

In re:)	
)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	Case No. 04–027848–MBM
)	
Debtors.)	Chapter 11
)	
)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., et al.,)	
)	
Movants,)	Related to Document No. 35
)	
v.)	
)	
NO RESPONDENT.)	
)	

Upon the motion (the “Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) seeking entry of an order (the “Order”) pursuant to sections 365 and 554 of title 11 of the United States Code (the “Bankruptcy Code”) authorizing and approving procedures for rejection of executory contracts and unexpired

² Capitalized terms not defined herein shall have the same meaning ascribed in the Motion.

leases of nonresidential real property and authorizing the abandonment of certain personal property; and it appearing that the relief requested is essential to the continued operation of the Debtors' business and is in the best interest of the Debtors' estates and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §157; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is granted; and it is further

ORDERED that the Lease Rejection/Abandonment Procedures are approved in connection with the rejection of any executory contract, lease or sublease, or interest in such lease or sublease (collectively, the "Contracts and Leases"), and corresponding abandonment of property of the Debtors during the Chapter 11 Cases as follows:

- (a) The Debtors will file a notice (the "Rejection Notice"), substantially in the form attached to the Motion as Exhibit A to reject any such executory contract, lease, sublease or interest in such lease or sublease (collectively the "Contracts and Leases"), pursuant to section 365 of the Bankruptcy Code and will serve the Rejection Notice via Federal Express (or similar overnight delivery service) upon: (i) the contract counterparty or landlord(s) affected by the Rejection Notice; (ii) other interested parties to the executory contract or lease (including subtenants), if any, sought to be rejected by the Debtors; (iii) counsel to the Agent for the Prepetition Senior Lenders; (iv) counsel to the Agent for the DIP lenders; (v) counsel to the Prepetition Term B Facility Lenders; (vi) counsel to the Term C Lender; (vii) the Indenture Trustee for the New Senior Notes (or any counsel therefor who files an appearance); (viii) the Indenture Trustee for the New Debentures (or any counsel therefor who files an appearance); (ix) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (x) counsel to the Committee of Unsecured Creditors, and (xi) the Office of the United States Trustee (collectively, the "Service Parties"), advising such service parties of the Debtors' intent to reject the specified Contracts and Leases, the Debtors' intent to abandon any personal property and the deadlines and procedures for filing objections to the Rejection Notice (as set forth below).

- (b) The Rejection Notice shall set forth the following information, as applicable: (i) in the case of a real property lease, the street address of the property underlying the lease and/or sublease, or interest in such lease or sublease which the Debtors seek to reject (to the best of the Debtors' knowledge); (ii) the Debtors' monthly payment obligation, if any, under the contract, lease or sublease or interest in such lease or sublease; (iii) the remaining term of the contract, lease, sublease or interest in such lease or sublease, including options; (iv) the name and address of the contract counterparty, landlord and/or subtenant; (v) a general description of the terms of the executory contract or unexpired lease; and (vi) a disclosure describing the procedures for filing objections, if any.
- (c) A party-in-interest may object to the proposed rejection by the Debtors of a contract or lease by filing and serving a written objection so that such objection is filed with this Court and is actually received by the following parties (collectively, the "Rejection Notice Parties") no later than fifteen (15) days after the date the Debtors serve the Rejection Notice to reject the particular executory contract, lease, sublease or interest in such lease or sublease: (a) bankruptcy counsel to the Debtors, Kirkland & Ellis LLP, Attn: Anup Sathy and Roger Higgins; (b) bankruptcy co-counsel to the Debtors, Campbell & Levine, L.L.C., Attn: Douglas A. Campbell and David B. Salzman; (c) conflicts counsel to the Debtors, Pepper Hamilton LLP, Attn: Robert S. Hertzberg; (d) counsel to the Agent for the Prepetition Senior Lenders; (e) counsel to the Agent for the DIP Lenders; (f) the Indenture Trustee for the New Senior Notes (or any counsel therefor who files an appearance); (g) the Indenture Trustee for the New Debentures (or any counsel therefor who files an appearance); (h) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; (i) counsel to the Committee of Unsecured Creditors, (j) the United States Trustee; (k) counsel to the Prepetition Term B Facility Lenders; and (l) counsel to the Term C Lender.
- (d) If the Debtors have deposited monies with a lessor or contract counterparty as a security deposit or other arrangement, such lessor or contract counterparty may not setoff or otherwise use such deposit without the prior authority of the Court.
- (e) Absent an objection being filed no later than ten days after the date the Debtors serve the Rejection Notice to reject a particular contract or lease, the rejection of such contract or lease shall become effective on the rejection date listed on the Rejection Notice, where such rejection date will not be prior to the date on which the Rejection Notice was filed with and it is further the Court, as described in paragraph (b) above, without further notice, hearing or order of this Court.

- (f) If a timely objection is filed, the Court will schedule a hearing to consider the objection only with respect to the rejection of any contract or lease as to which an objection is properly filed and served. If such objection is overruled or withdrawn, the rejection of such contract or lease shall be deemed to have occurred in accordance with subparagraph (e) above.
- (g) With respect to any personal property of the Debtors located at any of the premises subject to any Rejection Notice, the Debtors shall remove such property prior to the expiration of the period within which a party must file and serve a written objection pursuant to section (c) above. If the Debtors determine that the value of the property at a particular location is *de minimis* or the costs of removing the property exceed the value of such property, the Debtors shall generally describe the property in the Rejection Notice, and absent an objection filed pursuant to section (c) above, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, where is, effective as of the date of the rejection of the underlying unexpired lease;³

And it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and is further

ORDERED that upon rejection of such a Contract or Lease pursuant to this Order, all affected parties to such rejected Contracts or Leases shall file a rejection damages claim, if any, by the later of; (i) thirty (30) days after the rejection date; or (ii) the claims bar date established in these Chapter 11 Cases; and it is further

ORDERED that upon entry of this Order and immediately subsequent thereto, notice of the Motion and this Order (collectively, the “Notice”) shall be provided to (i) those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions, (ii) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, and (iii) the counterparties

³ The Debtors only seek the application of the procedures set forth herein insofar as the Contracts and Leases subject to such procedures constitute executory contracts pursuant to section 365 of the Bankruptcy Code.

to the Debtors' Leases and Contracts. The Notice shall provide that (a) any objections to entry of the Order must be (i) filed no later than ten (10) days following the date of service of the Order and (ii) served upon: bankruptcy counsel to the Debtors, Kirkland & Ellis LLP, Attn: Anup Sathy and Roger Higgins; bankruptcy co-counsel to the Debtors, Campbell & Levine, L.L.C., Attn: Douglas A. Campbell and David B. Salzman; conflicts counsel to the Debtors, Pepper Hamilton LLP, Attn: Robert S. Hertzberg; counsel to the Agent for the Prepetition Senior Lenders; counsel to the Agent for the DIP Lenders; the Indenture Trustee for the New Senior Notes (or any counsel therefor who files an appearance); the Indenture Trustee for the New Debentures (or any counsel therefor who files an appearance); those parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims Against The Debtors, as identified in their chapter 11 petitions; the United States Trustee; counsel to the Prepetition Term B Facility Lenders; and counsel to the Term C Lender; and (b) if no objections are timely filed and served in accordance with the Notice, the Court may grant final relief as requested in the Motion without further notice or hearing. In the event the Debtors discover additional counterparties to Contracts and Leases who did not initially receive the Notice, the Debtors will promptly serve the Notice on such additional parties; and its is further

ORDERED that if the Debtors have deposited monies with a non-Debtor counterparty to an executory contract or unexpired lease of non-residential real property as a security deposit or such other arrangement, that such counterparty not be permitted to setoff or otherwise use the monies from such deposit or other arrangement without the prior Order of the Court; and it is further

ORDERED that all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a); and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Pittsburgh, Pennsylvania
Dated: _____, 2004

United States Bankruptcy Judge