

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

)	
In re:)	
)	Case No. 04-0_____(____)
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	
)	Chapter 11
)	
Debtors.)	(Jointly Administered)
)	
)	Docket No. ____
ACR MANAGEMENT, L.L.C., et al.,)	
)	Hearing Date and Time: _____
Movants,)	
)	Objection Deadline: _____
v.)	
)	
NO RESPONDENT.)	
)	

**EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 363, 364, 1107 AND
1108 (A) AUTHORIZING (i) MAINTENANCE OF EXISTING BANK
ACCOUNTS, (ii) CONTINUED USE OF EXISTING BUSINESS FORMS,
(iii) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM,
(iv) CONTINUED PERFORMANCE UNDER INTERCOMPANY AGREEMENTS
AND (B) GRANTING SUPERPRIORITY STATUS TO POSTPETITION
INTERCOMPANY CLAIMS; AND SUPPORTING MEMORANDUM OF LAW**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) file this motion (the “Motion”) seeking entry of an order under sections 363, 364, 1107 and 1108 of title 11 of

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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.

the United States Code (the “Bankruptcy Code”) (a) authorizing the Debtors to (i) maintain existing bank accounts, (ii) continue to use their existing business forms, (iii) continue to use their existing cash management system, (iv) continue performing under the Intercompany Agreements (as defined herein); and (b) granting superpriority status to postpetition intercompany claims. In support of this Motion, the Debtors respectfully represent as follows:²

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). Venue of this proceeding and this Motion is properly in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 507, 1107 and 1108 of the Bankruptcy Code.

Background

3. On this date (the “Petition Date”), the Debtors filed petitions for relief under the Bankruptcy Code (the “Chapter 11 Cases”). As more fully described in the First Day Affidavit, Debtors have submitted various First Day Motions that seek to stabilize the Debtors’ business operations and allow the Debtors to commence these Chapter 11 Cases in the best position possible to emerge expeditiously.³ Consistent with the relief requested in the First Day Motions, Debtors have conducted extensive negotiations and preparations with their Prepetition Senior Lenders regarding their

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² The facts and circumstances supporting this Motion are set forth in the Affidavit of Ronald M. Marmo, Vice President, Administration, in support of certain first day motions, filed contemporaneously herewith (the “First Day Affidavit”).

financial obligations and future business operations and have secured a debtor-in-possession financing facility with certain of the Prepetition Senior Lenders to provide for financing of the Debtors' operations following the Petition Date. Moreover, the Company, certain of the Prepetition Senior Lenders and Prepetition Term B Facility Lenders, and the Term C Lender have entered into a lock up and voting agreement in support of a plan of reorganization that embodies the terms of their agreement concerning the Company's restructuring, which terms have been set forth in the term sheet attached to the lock up and voting agreement. The Debtors have also requested the Court designate the Chapter 11 Cases as a complex case pursuant to Local Rule 1002-3, and to jointly administer them pursuant to Bankruptcy Rule 1015(b).

Relief Requested

A. The Debtors Should Be Granted Authority to Maintain Their Existing Bank Accounts.

4. The United States Trustee has established certain operating guidelines for debtors-in-possession. One such provision requires a chapter 11 debtor-in-possession to open new bank accounts and close all existing accounts. See United States Trustee Guideline No. 3. The United States Trustee Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the United States Trustee. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help to protect against the inadvertent payment of prepetition claims by preventing the banks from honoring checks drawn before the Petition Date.

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³ Any capitalized terms used in this Motion that are not otherwise defined shall have the meaning ascribed to them in the First Day Affidavit.

5. Before the Petition Date, the Debtors, in the ordinary course of business, maintained approximately forty-four (44) operational bank accounts listed in Exhibit A to this Motion (collectively, the “Bank Accounts”).

6. Some of these Bank Accounts are located at financial institutions other than those designated authorized depositories by the United States Trustee. The Bank Accounts are described in considerable detail in the portion of this Motion that describes the Debtors’ integrated cash management system.

7. The Debtors seek a waiver of the United States Trustee’s requirement that the Bank Accounts be closed and that new postpetition bank accounts be opened at depositories authorized by the United States Trustee. If enforced in these Chapter 11 Cases, this requirement would cause enormous disruption in the Debtors’ businesses and would impair their efforts to reorganize.

8. Maintaining the Bank Accounts would greatly facilitate the Debtors’ “seamless transition” to postpetition operations. To avoid delays in paying debts incurred postpetition and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations. Otherwise, transferring the Bank Accounts will be tremendously disruptive and time consuming.

9. This relief has been granted by this Court and has routinely been granted in other Districts. See In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim Order authorizing Debtors to continue use of prepetition bank accounts under existing account numbers); In re North America Refractories Co., et al., Case No. 02-20198 (Bankr.

W.D. Pa. January 9, 2002) (same); In re The Carbide/Graphite Group, Inc., et al., Case No. 01-2974448 (MBM) (Bankr. W.D. Pa. Sept. 27, 2001) (same); In re Polymer Group, Inc., et al., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002) (same); In re W. R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. April 2, 2001) (same); In re Trans World Airlines, Inc., No. 01-0056 (PJW) (Bankr. D. Del. Jan. 10, 2001) (allowing the debtors to maintain existing bank accounts when changing accounts would be too burdensome); In re United Artists Theatre Company, et. al., Case No. 00-3514 (SLR) (Bankr. D. Del. Sept. 5, 2000) (same); In re Harnischfeger Industries, Inc., et al., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999) (same); In re Acme Metals Incorporated, et al., Case No. 98-2179 (MFW) (Bankr. D. Del. Sept. 29, 1998) (same); In re Flagstar Holdings, Inc., Case No. 97-05431-B (Bankr. D. S.C. July 15, 1997) (same). Accordingly, the Debtors request that this Court waive the strict enforcement of bank account closing requirements and replace them with alternative procedures that provide the same protection. The Debtors request that the Bank Accounts be deemed debtor-in-possession accounts and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period.

B. The Debtors Should Be Granted Authority to Use Existing Business Forms and Checks

10. To minimize expense to their estates, the Debtors also request authority to continue to use all correspondence and business forms (including, but not limited to, letterhead, purchase orders, invoices, etc.), as well as checks existing immediately before the Petition Date, without reference to their status as debtors-in-possession.

11. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession because these Chapter 11 Cases are so large. Changing correspondence and business forms is therefore unnecessary, and would burden the estates by the expense involved and also would disrupt the Debtors' business operations. The Debtors therefore request that they be authorized to use their correspondence, business forms and checks without placing the label "debtor-in-possession" on each such prepetition form. This Court and Courts in other districts have allowed debtors to use their prepetition forms without the "debtor-in-possession" label. See, e.g., In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim Order authorizing Debtors to continue to use existing checks and business forms without alteration, provided Debtors use "debtor in possession" legend on checks once all their pre-existing checks are issued); In re North American Refractories Co., et al., Case No. 02-20198 (Bankr. W.D. Pa. January 9, 2002) (Debtors authorized to use existing business forms provided that a notice of the Chapter 11 filing was sent to each person receiving a business form or the business forms were stamped to indicate debtor-in-possession status); In re The Carbide/Graphite Group, Inc., et al., Case No. 01-2974448 (MBM) (Bankr. W.D. Pa. Sept. 27, 2001) (same); In re Gold-Standard Baking Inc., 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (Debtors authorized to use prepetition forms without the "debtor-in-possession" label). This Court and Courts in other districts have routinely granted this type of relief in other similar chapter 11 cases and should be granted in these Chapter 11 Cases. See, e.g., In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim Order); In re North American Refractories Co. et al., Case No. 02-20198 (Bankr. W.D. Pa. January 9, 2002); In re The Carbide/Graphite Group, Inc., et al., Case No. 01-2974448 (MBM)

(Bankr. W.D. Pa. Sept. 27, 2001); In re Polymer Group, Inc., et al., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002); In re Flagstar Holdings, Inc., Case No. 97-05431-B (Bankr. D. S.C. July 15, 1997); In re W. R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. April 2, 2001); In re Trans World Airlines, Inc., No. 01-0056 (PJW) (Bankr. D. Del. Jan. 10, 2001); In re United Artists Theatre Company, et al., Case No. 00-3514 (SLR) (Bankr. D. Del. Sept. 5, 2000); In re Harnischfeger Industries, Inc., et al., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999).

C. Continuing the Debtors' Integrated Cash Management Is in the Best Interests of the Debtors' Estates and Creditors; Description of the Existing Cash Management System

12. The Debtors are "affiliates" as that term is defined in section 101(2) of the Bankruptcy Code. As affiliated entities, the Debtors maintain an integrated, but relatively decentralized cash management system in operating their businesses, as described further below and in the chart attached hereto as Exhibit B. The Debtors' integrated cash management system records permit the Debtors to maintain records for each of the operating entities (which are Anthony Crane Rental, L.P, Anthony Crane International, L.P., and Anthony Crane Sales & Leasing, L.P.), as well as for each other filing entity.

13. The Debtors' Bank Accounts are listed in Exhibit A hereto, although the majority of their funds are concentrated in the accounts described below:

(i) Cash Receipts:

14. The Debtors' main corporate account is held by Fleet Bank under account number 94158-45022 (the "Main Corporate Account"). Deposits from the Debtors' five regional lockbox accounts (the "Regional Account Lockboxes"), also held by Fleet Bank, are deposited to the Main Corporate Account. Generally, cash receipts are mailed by customers for collection to one of the

Regional Account Lockboxes. The Debtors' Regional Account Lockboxes are listed in Exhibit C hereto. The Main Corporate Account is used (i) to fund controlled disbursement accounts (the "Controlled Disbursement Accounts") used by each of the five regions, (ii) for corporate payments made by wire transfer, EFT's and certain automatic disbursements and (iii) to process customer automatic clearing house ("ACH") transactions.

15. On occasion, customers will mail checks directly to operating offices. Additionally, on occasion, checks will be collected directly from customers. Depending on the specific situation, these checks will be sent overnight to one of the Regional Account Lockboxes or deposited in a local bank account before being deposited in the Main Corporate Account.

16. The Debtors also receive payments for their St. Croix-USVI operations for which the Debtors maintain two existing accounts (collectively, the "St. Croix Accounts"). Part of the payments are received in an account held by Fleet Bank under account number 80223019. These funds are swept by Fleet Bank into the Main Corporate Account. Additional payments are received in an account held by First Bank Puerto Rico under account number 7241141220. Receipts in this account are manually transferred into the Main Corporate Account.

(ii) ***Cash Disbursements:***

17. The Debtors maintain eleven (11) Controlled Disbursement Accounts held by Fleet Bank. Each region prints checks from a specific controlled disbursement checking account. The Controlled Disbursement Accounts are funded through nightly automatic sweeps by Fleet Bank based on the checks presented each day.

18. Additionally, certain vendors are paid directly through automatic funding programs.

These vendors include:

- (a) *Wright Express* - this vendor provides bulk fuel purchases. On three occasions each month, generally the 1st, 10th and 21st of each month, the vendor draws funds against the Main Corporate Account.
- (b) *LaSalle National Leasing* - this vendor provides equipment leasing to the Company. The Company maintains various leases with the vendor. Lease payments are drawn on the 15th, 30th and 31st of each month. These funds are drawn from the Controlled Disbursement Account designated for corporate transactions.
- (c) *Kentucky Transportation Cabinet* - this vendor provides permits for the Midwest region of the Debtors' operations. The dispatcher for the region contacts the vendor when a permit is needed. The vendor draws funds from the Main Corporate Account for the permits ordered.
- (d) *Frost Bank* - operations for the Debtors' Central Region maintains two accounts with Frost Bank for the purchase of permits. The permits are paid for as they are purchased from these accounts. When the accounts reach a certain funding level, however, funds are automatically swept from the Controlled Disbursement Account for the Central Region to replenish the Frost accounts.

19. Each region also maintains a number of local bank accounts. These local accounts are used for deposits received at the branches or collected directly from customers. The accounts may also be used to write "immediate need" type of checks for charges including fines, COD purchases and permits. These accounts generally do not maintain a significant cash balance as credit agreements require that the balances of each account be maintained at a level of \$50,000 or less. Funds may be manually transferred into or out of these accounts on an "as needed" basis.

20. Disbursements for the Debtors' St. Croix-USVI operation are processed through the First Bank Puerto Rico account discussed above. In addition, payroll disbursements related to this

operation are processed from an additional account held by First Bank Puerto Rico under account number 7241141212.

(iii) ***Cash Position Reporting:***

21. The Debtors' corporate controller (the "Controller") downloads files from Fleet Bank into its treasury software on a daily basis. Additionally, the Fleet Bank treasury management software generates reports detailing the banking transactions processed during the previous day. The Controller reviews the reports and prepares the following summaries:

- (a) *Fleet Sweeps* - summarizes the transfers to and from the Main Corporate Account and the Controlled Disbursement Accounts.
- (b) *Lockbox Deposits* - summarizes the batch deposits received in each of the Regional Account Lockboxes.
- (c) *ACH Deposits* - summarizes all deposits received from customers paying via ACH.

22. The summaries are distributed by the Controller to regional personnel responsible for cash receipts posting and cash management.

23. The Controller prepares a disbursement notification form as a source of the data entry into the accounting system from summaries of the disbursements from the Main Corporate Account and the Controlled Disbursement Account for corporate transactions. The Debtors' accounts payable clerk then enters the disbursement notification form into the Debtors' accounting system.

24. Each region prepares a daily cash sheet summarizing the cash receipts, transfers, disbursements or other activity (such as void checks) completed the previous day from the information summarized in the above mentioned reports. These daily cash sheets are distributed to the Controller

who summarizes the daily cash sheets received from the various regions and prepares a total company cash sheet. This comprehensive cash sheet is then distributed to senior management for review.

D. Need to Continue Cash Management System

25. The Debtors hereby seek authority to continue utilizing their current integrated cash management system, as described above. It is critical that they continue to be able to consolidate their cash management and centrally coordinate funds transfers in order to efficiently and effectively operate their large, complex business operations. Substantially disrupting those cash management procedures would severely impair the Debtors' ability to preserve and enhance their respective going concern values and to successfully reorganize during these Chapter 11 Cases. Moreover, creating an entirely new cash management system would also inevitably have a deleterious effect on the Debtors' recordkeeping -- which would subvert the goal of the U.S. Trustee guidelines. It is essential, therefore, that the Debtors be permitted to continue to use their current cash management system.

26. The Debtors have utilized their cash management system as described herein in its current basic structure for more than four (4) years as a mainstay of their ordinary, usual and essential business practices. The cash management system is similar in form to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. Large, complex multiple-entity businesses tend to use such systems because of the numerous benefits they provide, including the ability to (a) tightly track and thus control all corporate funds through an ability to provide near-continuous status reports on the location and amount of all such funds, (b) ensure cash availability and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. These controls are particularly important here,

given the significant amount of cash that flows through the Debtors' integrated cash management system on an annual basis.

27. In addition, given the corporate and financial structure of the Debtors and their non-debtor affiliates, it would be difficult for the Debtors to establish an entirely new system of accounts and a new cash management system for each separate legal entity. For example, if the Debtors were required to open separate accounts as debtors-in-possession and rearrange their cash management system, it would necessitate opening numerous new accounts for collections, cash concentration and disbursements. The delays that would result from opening new accounts, revising cash management procedures and instructing customers to redirect payments would negatively impact the Debtors' ability to operate their businesses while pursuing these arrangements. Thus, under the circumstances, maintaining the Debtors' cash management system is both essential and in the best interests of their respective estates and creditors.⁴ Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary distractions that would inevitably be associated with any substantial disruption in the Debtors' cash management system obviously will facilitate the Debtors' reorganization efforts.

28. If the Debtors are not permitted to continue to utilize their integrated cash management system in its current form, their operations would be severely, and perhaps, irreparably, impaired. Accordingly, the Court should authorize the Debtors' continued use of their existing cash management system.

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⁴ Of course, the Debtors will continue to maintain strict records with respect to all transfers of cash, so that transactions can be readily ascertained, traced and recorded properly on applicable intercompany accounts.

E. Relief Requested Is Consistent with the Provisions of the Bankruptcy Code

29. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively “simple matter.” In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, a chapter 11 case involves affiliated debtors with complex financial affairs. In In re Charter Co., 778 F.2d 617 (11th Cir. 1985), for example, the Bankruptcy Court entered an order authorizing the debtor and 43 of its subsidiaries “to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors.” Id. at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent District Court decision denying a creditor’s motion for leave to appeal the Bankruptcy Court’s cash management order, holding that authorizing the debtors to utilize their prepetition “routine cash management system” was “entirely consistent” with applicable provisions of the Bankruptcy Code. Id. at 621.

30. Likewise, in another context, the Bankruptcy Court in the Columbia Gas chapter 11 case explained that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticabilities of maintaining separate cash accounts for the many different purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1993), aff’d in part and rev’d in part, 997 F.2d 1039 (3d Cir. 1993), cert. denied sub nom Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp., 114 S. Ct. 1050 (1994). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” Columbia Gas, 997 F.2d at 1061; see also, In re

Southmark Corp., 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”); In re UNR Indus., Inc., 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

31. The continued use of cash management systems employed in the ordinary course of a debtor’s prepetition business has been approved by this Court and has also been approved as a routine matter in cases in other Districts. See, e.g., In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim Order authorizing Debtors to continue use of their pre-existing cash management system); In re North American Refractories Co., et al., Case No. 02-20198 (Bankr. W.D. Pa. January 9, 2002); In re The Carbide/Graphite Group, Inc., et al., Case No. 01-2974448 (MBM) (Bankr. W.D. Pa. Sept. 27, 2001); In re Polymer Group, Inc., et al., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002); In re W. R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. April 2, 2001); In re Trans World Airlines, Inc., No. 01-0056 (PJW) (Bankr. D. Del. Jan. 10, 2001); In re United Artists Theatre Company, et. al., Case No. 00-3514 (SLR) (Bankr. D. Del. Sept. 5, 2000); In re Harnischfeger Industries, Inc., et al., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999); In re Flagstar Holdings, Inc., Case No. 97-05431-B (Bankr. D. S.C. July 15, 1997).

32. It is critical to both continuing to operate the Debtors’ businesses and preserving the value of those businesses that the Debtors continue to utilize their existing cash management system without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Debtors’ integrated cash management system in its current form (except to the extent it needs to be modified in accordance with the DIP

Budgets, the DIP Loan Amendment and the DIP Orders (as each such term is defined in the First Day Affidavit).

F. Granting Superpriority Status to Postpetition Intercompany Claims Is Necessary to Protect the Debtors' Claims

33. As described above, the Debtors' cash management system permits funds generated by their business operations to flow in most instances into the Main Corporate Account. Likewise, as the Debtors require funds to meet current obligations, cash flows out of the Main Corporate Account into the other concentration accounts, and thence to the various disbursement accounts.

34. Furthermore, the Debtors maintain business relationships with each other, and as a result, there are numerous intercompany claims (the "Intercompany Claims"), including, as of April 30, 2004:

- (i) Anthony Crane Rental, L.P. ("Rental") has a payable to Anthony Crane International, L.P. of approximately \$27,302,919;
- (ii) Rental has a payable to Anthony Crane Sales & Leasing, L.P. of approximately \$6,030,195;
- (iii) Rental has a payable to The Crane & Rigging Company L.L.C. of approximately \$127,420; and
- (iv) Rental has a net receivable of approximately \$22,630 from Anthony Crane Rental Holdings, L.P.

35. In many instances, the Debtors' funds may be commingled throughout the cash management system. Accordingly, at any given time, there may be balances due and owing by one Debtor to another. These balances are extensions of intercompany credit. The Debtors maintain strict records of all funds transfers and can readily ascertain, trace and account for all intercompany

transactions. The Debtors, moreover, will continue to maintain their detailed records of intercompany transactions.

36. To ensure that one Debtor will not fund, at the expense of its creditors, the operations of another Debtor, the Debtors request that, pursuant to section 364(c)(1) of the Bankruptcy Code, all Intercompany Claims arising after the Petition Date that are owed by one Debtor to another Debtor be accorded superpriority status, with priority over any and all priorities and claims, including claims relating to administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject and subordinate only to the priorities, liens, claims and security interests that may be granted under sections 363 and 364 of the Bankruptcy Code in connection with any debtor-in-possession credit facility. If the postpetition Intercompany Claims between the respective Debtors are accorded superpriority status, each Debtor will continue to bear the ultimate repayment responsibility on its respective obligations, thereby maximizing the protection afforded by the cash management system to the Debtors' creditors.

37. To resolve the concerns related to the repayment of funds moved between a debtor and its subsidiaries in a chapter 11 case, Courts in this District and other Districts have typically granted administrative and superpriority status to postpetition intercompany claims. See, e.g., In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim Order granting priority status to intercompany claims pursuant to section 364(c)(1) of the Bankruptcy Code); In re Polymer Group, Inc., et al., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002); In re W. R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. April 2, 2001); In re United Artists Theatre Company, et al., (SLR) Case No. 00-3514 (Bankr. D. Del. September 5, 2000); In re

Harnischfeger Industries, Inc., et al., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999); In re Flagstar Holdings, Inc., Case No. 97-05431-B (Bankr. D. S.C. July 15, 1997). Similarly, the Debtors request relief to resolve the same kinds of concerns.

38. Finally, Rental has a fifty-percent (50%) joint venture interest in AVS Services, Inc. (“AVS”) which has resulted in a net receivable to Rental from AVS of approximately \$50,000 as of April 30, 2004. In the event that the Debtors owe any amounts to AVS as of the Petition Date, however, the Debtors will not seek authority of this Court to treat any such claim with superpriority status pursuant to section 364(c)(1) of the Bankruptcy Code. Instead, Rental would continue to treat any such claim in the same manner as it did prepetition and reserve the right to determine the priority thereof pursuant to the Debtors’ plan of reorganization.

G. The Debtors Should Be Authorized to Continue Using Wire Transfer and ACH Payments

39. The Debtors should be granted further relief from the United States Trustee Guidelines to the extent they require that the Debtors make all disbursements by check. In particular, the United States Trustee’s Guidelines require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement.

40. Considering the complexity of the Debtors’ operations, it is necessary for the Debtors to conduct some transactions by wire transfer or ACH payments as discussed above in the description of the Debtors’ cash management system.⁵ To deny the Debtors the opportunity to conduct transactions by wire transfer or ACH payments would interfere with the Debtors’ performance of their

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⁵ Records are kept of every disbursement made via wire transfer and ACH payment.

contracts and unnecessarily disrupt the Debtors' business operations, as well as create additional costs to the Debtors and their non-debtor affiliates.

H. The Debtors Should Be Authorized to Continue Performing under the Intercompany Agreements

41. The Debtors and their non-debtor affiliates and subsidiaries engage in certain usual and customary business practices in the ordinary course of their businesses that govern the various intercompany relationships among the Debtors (the "Intercompany Agreements"). The Debtors believe that continued performance under the Intercompany Agreements is not only important to the successful restructuring of the Debtor entities, but is absolutely integral to ensure the Debtors' ability to operate their businesses as debtors-in-possession. Were the Debtors required to obtain the services they currently receive under the Intercompany Agreements on a per-company basis, aside from incurring excessive financial burdens in identifying appropriate providers of these services and entering into individual agreements for providing these services, the Debtors would be required to divert their attention and efforts from ensuring a smooth transition into the chapter 11 process and, ultimately, working towards a successful restructuring. Moreover, as noted above, the services provided under the Intercompany Agreements are ordinary course type tasks and functions.⁶

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⁶ The Debtors believe that because the transactions performed under the Intercompany Agreements were conducted on a regular basis prior to the Petition Date and are common for enterprises such as the Debtors, the Intercompany Agreements are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code. The Debtors believe therefore, that they do not require the Court's approval to continue performing under the Intercompany Agreements. Nonetheless, the Debtors seek the Court's express authority to do so out of an abundance of caution.

42. Thus, while the Debtors are not seeking to assume the Intercompany Agreements as executory contracts at this time, the Debtors respectfully request the authority to continue performing under the Intercompany Agreements in the ordinary course of business without need for further Court Order. Courts in this District and in other jurisdictions have routinely granted such authority in other complex multi-debtor chapter 11 cases for similar reasons. See, e.g., In re Mid-Valley, Inc., et al., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. December 17, 2003) (Interim order authorizing Debtors to continue to engage in intercompany agreements in the ordinary course of business); In re Polymer Group, Inc., et al., Case No. 02-05773 (JEW) (Bankr. D.S.C. July 1, 2002); In re W.R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. April 2, 2001); In re Flagstar Holdings, Inc., Case No. 97-05431-B (Bankr. D. S.C. July 15, 1997); In re Montgomery Ward Holding Corp., et al., Case No. 97-1409 (PJW) (Bankr. D. Del. July 8, 1997). For the reasons discussed herein, the Court should authorize the Debtors to continue to perform under the Intercompany Agreements.

Notice

43. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. Notice of this Motion has been provided to: (a) the United States Trustee; (b) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (c) counsel to the Agent for the DIP Lenders; (d) counsel to the Agent for the Prepetition Senior Lenders; (e) counsel to the Term B Lenders; (f) counsel to the Term C Lender; (g) the Indenture Trustee for the New Senior Notes; and (h) the Indenture Trustee for the New Debentures. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, (a) authorizing the Debtors to (i) maintain existing bank accounts, (ii) continue to use their existing business forms, (iii) continue to use their existing cash management system, (iv) continue performing under the Intercompany Agreements (as defined herein), (b) granting superpriority status to postpetition intercompany claims and (c) granting such other and further relief as the Court deems appropriate.

Dated: Pittsburgh, Pennsylvania
June 14, 2004

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