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In re:)	
)	Case No. 04-27848-MBM
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	
)	Chapter 11
)	
Debtors.)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., et al.,)	Document No. _____
)	
)	Hearing: August 3, 2004
)	
Movants,)	Responses Due: _____
)	
v.)	
)	
NO RESPONDENT.)	
)	

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby submit this motion (the “Motion”) for entry of an order authorizing and approving omnibus procedures for settling certain claims and causes of action of the Debtors against third parties pursuant to section 363(b) of title 11 of the United States Code and FED. R. BANK. P. 9019. In support of this Motion, the Debtors respectfully state as follows:

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.

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), and Bankruptcy Rule 9019.

Background

4. On June 14, 2004 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue in possession of their properties and are operating and managing their businesses as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

6. The nature of the Debtors’ business requires them to render services at job sites throughout the country, interacting with a myriad of customers, suppliers, independent contractors, and other third parties. In the ordinary course of business, the Debtors acquire claims and causes of action against some of these parties.

Relief Requested

7. The Debtors hereby seek approval of procedures for settling or otherwise liquidating claims and causes of action of the Debtors against third parties arising in the ordinary course of business. The Debtors submit that they routinely settle such claims and causes of action in the ordinary course of business, and present this Motion out of an abundance of caution.

8. In order to minimize expenses, the Debtors seek the entry of an order, pursuant to section 363 of the Bankruptcy Code and FED. R. BANKR. P. 9019, authorizing the Debtors to settle any potential or actual claims or causes of action (the “De Minimis Claims”) that they may have against various third parties pursuant to the omnibus procedures outlined below.

The Debtors Should Be Permitted to Settle the De Minimis Claims Pursuant to Omnibus Procedures

9. The Debtors hold various potential and actual claims and causes of action against numerous third parties. These claims and causes of action are a potentially significant source of revenue for their estates and should thus be vigorously pursued. If the Debtors were required to obtain prior approval of this Court to settle each De Minimis Claim, the Debtors would incur significant costs associated with preparing, filing and serving separate motions for each proposed settlement. Similarly, the Debtors would likely encounter significant delays in obtaining the Court’s approval of such settlements in complying with the required notice periods and available hearing schedules. Moreover, it is likely that, in some cases, such delays could cause the Debtors to lose significant negotiating leverage in resolving such claims. Additionally, the influx of de minimis settlement approval motions would needlessly clog the Court’s docket.

Therefore, the Debtors' desire to establish omnibus procedures in these Chapter 11 Cases that will allow them to enter into settlements on a more cost-effective and expeditious basis while preserving an oversight function for key parties-in-interest.

10. Settling claims and causes of action owned by a debtor constitutes a disposition of the property of the estate. See Northview Motors, Inc. v. Chrysler Motors Com., 186 F.3d 346, 350 (3d Cir. 1999). If a settlement is outside of the ordinary course of business of the debtor, it requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. Id. at 351. In addition to obtaining such approval, a debtor typically must file a motion and provide notice and a hearing of such motion as required by FED. R. BANKR. P. 9019. Again, the Debtors submit that the settlements contemplated by this Motion are entirely within the ordinary course of business, and seek approval of these procedures out of an abundance of caution.

11. In reviewing a motion for approval of a settlement, bankruptcy courts must assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal. In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). This requires court consideration of the following criteria: (1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. Id. The approval of the settlement procedures proposed in this Motion is supported by application of these criteria.

12. With respect to the De Minimis Claims involving non-insider third parties (the “Settling Parties”) against the Debtors, the Debtors propose that they be authorized to enter into settlements pursuant to the following procedures (the “Omnibus Procedures”):

- a. For purposes hereof, a non-insider will mean any Settling Party that is not an insider, as such term is defined in section 101(31) of the Bankruptcy Code;
- b. The Debtors will not agree to any settlements unless, in their business judgment, such settlement is merited based on consideration of: (i) the probability of success if the claim is litigated or arbitrated; (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claim; (iii) other factors relevant to assessing the wisdom of the settlement; and (iv) the fairness of the settlement vis-a-vis the Debtors’ estates, creditors and shareholders;
- c. No settlement will be effective unless it is executed by an officer of the Debtors or their counsel;
- d. Subject to subparagraphs (a) through (c) above, with respect to any Settled Amount that does not exceed \$250,000, the Debtors, in their discretion, may agree to settle such claim or cause of action on any reasonable terms, and may enter into, execute and consummate a written agreement of settlement that will be binding on it and its estate without notice by the Debtors or further action by this Court, provided however that the Debtors, in quarterly reports, shall give written notice of such settlements to the Notice Parties², which notice shall consist of (w) an identification and description of the De Minimis Claim settled, (x) identification of the counterparty to the settlement, (y) the Settlement Amount received or to be received by the Debtors, and (z) the significant terms of the settlement (collectively, the “Notice Contents”).
- e. Subject to subparagraphs (a) through (c) above, with respect to any Settled Amount that equals or exceeds \$250,000 but does not exceed \$1,500,000, the Debtors, in their discretion, may agree to settle such claim or cause of action only if it provides written notice, via facsimile transmission, to the Notice Parties of the terms of the settlement, and such terms are not

² The Notice Parties are: the United States Trustee; counsel to the Agent for the DIP Lenders; counsel to the Agent for the Prepetition Senior Lenders; counsel to the Term B Lenders; counsel to the Term C Lender and counsel to the creditors’ committee.

objected to in writing by any of the Notice Parties within ten (10) days after the date of transmittal of such written notice; and in the absence of any such objection, the Debtors may enter into, execute and consummate a written agreement of settlement that will be binding on it and its estate;

- f. If any of the Notice Parties object to any settlement within ten (10) days after the date of transmittal of the notice of such proposed settlement, and the Debtors, in their sole discretion, still desire to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed except upon (i) resolution of the objection by the parties in question or (ii) further order of the Court after a hearing;
- g. Subject to subparagraphs (a) through (c) above, with respect to any Settled Amount that equals or exceeds \$1,500,000, such settlement shall only be consummated upon order of the Court;
- h. For purposes of determining the applicable dollar amount of a De Minimis Claim in order to permit the settlement of such claim pursuant to this Motion (the “Settled Amount”), the Debtors propose that, for claims by the Debtors against the Settling Parties, the Settled Amount shall equal the dollar amount upon which the Debtors and the applicable Settling Party ultimately agree in resolving each such De Minimis Claim; and
- i. Any settlement that is not authorized pursuant to the foregoing procedures, or pursuant to any other Order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties-in-interest.

13. Nothing in the Omnibus Procedures is intended or should be construed to alter any requirements under the Debtors’ insurance policies.

14. Pursuant to FED. R. BANKR. P. 9019(b), this Court may authorize the Debtors to settle certain classes of controversies without requiring separate notice and hearing with respect to each separate controversy. Given such authority, settlement procedures designed to streamline the court approval process, similar to those proposed above, have been approved in other large Chapter 11 Cases. See, e.g., In re Exide Technologies, Case No. 02-11125; Order entered May 10, 2002 (D. Del.) (JCA); In re Federated Department Stores, Inc., Case No. 1-90-00130, Order entered July, 5 1990 (S.D. Ohio) (authorizing debtors to settle certain prepetition

claims). Approval of the Omnibus Procedures is in the best interest of the Debtors and their estates and will not prejudice the rights of any party-in-interest in this case.

**Approval of the Omnibus Procedures for Settling
De Minimis Claims is in the Best Interests of the Debtors and the Estates**

15. The Debtors believe that the relief requested herein will aid their efforts to reduce expenses and maximize value for the benefit of their estates, their creditors and other parties-in-interest. By granting the relief requested herein, the Debtors will be able to avoid the cost of having counsel draft and file numerous motions and send out numerous hearing notices. The procedures that the Debtors seek to implement pursuant to this Motion will also reduce the burden on the Court's docket while protecting the interests of all creditors through the notice and objection procedures described herein.

16. After careful analysis, and in the exercise of its business judgment, the Debtors have determined, and respectfully submit, that for all of the foregoing reasons the relief requested in this Motion is in the best interests of its estate and creditors.

No Prior Request

17. No prior Motion for the relief requested herein has been made to this or any other Court.

Notice

18. Notice of this Motion has been provided to: (a) the United States Trustee; (b) counsel to the Agent for the DIP Lenders; (c) counsel to the Agent for the Prepetition Senior Lenders; (d) counsel to the Term B Lenders; (d) counsel to the Term C Lender; (e) counsel to the creditors' committee, and (j) those persons who have requested notice pursuant to FED R.

BANKR. P. 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need to be given.

WHEREFORE, out of an abundance of caution, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, (i) authorizing and approving the Omnibus Procedures for settling certain actual and potential claims and causes of action of the Debtors against third parties; and (ii) granting such other and further relief as the Court deems appropriate.

Dated: Pittsburgh, Pennsylvania
July 9, 2004

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-and-

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