

2. Prior to the Petition Date, Sitrick and the Debtors entered into an agreement (the "Sitrick Agreement"), effective as of May 19, 2003, pursuant to which Sitrick was retained as corporate communications consultants to the Debtors. The Debtors state in the Sitrick Motion that Sitrick will provide the following services to the Debtors:

(i) develop and implement communications programs and initiatives with the Debtors' key constituencies;

(ii) develop public relations initiatives; and

(iii) prepare press releases and otherwise communicate with the Debtors' key constituencies and the media as necessary.

3. Pursuant to the Sitrick Agreement, the Debtors will compensate Sitrick for these services as follows:

(i) a non-refundable retainer of $60,000.00 (paid prior to the Petition Date);

(ii) hourly compensation that ranges from $160 to $625 per hour;

(iii) reimbursement of all reasonable and necessary out-of-pocket expenses;

(iv) indemnification of Sitrick and its shareholders, officers, directors, employees and agents for any losses, claims, expenses or liabilities incurred in connection with the services to be rendered by Sitrick to the Debtors, unless such amounts are judicially determined to have resulted from Sitrick's gross negligence or willful misconduct.

4. According to the Sitrick Motion, prior to the Petition Date Sitrick was paid approximately $369,327.79 by the Debtors and substantially this entire amount has been applied to the Debtors' account by Sitrick.

ARGUMENT

I. Sitrick's Retention is Not Necessary

5. It is puzzling why the Debtors need to retain a consultant to assist them in dealing with "public relations" initiatives. While the Debtors state in the Sitrick Motion that Sitrick will develop initiatives for the Debtors "to maintain public confidence and internal morale during these Chapter 11 Cases," the Committee believes that creditor confidence in management and a concerted effort to preserve estate assets is the key to achieving stability for the Debtors' Chapter 11 Cases. Public confidence and internal morale is not generated by some artificial and mysterious "communications initiative," but by consistent positive financial performance of the Debtors and their ability to successfully negotiate with their creditors and quickly emerge from the bankruptcy as a stronger company. The Debtors cannot afford the luxury of retaining outside consultants for services that could be performed in-house, nor have they demonstrated that they have a need for such services, especially at the time when the proposed recovery to the unsecured creditors is *de minimis*.

II. Sitrick Retention Cannot Be Justified In Light Of Six Other Professionals The Debtors Seek To Retain

6. On the first and second day hearings in these Chapter 11 Cases, the Debtors proposed to employ and retain the following professionals:

- Kirkland & Ellis LLP as Counsel;
- Campbell & Levine, LLC as Co-counsel;

- CIBC World Markets Corp. as Financial Advisor;
- Pepper Hamilton LLP as Special Tax And Conflicts Counsel;
- Bankruptcy Management Corporation as Notice, Claims And Balloting Agent;
- Leonard LoBiondo and KZC Services LLC, as Chief Restructuring Officer; and
- Sitrick as Corporate Communication Consultants.

7. Since this is a pre-arranged case, the need to retain Sitrick, in addition to six other professionals to date, is difficult to justify. As the Debtors represent in their first day motions and the "Affidavit of Ronald M. Marmo, Vice President of Administration of ACR Management, L.L.C. in Support of First Day Motions," it is contemplated that the restructuring terms contained in that certain Lock Up, Voting & Consent Agreement dated as of May 20, 2004 and the accompanying term sheet will form the basis of the Debtors' prearranged plan of reorganization. Considering the prearranged nature of the Debtors' bankruptcy, it is unreasonable that the Debtors ask this Court to approve and authorize Sitrick's retention, given that the Debtors will be spending millions of dollars on other professionals, and given that Sitrick's involvement in these cases will not "make or break" the prenegotiated nature of the plan, and the additional expense associated with Sitrick's retention will likely reduce potential recovery to unsecured creditors.

8. At this time, the Debtors' focus should be on preserving the estates' assets, rather then further depleting them through unnecessary retentions. Accordingly, Sitrick's proposed retention should not be approved.

III. Sitrick's Proposed Fees Are Not Reasonable

9. The proposed hourly fees are excessive for the type of services to be provided by Sitrick, as compared to the actual value to be brought to the estates. As previously discussed, it is the Debtors' management whose performance will generate the greatest amount of confidence

in the Debtors and their ability to successfully reorganize. Sitrick's contribution will be marginal and difficult to evaluate. At the same time, the type of services to be provided by Sitrick may generate many billable hours, as the need for communications programs and strategies is vague and difficult to estimate or restrict. Depending on the professional performing such services, Sitrick may charge up to $625 an hour, a rate that seems high and inappropriate, given the relatively non-complex nature of the services to be provided. Accordingly, the Committee views Sitrick's proposed fee structure as unreasonable given the minimal recovery to unsecured creditors in these cases. Neither the Company nor Sitrick have demonstrated that Sitrick will provide measurable value to creditors or that Sitrick's retention represents anything more than an expense to the estate that will be paid directly from the pockets of the unsecured creditors.

10. In addition, to the extent the Sitrick Motion is approved, and in furtherance of ensuring that the Debtors' estates are not unnecessarily depleted by professional fees, any proposed order approving Sitrick's retention should subject Sitrick to the Administrative Order Under Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals, as proposed by the Debtors and which is currently pending before this Court, and Sitrick's proposed fee structure should be subject to a monthly ceiling set by this Court on such fees and expenses.[2]

RESERVATION OF RIGHTS

11. Nothing contained herein shall constitute a waiver of any of the rights or remedies of the Committee under the Bankruptcy Code or applicable law, including, without limitation the right to supplement this Objection prior to the final hearing on the Sitrick Motion.

[2] The Committee would also request that Sitrick be ordered to provide detailed time records in conjunction with its fee applications in order to assist the Committee in evaluating the amount of its monthly fees.

WHEREFORE, the Committee requests that this Court (i) deny the Sitrick Motion, or, in the alternative, modify the proposed order as described herein, and (ii) grant such other relief as is just and proper.

Dated: July 9, 2004

Respectfully submitted,

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