

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	Chapter 11
	:	
ACR MANAGEMENT, L.L.C.,	:	Case No. 04-27848-MBM
et al.,	:	
	:	Responses Due: June 28, 2005
	:	Hearing Date: July 5, 2005; 3:00 PM
	:	
Debtors.	:	(Jointly Administered)

**RESPONSE FILED BY TIC - THE INDUSTRIAL COMPANY ON BEHALF OF
JAVIER ROSELL EVAN AND LISA ROSELL TO DEBTORS'
TWELFTH OMNIBUS OBJECTION TO CLAIMS**

TIC – The Industrial Company (“TIC”) hereby responds on behalf of Javier Rosell Evan and Lisa Rosell to the Debtors’ Twelfth Omnibus Objection Claims Pursuant to 11 U.S.C. § 105(a), 502(b) and Fed. R. Bankr. P. 3007 and states as follows:

Introduction.

1. Debtor Anthony Crane Rental, L.P. d/b/a Maxim’s Crane Works (“Debtor”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on June 14, 2004.
2. Claimant TIC is a corporation with its principal place of business located at 2211 Elk River Road, Steamboat Springs, Colorado.
3. Upon information and belief, Javier Rosell Evan is an adult individual who resides in Solano County, California.
4. Upon information and belief, Lisa Rosell is an adult individual who resides in Solano County, California.
5. Upon information and belief, Javier Evan and Lisa Rosell are husband and wife.

6. On or about December 23, 2004, Debtor filed its Second Amendment of Debtors' Schedules of Assets and Liabilities (the "Amended Schedules").

7. Schedule F of the Amended Schedules list "Javier Evan" (Vendor No. 3666) and "Valero Refinery c/o TIC – The Industrial Co" (Vendor No. 3921) as creditors holding unsecured claims. Schedule F of the Amended Schedules does not list Lisa Rosell as a creditor.

8. On April 22, 2005, in accordance with the Notice Pursuant to Local Rule 3002-1(b) of Fixing of Supplemental Bar Date for the Filing of Certain Claims and Federal Rule of Bankruptcy Procedure 3005, TIC timely filed a proof of claim (Claim No. 1015)(the "Proof of Claim") on behalf of Javier Rosell Evan and Lisa Rosell. The Proof of Claim relates to a claim for damages asserted by Javier Evan and Lisa Rosell against Valero Refinery, Debtor and TIC. A copy of the Proof of Claim without exhibits is attached hereto as Exhibit A and incorporated herein by reference.

The Project

9. TIC entered into a subcontract with Gulf States, Inc. to perform certain work and provide certain services in connection with the construction of the Alkylation DeBottleneck Mechanical and Electrical Project at a petroleum refining facility owned by Valero Refining Company ("Valero") and located at 3400 East Second Street, Benicia, California (the "Project").

10. Gulf States had previously entered into a contract with Valero to serve as the general contractor for the Project.

11. TIC, in turn, entered into a contract with Debtor with an effective date as of December 30, 2003 (the "Contract") to provide crane and rigging services for the Project. Debtor already possesses a copy of the Contract as a copy of the Contract was previously provided to the Debtor as part of the proof of claim filed by TIC.

The Complaint

12. On or about May 13, 2004, Javier Evan and Lisa Rosell filed a complaint in the Superior Court of California for Solano County against Valero, Debtor and Does 1 through 40, where it was docketed at Docket No. FCS024128 (the “Complaint”). A copy of the Summons and Complaint is attached to the Proof of Claim and is incorporated herein by reference.

13. The Complaint alleges, *inter alia*, that, on or about February 5, 2004, Javier Evan was injured when a crane owned and/or operated by Debtor lowered a tower onto Mr. Evan, severing three fingers and causing internal and external injuries.

14. The alleged injuries suffered by Mr. Evan and Ms. Rosell were the result of acts and/or omissions of Debtor and/or its employees.

15. The statement of damages accompanying the Complaint filed by Javier Evan and Lisa Rosell claims damages in the aggregate amount of \$41.45 million. *See* Complaint attached to the Proof of Claim.

16. TIC was not originally named as a defendant in the Complaint.

17. On or about December 7, 2004, the Complaint was amended to include TIC as a defendant. A copy of the amendment to the complaint is attached to the Proof of Claim and is incorporated herein by reference.

The Insurance Policy

18. The claims asserted by Javier Evan and Lisa Rosell are currently unliquidated, however the Debtor’s direct liability is likely limited by an insurance policy that provides coverage for these claims.

19. Debtor is covered by Policy No. EGL-NY-078870-033 issued by LSI Corporation (the “Policy”) which provides coverage for the claims asserted by Javier Evan and Lisa Rosell.

20. TIC understands that the Policy is subject to a self-insured retention for indemnity of \$500,000 and a self-insured retention of \$500,000 for “Occurrence Expenses” (as this term is defined in the Policy).

21. As a result, while the total amount of the claims asserted by Javier Evan and Lisa Rosell is not known, the Debtor’s direct liability for those claims is defined by the self-insured retentions in the Policy.

The Twelfth Omnibus Objection to Claims.

22. On June 1, 2005, the Debtors’ Twelfth Omnibus Objection to Claims Pursuant to 11 U.S.C. § 105(a), 502(b) and Fed. R. Bankr. P. 3007 (the “Objection”) was filed with the Court.

23. Among the claims sought to be disallowed is the Proof of Claim filed on behalf of Javier Evan and Lisa Rosell.

24. The Objection argues that the Proof of Claim should be disallowed because it was filed in an unknown or unliquidated amount and the claimants have been unable to convert their claim into a liquidated amount. *See* Objection at ¶¶ 6(a) and 8.

25. The Objection also argues that liquidating the Proof of Claim would unduly delay the administration of the Chapter 11 cases.

The Debtor’s Objection is Without Merit.

26. The Debtor’s Objection should be overruled insofar as it relates to the Proof of Claim because the Objection fails to produce any evidence to overcome the *prima facie* validity of the claims asserted in the Proof of Claim.

27. Pursuant to § 502(a) of the Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., a proof of claim is deemed to be allowed unless a party in interest objects. 11 U.S.C. § 502(a). Thus, a proof of claim operates as prima facie evidence of such claim. See H.R. Rep. No. 95-595, 95th Cong., 1st Sess., at 352 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess., at 62 (1978).

28. The burden of proof for claims against a debtor rests on different parties at different stages of the proceedings. The claimant must initially allege facts sufficient to support its claim, but once this is done, the claim is prima facie valid. The burden of proof then shifts to the objecting party to produce sufficient evidence to negate the prima facie validity of the proof of claim by refuting at least one of the essential allegations of such claim. Only after the objecting party produces evidence equal in force to the prima facie claim does the burden revert to the claimant to prove the validity of its claim by a preponderance of the evidence. See *In re Allegheny Int'l. Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992); see also *Fullmer v. U.S.*, 962 F.2d 1463, 1466 (10th Cir. 1992) (“A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. This evidentiary presumption remains in force even though an objection to the claim is filed by a party in interest. To overcome this prima facie effect, the objecting party must bring forward evidence equal in probative force to that underlying the proof of claim.”) (citations omitted).

29. First, the Debtor’s Objection fails to set forth any facts sufficient to overcome the prima facie validity of the claims asserted on behalf of Javier Evan and Lisa Rosell. Instead, the Objection simply states in a conclusory fashion that the Proof of Claim should be disallowed because it was filed in an unknown or unliquidated amount and the claimants have been unable to convert their claim into a liquidated amount.

30. Second, the Objection does not state a proper basis to object to the claim asserted by Javier Evan and Lisa Rosell. The fact that a claim may be unliquidated is not a proper basis to object to a claim and seek its disallowance.

31. Third, Debtors cannot be heard to complain that Javier Evan and Lisa Rosell have been unable to convert their claim into a liquidated amount when the automatic stay that resulted from Debtor's bankruptcy petition stopped prosecution of their claims. Debtor cannot use the automatic stay as a basis to object to the Proof of Claim.

32. Debtor offers no evidence whatsoever to counter the detailed facts and documentation that was provided to support the Proof of Claim.

33. Because the Objection fails to set forth any facts sufficient to overcome the prima facie validity of the claims asserted by TIC on behalf of Javier Evan and Lisa Rosell, the Objection must be overruled insofar as it relates to the Proof of Claim.

WHEREFORE, TIC respectfully requests that the Court overrule Debtors' Twelfth Omnibus Objection to Claims Pursuant to 11 U.S.C. § 105(a), 502(b) and Fed. R. Bankr. P. 3007 insofar as it relates to the Proof of Claim filed on behalf of Javier Evan and Lisa Rosell and grant such other relief as the Court deems appropriate.

Respectfully submitted,

Dated: June 27, 2005

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