

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	
)	Chapter 11
)	
ACR MANAGEMENT, L.L.C., et al.,)	Case No. 04-27848-MBM
)	(Jointly Administered)
Debtors.)	
)	
ACR MANAGEMENT, L.L.C., et al.,)	JUDGE M. BRUCE McCULLOUGH
)	
Movants,)	
)	
v.)	
)	
WHEELING-PITTSBURGH STEEL CORP.,)	
)	
Respondent.)	

**OBJECTION OF WHEELING-PITTSBURGH STEEL CORPORATION
TO DEBTORS' OBJECTION TO ITS PROOF OF CLAIM AND
TO DEBTORS' NINTH OMNIBUS OBJECTION**

Wheeling-Pittsburgh Steel Corporation ("WPSC"), a creditor and party in interest in the above captioned case, by and through its counsel, submits this objection to the Debtors' Objection to Proof Claim Filed By Wheeling Pittsburgh Steel Corp. and the (I) Ninth Omnibus Objection to Certain Disputed Proofs of Claim Pursuant to 11 U.S.C. §§ 105(a), 502(b) and Fed. R. Bankr. P. 3007 and (II) Motion to Estimate Such Claims to be \$0.00 for the Purposes of Distribution Pursuant to 11 U.S.C. § 502(c)(1) and Plan Article VIII(A)(2.) (collectively, the "Objection") filed by the Debtors, and in support thereof, respectfully represents as follows:

Background

1. On November 16, 2000, WPSC and affiliated debtors filed a petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Ohio. WPSC's plan

of reorganization was confirmed by the Ohio Bankruptcy Court on June 18, 2003; and WPSC is now a reorganized debtor pursuant to that plan.

2. On or about April 29, 2002, WPSC brought an adversary proceeding, No. 02-4072 (the “Preference Action”), against Anthony Crane Rental, L.P., dba Maxim Crane Works (“Maxim”), to avoid preferential and fraudulent transfers made to Maxim during the ninety days preceding WPSC’s bankruptcy filing and to recover certain overpayments made to Maxim. A copy of the Complaint in the Preference Action was attached to the Debtors’ Objection as Exhibit A.

3. During the course of the Preference Action, WPSC limited its claims to seek only recovery of (1) a \$571,043.38 payment WPSC made to Maxim on October 9, 2000, which resulted from aggressive collection practices on Maxim’s part; (2) \$645,000, due to Maxim’s failure to provide discounts on the draws it made against a letter of credit obtained by WPSC in Maxim’s favor; and (3) \$239,000 in other miscellaneous payments made to Maxim during the preference period.

4. WPSC moved for summary judgment in the Preference Action with respect to the October 9, 2000 payment referenced above. A copy of WPSC’s summary judgment motion is attached as Exhibit A.

5. On June 14, 2004 (the “Petition Date”), the Debtors filed a petition for relief under chapter 11 of title 11 of the Bankruptcy Code. The filing operated to stay the Preference Action and prevented a ruling on WPSC’s summary judgment motion.

6. On November 8, 2004, WPSC filed Proof of Claim No. 873 in Case No. 04-27861 in this bankruptcy for the above amounts, which total roughly \$1.455 million. On the same date, WPSC filed Proof of Claim No. 874 in Case No. 04-27857 for the same amounts.

7. Prior to the filing of WPSC's Proofs of Claim, Maxim had brought three separate actions in Ohio and West Virginia (the "Invoice Actions") to recover a total of \$92,622.01 in alleged unpaid invoices. These actions were each removed to federal court and have been transferred to this Court as adversary proceedings.

8. On May 11, 2005, the Debtors filed the Objection to WPSC's proof of claim. The Debtors also included in the Objection a request that WPSC's claim, among others, be either disallowed or valued at \$0.00.

Argument and Law

9. The Court is not required to estimate Wheeling-Pitt's claim. 11 U.S.C. § 502(c) permits the Court to estimate "contingent" or "unliquidated" claims. While WPSC expresses no opinion as to the certainty of any of the other claims to which the Debtors object in the Objection, WPSC seeks to recover definite sums that do not require the Court to undertake an estimation.

10. First, WPSC seeks to recover approximately \$810,000 in transfers WPSC made to Maxim in the ninety days preceding WPSC's own bankruptcy filing. The transfers are set forth in Exhibit A to the Complaint in the Preference Action, attached to the Debtors' Objection.

11. Second, WPSC seeks to recover excessive draws on a Letter of Credit. In October 2000, under economic duress imposed by Maxim, WPSC obtained a Letter of Credit in an amount exceeding \$3 million to pay for invoices from, and services to be provided by, Maxim.

12. Before WPSC had obtained the Letter of Credit, WPSC and Maxim had enjoyed a long business relationship, in which Maxim customarily provided WPSC with discounts against Maxim's invoices.

13. The discounts came in three forms: a 6% discount on all rentals, a 3% discount on cash payments and a 50% reduction for all second shift rentals. The continued provision of these discounts was a material component of WPSC's agreement to use Maxim's crane services.

14. When Maxim began to make draws on the Letter of Credit, however, Maxim refused to account for the discounts. Maxim's draws on the Letter of Credit thus exceeded Maxim's authority to make those draws by over \$645,000.

15. The parties to the Preference Action exchanged voluminous documents and took several depositions. The parties also participated in a mediation which, while Maxim refused to participate meaningfully, presented another opportunity for the exchange of information. Maxim thus has sufficient information in its possession to verify the sums set forth in WPSC's proof of claim. Maxim's request that this Court estimate WPSC's claim at an amount other than that set forth in the proof of claim should be denied.

16. Maxim also objects to WPSC's proof of claim and has requested in the Objection that Wheeling-Pitt's claim be disallowed. Maxim's request should be denied. Section 502 of the Bankruptcy Code provides that "a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. section 502(a). In addition, this Court has previously held that Federal Rule of Bankruptcy Procedure 3001(f) "provides that a properly executed and filed claim constitutes *prima facie* evidence of the validity and amount of the claim." *In re Wilkins*, 71 B.R. 665, 668 (Bankr. N.D. Ohio 1987).

17. As a result, the party objecting to a properly executed and filed proof of claim has the initial burden of presenting sufficient probative evidence to overcome such *prima facie* effect. *In re Electronic Theatre Restaurants, Inc.*, 85 B.R. 45, 47 (Bankr. N.D. Ohio 1988).

18. The Debtors have presented no facts whatsoever to contradict or rebut, let alone overcome, the prima facie showing made by WPSC's proof of claim.

19. Moreover, WPSC has demonstrated, through its Motion for Summary Judgment, that it is entitled at least to the recovery of the \$571,000 preference payment made to Maxim. Because the Debtors have failed to present evidence to counter WPSC's claim, the claim should be allowed in its entirety.

20. WPSC, without admitting liability for any of the claims set forth in the Invoice Actions, is willing to agree that the sum of \$92,622.01 claimed in those actions may be applied to WPSC's Proofs of Claim as a setoff pursuant to 11 U.S.C. § 553(a).

21. WHEREFORE, based upon the foregoing, and based upon WPSC's filed Proofs of Claim and the supporting documentation attached thereto, WPSC respectfully urges this Court to: (1) deny the Debtors' Objections to WPSC's claim; (2) deny the Debtor's request that the Court estimate WPSC's claim at less than the full amount; and (3) allow WPSC's claim in its entirety, such that WPSC has an allowed unsecured claim against the Debtors in the amount of 1,355,000, less \$92,622.01 for the Debtors' § 553 setoff as set forth above, and an additional allowed secured claim against the Debtors in the amount of \$100,000.

Dated: June 14, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Objection to Debtors' Objection and Response to Debtors; Ninth Omnibus Objection has been filed electronically this 14th day of June, 2005. Notice of this filing will be sent via electronic mail to all parties who have entered an appearance by operation of the Court's electronic filing system. Additionally, a copy of the foregoing has been served by regular U.S. mail, postage prepaid, to the parties listed below, this 14th day of June, 2005.

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