

**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>	)	Case No. 04-27848-MBM
	)	Chapter 11
Debtors.	)	(Jointly Administered)
	)	
CONDON-JOHNSON & ASSOCIATES, INC.,	)	<b>Docket No.:</b> ____
	)	
Movant,	)	<b>Related Docket No.: 1736</b>
v.	)	<b>Objection Deadline: May 24, 2005</b>
	)	<b>Hearing Date: May 31, 2005, at 3:00 p.m.</b>
ACR MANAGEMENT, L.L.C., <i>et al.</i> ,	)	<b>(EST)</b>
	)	
Respondents.	)	
	)	

**RESPONSE OF THE DEBTORS TO  
[CM/ECF#1736] MOTION OF CONDON-JOHNSON &  
ASSOCIATES, INC. TO ALLOW CONTINUANCE OF SUIT**

The above-captioned Reorganized Debtors (collectively, the “Debtors<sup>2</sup>”) by and through their undersigned attorneys, hereby submit this response (the “Response”) to the motion (filed on April 21, 2005, CM/ECF#1736, the “Motion”) filed by Condon-Johnson & Associates, Inc. (the “Movant”), (i) to allow the continuance of its prosecution of a property damage suit with and against the Debtors with recovery limited to the Debtors’ insurance coverage and (ii) to file a proof of claim against the Debtors for any amounts not covered by applicable insurance. In support of this Response, the Debtors respectfully represent as follows:

<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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

## **RELEVANT BACKGROUND**

1. Prior to the Petition Date, the Debtors supplied and operated a crane to its customer, the Movant, pursuant to a certain written contract (the “Agreement”).

2. A lawsuit was initiated against one of the Debtors and the Movant in the Superior Court of California at San Diego styled Scripps Health, Inc., and The Titan Corporation v. Condon-Johnson & Associates, Inc., State of California et al., No.: GIC 832448 (the “Action”) arising out of an incident in which property was allegedly damaged. The incident allegedly involved one of the cranes supplied by the Debtors to the Movant.

3. In the Action, the Movant filed cross-claims for breach of contract, negligence, implied indemnity and declaratory relief requesting relief in excess of \$5,000,000.00.

4. Pursuant to the terms of the Agreement between the Debtors and the Movant, Maxim was named as an additional insured under the Movant’s general liability policy with Zurich North America (“Zurich” and the “Zurich Policy”). The Agreement also provided that Movant had an express contractual obligation to indemnify and defend the Debtors.

5. Contrary to the Movant’s allegations in the Motion, the only insurance policies at issue here are those of the Movant’s, not the Debtors’.

6. Since the filing of the Action, Zurich has accepted the Debtors’ tender of their defense as an additional insured on the Movant’s Zurich Policy; and, the Debtors are entitled to complete coverage under the Zurich Policy for any liability arising out of the Action and to complete coverage under all applicable excess policies of the Movant (the Zurich Policy, together with all applicable excess policies of the Movant, the “Policies”).

7. This Court set November 17, 2004 (the “Bar Date”), as the last date for all persons and entities (except governmental units) to assert a “claim” against the Debtors by filing a proof

of claim with the Debtors' claims and noticing agent Bankruptcy Management Corporation ("BMC").

8. While it appears as though the Debtors listed the Movant on their Schedules filed with this Court as having a contingent, unliquidated, or disputed claim, the Movant never filed a proof of claim against the Debtors by this Bar Date. BMC has informed the Debtors, however, that it is likely that the Movant did not receive notice of the Bar Date since the Movant was listed on the Schedules with an incomplete street address.

9. On December 30, 2004, this Court entered an Order confirming the Debtors' Plan of Reorganization. On January 28, 2005, the Debtors' Plan of Reorganization became effective pursuant to its terms.

10. By the Motion, the Movant now seeks (i) authority to proceed in a third party lawsuit against the Debtors with recovery limited to the Debtors' applicable insurance coverage; (ii) authority to file a proof of claim with this Court for any amounts not covered by applicable insurance coverage.

### **RESPONSE TO REQUESTED RELIEF**

11. The Debtors do not object to the Movant's request for this Court to authorize it to continue its prosecution of its rights in the Action, but only so long as (i) the Movant's relief is limited to allowing the Movant to liquidate its claims and recover from any applicable insurance coverage under the Movant's Policies, not any insurance policy of the Debtors; (ii) the relief does not seek to impose or allow the Movant to impose liability upon the Movant's insurers beyond the express terms of the applicable Policies; (iii) the Movant agrees to waive any right to file any proof of claim against the Debtors for any amounts not covered by the Policies; and (iv) the relief does not cause the Debtors to bear extraordinary expense.

12. As stated above, pursuant to the Agreement between the Movant and the Debtors, at all times relevant to the incident underlying the Action, the Debtors were to become an additional insured on the Movant's Zurich Policy. The Agreement also provided that Movant had an express contractual obligation to indemnify and defend the Debtors.

13. The Debtors' own general liability policies are not relevant here.

14. As to filing of a proof of claim against the Debtors with respect to any self-insured retentions or deductibles or any amount not covered by the Policies, the Debtors seek to condition the Movant's continuance of the Action upon the Movant's waiver of a right to file such proof of claim against the Debtors.

15. Even if the Movant had filed such a proof of claim, Debtors would have objected to the claim in their omnibus claims objection process, seeking a disallowance of the entire claim because converting the proof of claim into dollars would unduly delay the administration of the Debtors' cases.

16. Based on the Debtors' experience in litigating similar disputes such as the one underlying the Action, the Debtors believe that if the Action is permitted to go forward against the Debtors, there is no way that the parties to the Action will conclude their litigation in a non-bankruptcy court in a time frame sufficient to facilitate a timely distribution to other holders of Class 7 general unsecured Allowed Claims. In fact, the dispute underlying the Action may take years to litigate.

17. With respect to Class 7 general unsecured Allowed Claims, the Debtors' Plan provides that holders are to receive pro rata distributions from a fixed pot of \$3 million. Accordingly, waiting for an unsecured claim to be liquidated will unduly delay the administration of the Debtors' Chapter 11 Cases.

18. Accordingly, the Debtors request that the Movant's relief be conditioned upon the following:

- a. The relief from stay shall be limited, as to the Debtors, to allowing the Movant to liquidate its claims and recover from any applicable insurance coverage under the Movant's Policies, and the Movant may not seek to enforce any judgment obtained against any asset of the Debtors, or property of the Debtors' estate; provided however, the Movant is not precluded from pursuing recovery upon the Movant's claims from any other party to the Action that may, for any cognizable reason, be liable therefore;
- b. The relief granted herein shall not include any right of the Movant to recover from any insurance coverage under the Debtors' applicable insurance policies;
- c. The Movant agrees to waive any right to file a Proof of Claim against the Debtors with respect to any applicable retentions or deductibles, or any amount not covered by the Movant's Policies; and
- d. The relief granted herein shall be limited to only the Movant and not to Scripps Health, Inc., the Titan Corporation, or any other party to the Action, unless such party independently has sought the same relief from this Bankruptcy Court.

**WHEREFORE**, the Debtors respectfully request that this Court enter an Order (i) granting the Motion subject to the above conditions; or (ii) granting such other relief the Court deems just and proper.

Dated: Pittsburgh, Pennsylvania

May 26, 2005

Respectfully submitted,

CAMPBELL & LEVINE, LLC

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